

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT007OCT2016

In the matter between:

Cornelis Johannes Barnard

Applicant

And

Companies and Intellectual Property

Registration Commission (CIPC)

Respondent

Coram: Kganyago M.F

Decision handed down on the 09th November 2016

DECISION

- [1] This is an application in terms of section 160 of the Companies Act 71 of 2008 (“the Act”) read together with regulation 13 of the Companies Regulations of 2011 (“the Regulations”). The applicant is seeking an order that the Tribunal set aside the decision of the respondent’s refusal to reserve either of its proposed names Cleanzing South Africa or Clean Zing South Africa.
- [2] On the 13th September 2016, the applicant applied to the respondent for the reservation of the name of either Cleanzing South Africa or Clean Zing South Africa. The respondent in their letter dated the 14th September 2016 declined the applicant’s application the ground that a “comparative name exists” for both proposed names.
- [3] The applicant’s present application was duly served on the respondent on the 26th October 2016. The respondent has made its representation by email standing by its decision to refuse to reserve the applicant’s proposed names.

[4] Section 11(2) (a) of the Act provides that:

“(2) The name of 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), as a business name in terms of the Business Names Act, 1960 (Act no 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 trade mark belonging to a person other than the company, or mark in respect of which an application has been filed in the Republic for registration as a trade mark or well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act no 194 of 1993) unless the registered owner of the mark has consented in writing to the use of the mark as the name of the company; or

(iv) a mark, word or expression the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act no.17 of 1941), except to the extent permitted by or in terms of that Act.

[5] Section 12(2) (a) and (b) of the Act provides as follows:-

“(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 applied for; or

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

[6] Regulation 9(3) of the Companies Regulations, 2011 (“the Regulations”) provides as follows:-

“(3) As soon as practicable after receiving an application to reserve a name, or to extend the reservation of a name, the Commission must consider the name, or if more than one name is included in the application for reservation, must consider the names serially in the order in which they appear in the application, and must issue to the applicant-

(a) a Notice Requiring Further Particulars in Form CoR 9.3, if the Commission requires more information to satisfy any relevant requirements in terms of section 11 or 12 or regulation 8, before determining whether to accept the application, or

(b) a Notice Confirming a Name Reservation or Registration in Form CoR 9.4, if the Commission has accepted an application to reserve a name, or extend the reservation of a name; or

(c) a Notice Refusing a Name Reservation or Registration in Form CoR 9.5, if-

(i) the form of the name, or in the case of an application including alternative names, the form of each such name, fails to satisfy any requirements set out in section 11 or 12, or regulation 8, or

(ii) the use of that name, or in the case of an application including alternative names, the use of each of those names, by the applicant is prohibited in terms of the Act.”

[7] In terms of section 12(2) of the Act CIPC is compelled to reserve each name applied for unless the applicant is prohibited in terms of section 11(2)(a) from using the name as applied for, or the name as applied for is already reserved in terms of this section. The section use the words “must reserve”. In other words it is only in those two instances wherein CIPC can refuse to reserve the name applied for.

- [8] In terms of section 11(2)(a) CIPC will be justified if it refuses to reserve a name that is the same as another company. However, the respondent in their opposing representation has stated that they refused to reserve the applicant's names since they are of the view that they are confusingly similar to other companies names. However, the words confusingly similar is not found in section 11(2)(a), but is found in section 11(2)(b). Section 11(2)(b) has not been listed in section 12(2) as a ground upon which CIPC can refuse to reserve a name applied for, but refers only to section 11(2) (a). As I have already pointed out that in terms of section 11(2)(a) CIPC will be justified to refuse if the company's name applied for is the same as that of another company. If the legislature intended also to include the one that is confusingly similar, it would have done so.
- [9] According to the Consise Oxford Dictionary, "similar" is defined as of the same kind in appearance, character, or quantity, without been identical, whilst "same" is defined as identical or unchanged. In other words, the mere fact the names are similar, does not mean that they are identical, they can still be differentiated without causing any confusion.
- [10] Under the circumstances, in my view, the respondent has committed an irregularity that is material in relying on section 11(2)(b) in refusing to reserve the applicant's proposed names, and therefore its decision stand to be set aside.
- [11] In the result I make the following order:-
- 10.1. The decision of the respondent of the 14th September 2016 in refusing to reserve the applicant's proposed names is hereby set aside.
- 11.2. The respondent is directed to reserve the applicant's proposed name "Cleanzing South Africa" within 20 business day of receipt of this decision.
- 11.3. Upon reserving the name CIPC may require the applicant to serve a copy of the application and name reservation upon the relevant person who might have an interest in the name reserved.

M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL