

COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No CT011NOV2016

PIETER JACQUES BEUKES

Applicant

and

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
(CIPC)

Respondent

DECISION and ORDER

Presiding Member of the Companies Tribunal: Lucia Glass

1) The Applicant applies to the Companies Tribunal for an order, directing the CIPC to reserve the name as applied for by the Applicant and setting aside the CIPC notice COR 9.5, refusing the Applicant's name reservation, dated 18.10.2016 Notice reference 953876901.

2) The Deponent to the founding affidavit Pieter Jacques Beukes, avers that he instructed his accountant Cobus Esterhuyse, to reserve certain names on his behalf, for a new company which he intends to register.

3) The names applied for were:

The Seedless Grape Company

Seedless Grape Company

The Seedless Grape Exporter.

3) The deponent avers that on the 18th October 2016 a letter COR 9. 5 was issued by CIPC, refusing all three names as a confusingly similar name existed, the following conflicting name was identified:

Seedless Grapes

4) The Applicant applies to the Tribunal for an order directing the CIPC to reserve one of the names applied for.

5) The following Sections of the Companies Act 2008 (the Act) apply :

The Criteria for names of companies

*Section 11 (2) of the Act states that the name of a company must— **(a) not be the same as, or confusingly similar to— (i) the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names;** (emphasis added)*

Section 12. (2) of the Act, states that the Commission must reserve each name as applied for in the name of the applicant, unless the name as applied for is— (a) the registered name of another company, close corporation or co-operative; (b) the name of a registered external company; or (c) already reserved in terms of this section.

*Section 12. (3) of the Act states that **if, upon reserving a name in terms of subsection (2), there are reasonable grounds for considering that the name may be inconsistent with the requirements of— (a) section 11(2)(a) or (b)— (i)***

the Commission, by written notice, may require the applicant to serve a copy of the application and name reservation on any particular person, or class of persons, named in the notice, on the grounds that the person or persons may have an interest in the use of the name that has been reserved for the applicant; and (ii) any person to whom a notice is required to be given in terms of subparagraph (i) may apply to the Companies Tribunal for a determination and order in terms of section 160; or (b) section 11(2)(c)— (emphasis added)

EVALUATION

6) After scrutinizing Section 12 (2) and 12 (3) of the Act and the conflicting name being,

“Seedless grapes”,

against the names applied for being,

The Seedless Grape Company

Seedless Grape Company

The Seedless Grape Exporter

it is my understanding of the Act, that once the Commission reserves a name in terms of **Section 12 (2)** due to the fact that, **that name** (not a **name similar** to the name registered) (emphasis added) is not the registered name of another company, close corporation or co-operative; the name of a registered external company; or already reserved in terms of this section), then the Commission can in terms of Section 12 (3) upon reserving a name in terms of subsection (2), and there are reasonable grounds for considering that the name may be inconsistent with the requirements of section 11(2)(a) or (b), and in this instance it is my view that there are reasonable grounds for considering that the name may be inconsistent with requirements of Section 11(2)(a) or (b) then in this instance the Commission, having already reserved the name, in terms of Section 12(2), can by written notice, require the applicant to serve a copy of the application and name reservation on any particular person, or class of persons, named in the notice, on the grounds that the

person or persons may have an interest in the use of the name that has been reserved for the applicant; and (ii) any person to whom a notice is required to be given in terms of subparagraph (i) may apply to the Companies Tribunal for a determination and order in terms of section 160; or (b) section 11(2)(c).

ORDER

I make the following orders:

1. An order directing CIPC, to reserve the name, "*The Seedless Grape Company*" in terms of Section 12 (2) of the Act.
2. An order directing the Commission, in terms of Section 12 (3) of the Act, to issue a Notice of Potential Contested Name in form COR 9.6 which will require the applicant to serve a copy of the application and name reservation on any particular person, or class of persons, named in the notice, on the grounds that the person or persons may have an interest in the use of the name that has been reserved for the applicant.



LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 29 November 2016