

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

("THE TRIBUNAL")

CASE NUMBER: CT002NOV2014

In the matter of:

K2014220067 (SOUTH AFRICA) (PTY) LTD

APPLICANT

**THE COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

RESPONDENT

Coram: PJ Veldhuizen

Order delivered: 29 July 2015

ORDER & REASONS

1. THE PARTIES

1.1. The Applicant is **K2014220067 (SOUTH AFRICA) (PTY) LIMITED**, a company incorporated and existing under the Company Laws of the Republic of South Africa, having its registered address as 7 Maori Road, Llandudno, Western Cape.

1.2. The Respondent is **THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**, established by Section 185 of the Companies Act No. 71 of 2008 at the DTI Campus (Block F), 77 Meintjies Street, Sunnyside, Pretoria.

2. THE APPLICATION

2.1. This is an application brought in terms of Section 160 of the Companies Act No. 71 of 2008 ("the Act") for an Order confirming that the Companies and Intellectual Property Commission ("**CIPC**") reserve the name **CLUB ELECTRON** in the name of the Applicant as envisaged by Section 160(3)(a), (b)(i)(aa). The relevant sections are set out in hereinbelow:

Section 160

Disputes concerning reservation or registration of names

- (3) *After considering an application made in terms of sub-section (1), and any submissions by the Applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Companies Tribunal –*
 - (a) *must make a determination whether the name, or reservation, registration or use of the name, or transfer of the reservation or registration of the name, satisfies the requirements of this Act; and*
 - (b) *may make an administrative order directing –*
 - (i) *the Commission to –*
 - (aa) *reserve a contested name, or register a particular defensive name that has been contested for the Applicant;*
 - (bb) *register a name or amended name that has been contested as the name of a company.*

2.2. The founding papers were deposed to by **JEANINE MARGARET AMSEL**, the sole director of the Applicant. The deponent has filed an application for relief in terms of Regulation 142(2) and has filed with that application a supporting affidavit setting out the facts upon which the application is based.

2.3. The Respondent was served via email with a copy of the papers on **5 November 2014** at the email address info@cipc.co.za. To date, the Respondent has not filed a response within the prescribed period or at all and the Applicant accordingly applies to the Companies Tribunal for a Default Order.

2.4. I am satisfied that notice of the application was adequately served upon the Respondent and that the deponent has the necessary *locus standi* to bring this application on behalf of the Applicant.

3. THE RELIEF SOUGHT

The Applicant seeks an Administrative Order directing the Commission to reserve the proposed name **CLUB ELECTRON** which was refused on the basis that comparative names existed at the time of the application.

4. THE APPLICANT'S ARGUMENT

4.1. The Applicant argues that the word "club" is a generic collective noun and that the word "electron" is distinct from the alleged comparative company names containing the word "electronics" identified by the Respondent.

4.2. The Applicant refers extensively to the definitions of the words "club" and "electron" as proffered on the website Wikipedia. **It should be noted that this Tribunal does not rely on any aspect of this argument or take any judicial notice of anything contained on the website. Wikipedia is an open editable website which is not peer reviewed and consequently has no standing with the Tribunal.** Notwithstanding the aforesaid, it is trite that the word "electron" and "electronics" do not mean the same thing and consequently they cannot be considered comparative.

4.3. Section 12 (1) of the Act reads:

A person may reserve one or more names to be used at a later time, either for a newly incorporated company, or as an amendment to the name of an existing company, by filing an application together with the prescribed fee.

(2) –

The Commission must reserve each name as applied for in the name of the Applicant, unless –

(a) the Applicant is prohibited, in terms of section 11(2)(a), from using the name as applied for; or

(b) the name as applied for is already reserved in terms of this section.

(3) –

If upon reserving the names in terms of sub-section (2), there are reasonable grounds for considering that the name may be inconsistent with the requirements of –

(a) section 11(2)(b) or (c) –

(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 sub-paragraph (i) may apply to the Companies Tribunal for a

determination and order in terms of Section 160; or (b) section 11(2)(d) – (i) the commission may refer the application and name reservation to the South African Human Rights Commission; and (ii) the South African Human Rights Commission may apply to the Companies Tribunal for a determination and order in terms of Section 160;

4.4. Accordingly it is readily apparent that the Respondent in the absence of an identical name being registered in time would not be able to simply refuse to reserve the name requested by the Applicant but should have issued a notice in terms of Section 12(3).

5. FINDINGS

In the light of the above, it is the finding of this Tribunal that the Respondent erred in refusing to register/reserve the name reservation of the Applicant and that when it did so, it was acting *ultra vires* of its powers.

6. ORDER

6.1. The decision of the Respondent to refuse the reservation of the name **CLUB ELECTRON** is set aside.

6.2. The Respondent is directed to reserve the name **CLUB ELECTRON** for the Applicant.



PJ VELDHUIZEN
MEMBER OF THE COMPANIES TRIBUNAL
CAPE TOWN