REPUBLIC OF SOUTH AFRICA

COMPANIES TRIBUNAL

Case/File Number: CT006Oct2014

In the matter between:

INNOVATION GROUP PROPRIETARY LIMITED **Applicant**

and

MAVENS ON TARGET INTEGRATED MARKETING AND BUSINESS CONSULTING PROPRIETARY LIMITED **Respondent**

(Registration Number: 2012/021043/07)

Presiding Member	:	Khashane Manamela (Mr.)
Date of Decision	:	13 April 2015

DECISION (Reasons and an Order)

Khashane Manamela

[1] MAVEN[1] is a trade mark owned by INNOVATION GROUP PROPRIETARY LIMITED, the applicant in this matter. The trade mark is registered in classes 09, 35, 36 and 42 which are for goods and services mainly in respect of computers, computing equipment, and office and management functions.[2] The trade marks were granted in late 2009 and 2010,[3] but they appear to have had some measure of existence from late in the past century.[4] The applicant submits that it is involved in "industry-leading technology and business process services, insurance and financial affairs".[5] It has been using the trade mark MAVEN in relation to its services and products since 1999 and the trade mark, therefore, represents an asset of considerable commercial value and importance to the applicant.

[2] MAVENS ON TARGET INTEGRATED MARKETING AND BUSINESS CONSULTING PROPRIETARY LIMITED is the respondent herein. It is not participating and has not filed any papers, in these proceedings. I deal with the issue of service of the papers on the respondent by the applicant a little later below.

[3] The applicant submits that the dominant and memorable portion of the respondent's name is the word or element "MAVENS". It therefore contends that,

[1]The trade mark comprises "MAVEN" as a word and mark.
[2] See para 4.2 of the founding affidavit on pp 5 – 6 and annexures 2 – 5 on pp 14 – 21, of the indexed papers.
[3] See annexures 2 – 5.
[4] They are stated to be associated with trade marks bearing numbers with the year 1998.
[5] See para 4.4 on p 6 of the indexed papers.

the respondent's name is the same and confusingly similar to its trade mark MAVEN. Also that, the respondent's name falsely implies or suggests and would reasonably mislead a person to believe incorrectly that the respondent is part of, or associated with the applicant or its trade mark MAVEN. It applies therefore that the respondent be ordered to change its name as its current name does not satisfy the provisions of sections 11(2)(a)(iii); 11(2)(b)(iii) and 11(2)(c)(i) of the Companies Act 71 of 2008 (the CA 2008).

[4] As alluded to above, this is effectively an application for default order as contemplated in regulation 153 of the Companies Regulations, 2011[6]. In terms of his return of service, the actual application in terms of section 160 of the CA 2008 was served by the sheriff at the registered office address of the respondent on 21 October 2014.[7] The return of service also indicates that the papers were served on a certain T. Blom, who according to the sheriff is "*OCCUPIER FOR THE PAST YEAR apparently a responsible employee and not less than 16 years of age, and in control at the registered office of MAVENS …*" (my italics). I have some concerns regarding the adequacy of this service.[8] I also note the glaring contradictions in the contents of the return of service, which include that, the recipient of the process (T.Blom) is both the occupier and employee of the respondent. Blom is indicated to have been an occupier for a year already at the

[6]The Companies Regulations were made by the Minister of Trade and Industry in terms of section 223 of the Companies Act 71 of 2008 and published under GN R351 in Government Gazette 34239 of 26 April 2011.
[7] See annexure "CLR 1" on p 69 of the indexed papers.
[8] It terms of regulation 153(2)(b) this Tribunal ought to be satisfied that the application was "adequately served".

time of service and therefore the respondent would have vacated the address in that time.

[5] The concerns I have, which relate to the adequacy service upon the respondent, are the following. Firstly, there is no confirmation in the papers that the service address indicated as the registered office address of the respondent [being, 28 Kensal Road, Parklands] is still used as such by the respondent. The papers include extracts from Searchworks which appear to have been printed on 11 July 2014, evidently more than three months before the date of service of the papers on 21 October 2014. This appears at face value not to be problematic, but, in fact, it is. For there is no confirmation that the records kept by Searchworks are, at any given moment, exactly the same as those of the official keeper thereof: the Companies and Intellectual Property Commission (the CIPC). Further, there is no explanation why the applicant relies on the records which are over three months old and whether the information didn't change in that period. I should not be understood to require the applicant to attach up-to-the-hour type of information to its papers, but, in my view, three months is a significantly long time for a change in regulatory records. The possibility that Searchworks' records may be trailing, rather than being *in tandem*, with the CIPC records, is not far-fetched.

[6] My second concern relates to the requirements for an application in terms of section 160 of the CA 2008. This statutory provision reads as follows in the material part:

"**160. Disputes concerning reservation or registration of company names**
(1) A person to whom a notice is delivered in terms of this Act with respect to an application for reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company's name, or any other person with an interest in the name of a company, may apply to the Companies Tribunal in the prescribed manner and form for a determination whether the name, or the reservation, registration or use of the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act.
(2) An application in terms of subsection (1) may be made-
(a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or
(b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case."

[underlining added for emphasis]

[7] The papers confirm that the applicant did not receive notice contemplated in section 160(1) of the CA 2008. Therefore, the application can only be brought within the ambit of or timeframe stated in section 160(2)(b) and not section 160(2)(a). The former, unlike the latter, does not have the time-limitation of three months within which an application must be brought. Where section 160(2)(b) is involved, the applicant ought to show good cause why it only made the application when it did and not earlier. Applied in this matter, it means that the applicant has to show good cause why it only made the application on 17 October 2014[9], which is almost three years after the registration of the respondent on 06 February 2012.[10] It has been held elsewhere that the failure to

[9] In the absence of the definition of "making the application" I have assumed the date of filing same with the recording officer or registrar of this Tribunal, which is mostly confirmed by a date stamp, to be the date the application is made.
[10] See annexure 9 on pp 44 – 46 of the indexed papers.

show good cause is a critical and decisive issue.[11] For the register of company names kept by the CIPC as the regulator has to have some measure of certainty and credibility. This, in my view, is the reason or one of the reasons, why the legislature opted to allow a disputed reserved or registered company name to be open to a challenge by an affected party, who did not receive a notice envisaged in section 160(1) of the CA 2008[12], upon showing good cause. This constitutes a statutory hurdle that ought to be cleared by an applicant who brings an application challenging a company name under these circumstances. To lower the hurdle, there has to be good grounds justifying this Tribunal as the adjudicating body to do so, otherwise the credibility of the register of company names will be constantly under threat of revocation. Inherent in this lack of certainty will be lack of trust and investment in company names and their supposed goodwill.[13]

[8] However, the CA 2008 doesn't define or explain what is meant by showing good cause. In my view, it would entail the applicant adducing evidence regarding when and how it became aware of the reservation or registration of an impugned company name and with that why an application couldn't be made earlier than it was made in the given case. In *Minister of Defence and Military*

[11] See *COMAIR Limited v Kuhlula Training, Projects and Development Centre (Pty) Limited*, an unreported Case NO.: CTR007SEP2014 (Companies Tribunal, decided on 27 February 2015) at paras [5] – [6], and *AVON Justine (PTY) LTD vs Justine Trading CC* unreported Case NO.: CTR001/11/2011 (Companies Tribunal, decided on 20 January 2013) at paras [58] – [64]. Copies may be obtained from the website: www.companiestribunal.org.za.

[12] This notice appears to be derived from the process contemplated in section 12(3)(a) of the CA 2008.

[13] *Premier Trading Co (Pty) Ltd & another v Sporttopia (Pty) Ltd* 2000 (3) SA 259 (SCA) at 266G – 267C quoted with approval recently in *Alliance Property Group* v *Alliance Group* and another [2011] JOL 26890 (SCA) at para [17].

Veterans v Motau and Others [2014] ZACC 18, although being about a different subject matter, it was stated that "good cause may be defined as a substantial or "legally sufficient reason" for a choice made or action taken".[14] In my view, this amounts to a factual enquiry or determination dependent on the circumstances of each and every matter.[15]

[9] The applicant states, rather nonchalantly that, the existence of the respondent's name only came to its attention only recently.[16] This is far from being satisfactory. Consequently, I find the applicant to have failed to show good cause required in terms of section 160(2)(b) of the CA 2008. Equally, this application must fail.

[10] Before I make the consequential order, there is also the issue of the board resolution dated 25 October 2012. This resolution is included as confirmation of the authority of Ms Melony Davids as the deponent to the founding affidavit, among others. However, the resolution is in respect of a different entity called Maven Capital (Proprietary) Limited with registration number: 2011/007045/07.[17] I would assume this to have been an error. And, in my view, this kind of error would have been capable of being fixed in the absence of the other problems discussed above. Therefore it is not necessarily influential in my pronouncement already made.

[14] *Minister of Defence and Military Veterans v Motau and Others* [2014] ZACC 18 para [54].
[15] *Ibid.*
[16] See para 6 of the founding affidavit on p 7 of the indexed papers.
[17] See annexure 1.

[11] Therefore, I do not consider it warranted that I should deal with the merits or substantive issues in the application.

[12] I make the following order:

a) the application is refused.

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Khashane Manamela

Member, Companies Tribunal