



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("THE TRIBUNAL")**

CASE NUMBER: CT003NOV2016

In the matter of:

KHANGELA BENEFIT TRACING SERVICES CC

APPLICANT

and

KHANGELA INVESTIGATIONS AND TRACING (PTY) LTD

RESPONDENT

Coram: PJ Veldhuizen

Date of Hearing: n/a

Order delivered: 27 February 2017

ORDER & REASONS

A. INTRODUCTION

1. THE PARTIES

- 1.1. The Applicant is **KHANGELA BENEFIT TRACING SERVICES CC** (“The Applicant”), a close corporation duly incorporated in terms of the laws of the Republic of South Africa.
- 1.2. The Applicant has its principal place of business at No 1 Joseph Road, Silamonte, Johannesburg, Gauteng.
- 1.3. The Respondent is **KHANGELA INVESTIGATIONS AND TRACING (PTY) LTD**, a private company duly incorporated in terms of the laws of the Republic of South Africa and having its registered address at No 16 Annlin Place, Matlabas Street 220, Annlin, Gauteng.

B. THE APPLICATION

2. This is an application brought in terms of section 160(3)(b)(ii) of the Companies Act 71 of 2008 ("the Act").
3. The Applicants objects to the use of the words “Khangela” and “Tracing” in the name of the Respondent, Khangela Investigations and Tracing (Pty) Ltd, on the basis of their earlier rights in the name and that the Respondent’s use of the aforementioned words:
 - 3.1. create the impression that the Applicant and Respondent are in some way connected and / or related;

- 3.2. is calculated or likely to deceive or confuse members of the public and that as a result the customers of the Applicant may be diverted to the Respondent causing damage to the Applicant.
4. The Applicants seek an Order directing the Respondent to change its name to a name that meets the requirements of the Act.

C. THE LEGISLATION

5. The regulation of disputes concerning the reservation or registration of company names and the jurisdiction of the Tribunal is set out in Section 160 of the Act:

(1) –

A person to whom a notice is delivered in terms of this Act with respect to an application for a 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 the 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); 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.

(3) –

After considering an application made in terms of subsection (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 that name, or the reservation, registration or use of the name, or the 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 had been contested, for the applicant;

(bb) register a name or amended the name that had been contested as the name of the company;

(cc) cancel the reservation of a name, or the registration of a defensive name; or

(dd) transfer, or cancel the transfer of, the reservation of a name, or the registration of a defensive name; or

(ii) a company to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within a period and

on any conditions that the Tribunal considers just, equitable and expedient in the circumstances, including a condition exempting the company from the requirement to pay the prescribed fee for filing the Notice of Amendment contemplated in this paragraph.

(4) –

within 20 business days after receiving a notice or decision issued by the Companies Tribunal in terms of this section, an incorporator of a company, a company, a person who received a notice in terms of section 12(3) or 14(3), an applicant under subsection (1) and any other person with an interest in the name or proposed name that is the subject of the application, as the case may be, may apply to court to review the notice or decision.

6. The restrictive criteria for the names that may be chosen by a company is set out in Section 11 (2) of the Act:

(2) – The name of a company must –

(a) not be the same as –

(i) the name of another company, domesticated company, registered external company, close corporation or co-operative;

(ii) a name registered for the use of a person, other than the company itself or a person controlling the company, as a defensive name in terms of section 12(9), or as a business name in terms of the Business Names Act, 1960, (Act 27 of 1960), unless the registered user of that defensive name or business name has executed the necessary documents to transfer the registration in favour of the company;

(iii) a registered trademark belonging to a person other than the company, where mark in respect of which an application has been filed in the Republic for registration as a trademark or a well-known trademark is contemplated in section 35 of the Trade Marks Act, 1993 (Act 194 of 1993), unless the registered owner of that mark has consented in writing to the use of the mark as the name of the company; or

(iv) a mark, word or expression use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act 17 of 1941), except to the extent permitted by and were in terms of that Act;

(b) not to be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless –

(i) in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies;

(ii) in the case of the company name similar to a defensive name or to a business name referred to in paragraph (a)(ii), the company, or person who controls the company, is the registered owner of that defensive name or business name;

(iii) in the case of a name similar to a trademark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trademark, will mark, or is authorised by the registered owner to use it; or

(iv) in the case of a name similar to a mark, word or expression referred to in paragraph (a)(iv), the use of that mark, word or expression by the company is permitted by and in terms of the Merchandise Marks Act, 1941;

(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company –

(i) is part of, or associated with, any other person or entity;

(ii) is an organ of state or a court, or is operated, sponsored, supported or endorsed by the State or any organ of state or a court;

(iii) is owned, managed or conducted by a person or persons having any particular educational designation or who is a regulated person or entity;

(iv) it is owned, operated, sponsored, supported or endorsed by, or enjoys the patronage of, any –

(aa) foreign state, head of state, head of government, government or the administration or any department of such a government or ordered administration; or

(bb) international organisation; and

(d) not include any word, expression or symbol that, in isolation or in context within the rest of the name, may reasonably be considered to constitute –

(i) the propaganda for war;

(ii) incitement of imminent violence; or

(iii) advocacy of hatred based on race, ethnicity, gender or religion, or incitement to cause harm.

D. EVALUATION OF EVIDENCE

7. The Applicant has properly filed an application together with a supporting affidavit where it sets out the nature of the relief sought and the reasons why it believes it is entitled to same.
8. The Applicant has served a copy of the application on the Respondent who has failed and / or neglected to file any opposition. In the circumstances the Applicant has filed an application for default relief.
9. In the absence of any opposition, I cannot fault the Applicant's version either technically on the papers or substantively on the law and I am therefore satisfied that the Applicant is entitled to the relief sought.

E. DECISION

10. The Applicant is granted a Default Order in terms of Section 160(3) of the Companies Act 71 of 2008 and Regulation 153 of the Companies Regulations of 2011 in the following terms:
 - 10.1. Directing the Respondent to change its name to one which does not incorporate the words **KHANGELA** and **TRACING** in conjunction with each other in their company name;

- 10.2. In the event that the Respondent fails to comply with the relief ordered in paragraph 10 above within three (3) months from the date of this Order, that the Respondent be directed, in terms of Section 160(3)(b)(ii) read with Section 14(2) of the Companies Act, to change its name to "K2013/115206/07 (Pty) Ltd", as its interim company name on the Companies Register; and
11. Should the Respondent fail to comply with the relief ordered in 10 and 10.2 above, that the Companies and Intellectual Property Commission be ordered to change the Respondent's name to "K2013/115206/07 (Pty) Ltd", as the Respondent's interim company name on the Companies Register.



PJ VELDHUIZEN

MEMBER OF THE COMPANIES TRIBUNAL

CAPE TOWN