

**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**

**(“The Tribunal”)**

**CASE NO: CT005NOV2016**

**In an Application in terms of Sections 160; 11 (2); and 12 of the Companies Act 71 of 2008 (“the Act”) for a determination that the proposed name SUPPLY CHAIN SOLUTIONS S.A be reserved as a Company name in favour of the Applicant.**

**In the matter between:**

**SUNISH DARAMPAL**

**APPLICANT**

**AND**

**CIPC (COMPANIES AND INTELLECTUAL  
PROPERTY RIGHTS COMMISSION**

**RESPONDENT**

**Coram: Khatija Tootla**

**Decision handed down on 30 December 2016**

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**DECISION**

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**INTRODUCTION:**

- [1] The Applicant, Sunish Darampal, adult male, [...] W. C. D., Pinetown, KwaZulu- Natal made an application for the reservation of the company name **SUPPLY CHAIN SOLUTIONS S.A** and it was refused on 24 June 2016.
- [2] The Respondent is the Commission of Intellectual and Property Rights Commission, Pretoria.

## **BACKGROUND:**

- [3] On 26 October 2016, CIPC notified the applicant of the refusal to reserve the name **SUPPLY CHAIN SOLUTIONS S.A.**, as the CoR 9.5 notice states that the name is in conflict with the following comparative name: **GRAVITY SUPPLY CHAIN SOLUTIONS S.A** on the CIPC register with a note that it is confusingly similar. It is only in the email dated 8 November 2016 from Mr Monyela of CIPC that it is contended that the name is confusingly similar to the conflicting name in terms of Section 11(2) (b); and that a distinguishing element be inserted that will assist in differentiating the Applicant's name from the aforementioned registered name, alternatively in the event of association with the existing name on the register or alluding to an association from the conflicting company, the Applicant obtain a letter of consent of such association with relevant documentation ( also mentioned on CoR 9.5 notice).
- [4] The applicant requests the Tribunal to approve the reservation of the proposed name **SUPPLY CHAIN SOLUTIONS S.A** in substitution for the decision of the CIPC, based on the fact that he is currently operating a company as such. Suffice it to say no such company exists on the CIPC register with S. Dharampal being a director. It may well be that the Applicant trades as a sole proprietor under that name.
- [5] There is evidence on record that this Application has been served on CIPC and that CIPC has provided a response via email.

## **EVALUATION:**

- [6] The CoR 9.5 notice issued by CIPC speaks of comparison with the proposed name and identifies one conflict as mentioned in para 3 above. It is interesting to note that nowhere in the Act is there any mention of comparative names as a ground to refuse reservation of a proposed company name. It begs the question why CIPC time and again continues to mention comparative names in its notices.

Section 11 and 12 read together with regulations 8 to 13 of the Companies Regulations, 2011 are the pertinent sections and regulations which apply to name registration and reservation; and which provides for a mechanism to approach this Tribunal for relief in terms of section 160 of the Act, when a situation such as this arises.

- [7] Section 11(2) mentions, amongst others, company names which are the same or confusingly similar to other company names or names which falsely imply or suggest, or are such as would reasonably mislead a person to believe incorrectly, that the company, is part of, or associated with, any other person or entity”. CIPC does not state that the name proposed which is SUPPLY CHAIN SOLUTIONS S.A is the same as that which exists on the CIPC register because it is not.
- [8] On the CoR 9.5 form, CIPC apart from making a comparison with other name on the CIPC register, concludes that the name proposed by the Applicant cannot be approved due to the fact that it is confusingly similar to that name already registered in the name register in particular in terms of Section 11 (2) (b) of the Act by simply stating “confusingly similar”.
- [9] Section 12 (2) of the Companies Act provides that the CIPC must (my emphasis) reserve a name unless the applicant is prohibited to use the name by virtue of Section 11 (2) (a) or if the name applied for is already reserved (Section 12(2)(b)). Section 11(2) (a) speaks of a name which is the “same” and not confusingly similar. Secondly, if the name is already reserved as set out in Section 12(2) (b), then CIPC must follow the process set out in Section 12 (3). In this instance, the proposed name has not already been reserved by CIPC nor is it the same but it may amount to it being confusingly similar to it.
- [10] Furthermore, if, upon reserving the name, there are reasonable grounds for considering that the name may not comply with Section 11 (2) (b) or (c), the CIPC may require the applicant to serve a copy of the application and name reservation on the relevant person (this is any person who may have an interest in the use of the name and in this instance it is the company **GRAVITY SUPPLY CHAIN SOLUTIONS S.A**. However, CIPC has not followed this procedure.

Thereafter, the person on whom the notice is to be served can apply to the Tribunal for a determination or an order in terms of Section 160 which deals with disputes concerning reservation or registration of company names.

- [11] However, if read with the regulations, the CIPC has one of two alternatives in respect of names in Sections 11 (2) (b) and (c). It seems CIPC can refuse to reserve the name if it does not satisfy any (my emphasis) of the requirements of Section 11 (2) (b) and (c); and Regulation 9 (3) (c) (i).

However, this Regulation seems to be in conflict with Section 12 (2) that provides it must (my emphasis) reserve the name, except for names as mentioned in Section 12 (2) (a) and (b) and it may amount to being ultra vires. However, the rules are the rules to the Act, which means the Act takes precedence over the Rules.

- [12] Secondly, it must register the name (except for names as mentioned in Section 12 (2) (a) and (b), which includes names in terms of s 11 (2) (a)) but if there are reasonable grounds for considering that the name may be inconsistent with the requirements of s 11 (2) (b) or (c), it 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 that person can apply to the Companies Tribunal in terms of Section 160 to determine if the name satisfies the requirements of the Act . (Refer Renier A Schuld vs Companies and Intellectual Property Commission CT002Oct2014; See also notes on Section 12 in Henochsberg on the Companies Act 71 of 2008.)

- [13] In the circumstances, it is not the domain of CIPC to pronounce on this issue and to refuse reservation of the company under these circumstances, unless it does so in terms of Section 12 (2) (b) i.e. that the name has already been reserved or the name is the same.

**FINDING:**

[14] In accordance with Section 12 (2) of the Act, CIPC must reserve the name “**SUPPLY CHAIN SOLUTIONS S.A** “ and thereafter it can instruct the Applicant to serve a copy of the name reservation on “GRAVITAS SUPPLY CHAIN SOLUTIONS” to enable this company to object to the name “**SUPPLY CHAIN SOLUTIONS S.A** “ if it so wishes to do.

[15] Copy of this order is to be served on the compliance department of CIPC.

*k. tootla (electronically signed)*

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**KHATIJA TOOTLA**

**Member of the Companies Tribunal**

**30 December 2016**