

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT003AUG2015

In the matter between:-

FRUIT & VEG CITY HOLDINGS (PROPRIETARY) LIMITED Applicant

And

EVER FRESH SUPER MARKET (PROPRIETARY) LIMITED FIRST RESPONDENT

THE COMMISSIONER OF COMPANIES SECOND RESPONDENT

CORAM: KGANYAGO M.F

DECISION HANDED DOWN ON THE 14TH DECEMBER 2015

DECISION

[1] The applicant in this matter has brought an application in terms of section 160 (1) and (2) read together with section 11(2) of the Companies Act 71 of 2008 (“the Act”). The applicant is seeking an order in terms of section 160(3) of the Act that the first respondent be ordered to choose a new name that does not consist or incorporate their mark “Ever Fresh Markets” or any other mark which is confusingly and/or deceptively similar to the applicant’s Everfresh Markets trade mark. The applicant is also seeking a costs order against the first respondent.

- [2] The applicant's form CTR 142 was filed with the Tribunal on the 03rd August 2015. However, it was served by the sheriff on the first respondent on the 17th August 2015.
- [3] The first respondent did not serve or file any opposing papers. The 20 days within which the respondent is required to serve and file opposing papers if any has lapsed. The applicant is now applying for a default order in terms of Regulation 153(1) of the Companies Regulations, 2011 ("the Regulations".)
- [4] In terms of Regulation 142 (2), the applicant is required to serve their application on the respondent within five business days after filing it with the Companies Tribunal. The applicant has served their application outside the stipulated five days period. In short it was served out of time. The applicant has failed to comply with rule 142(2), and in my view their application is defective.
- [5] Under the circumstances, I am not inclined to grant a default order on a defective application.

ORDER

- [6] In the result, the default order is refused.

M.F KGANYAGO

MEMBERS OF THE COMPANIES TRIBUNAL