

**COMPANIES TRIBUNAL**

**REPUBLIC OF SOUTH AFRICA**

Case No CT013Mar2017

**JONATHAN JENSEN**

**Applicant**

and

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

**Respondent**

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**DECISION and ORDER**

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Presiding Member of the Companies Tribunal: Lucia Glass

- 1) The Applicant applies to the Companies Tribunal for an order setting aside the Respondent's notice (dated 20/3/2017 Notice reference 963387042) concerning the Applicant's name reservation LUMINI in which he is notified that the reservation of the name LUMINI is refused and that the following conflicts were identified; LUMINIS CONSULTING.
- 2) The Deponent to the founding affidavit of the Applicant's papers is Jonathan Jensen, who avers that the name applied for LUMINI is not confusingly similar to those on the Respondent's database.
- 3) He further avers that the Respondent has in the past registered the name LUMINO after companies existed with that word, namely LUMINO CONTRACTORS AND LUMINO CREATORS.

4) It is further alleged that LUMINI is a brand name on its own, whereas LUMINIS CONSULTING specifies clearly the purpose of the business and that this makes the name less easy to be confused.

5) He alleges that the name LUMINI, does not appear as the first word of any other company name.

6) He further states that the pronunciation of the name is dissimilar to LUMINIS CONSULTING.

7) On the 4/6/2017 Applicant received a letter via email correspondence from the Respondent, in which it is stated that a reasonable ground of confusion exists, in the business world in putting members of the public under misapprehension into thinking and believing that the Applicant's entity is the **mother body** of all LUMINI companies. (emphasis added) And further advises that the Applicant insert the **distinguishing element** (LUMINI ADVERTISING or LUMINE TRADING etc) that will sufficiently be capable of **differentiating** LUMINI from names already registered within the meaning of the name register.(emphasis added)

8) The Applicant applies to the Tribunal for an order confirming or varying this notice in whole or in part, or setting aside this Notice and directing the Respondent to reserve the name applied for.

9) **The following Sections of the Companies Act 2008 apply**

*The Criteria for names of companies*

**Section 11 (1) Subject to subsections (2) and (3), a company name—**

*(a) may comprise words in any language, irrespective of whether or not the words are commonly used or contrived for the purpose, together with— (i) any letters, numbers or punctuation marks; (ii) any of the following symbols: +, &, #, , %, =; (iii) any other symbol permitted by the regulations made in terms of subsection (4); or (iv) round brackets used in pairs to isolate any other part of the name, alone or in any combination; or*

*(b) in the case of a profit company, may be the registration number of the company together with the relevant expressions required by subsection (3).*

***(2) The name of a company must— (a) not be the same as, or confusingly similar to— (i) the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names; (emphasis added)***

***Section 12. (1) 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 the name as applied for is— (a) the registered name of another company, close corporation or co-operative; (b) the name of a registered external company; or (c) already reserved in terms of this section.***

***(3) If, upon reserving a name in terms of subsection (2), there are reasonable grounds for considering that the name may be inconsistent with the requirements of— (a) section 11(2)(a) or (b)— (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 subparagraph (i) may apply to the Companies Tribunal for a determination and order in terms of section 160; or (b) section 11(2)(c)— (emphasis added)***

## **EVALUATION**

10) The Act states clearly that the name applied for must be consistent with the requirements of Section 11(2)(a) or (b) of the Act. Section 11(2) of the Act, states that the name of a company must not be the same as, or confusingly similar to the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names.

11) The Applicant alleges **that LUMINI is a brand name on its own, whereas LUMINIS CONSULTING specifies clearly the purpose of the business** (emphasis added) and that this makes the name less easy to be confused. It is my view that the

Applicant's understanding makes out a case that LUMINI will very well confuse the public into believing that it is the mother company of all other companies with a similar name (but perhaps with distinguishing features such as the addition of the word, "consulting"). In my view, the mere fact that it appears to be a brand name, makes it confusingly similar to the other similar names registered.

12) In my view, the public will look to the name "LUMINI" as the mother company of all the other companies with similar names, but which have distinguishing features.

13) Moreover the name applied for "LUMINI" is confusingly similar to "LUMINIS CONSULTING", and may very well confuse the public into believing that these companies are related.

14) The names applied for are not consistent with the requirements of Section 11(2)(a) or (b) of the Act. It is my view that the company name already registered on the CIPC data base, is too similar to the Applicant's company reservation name, which will create confusion and the general public may regard the Applicant's potentially registered name and the already registered company name, as horses from the same stable and this may be detrimental to the business of the already registered companies.

## **ORDER**

The application is refused.

An order confirming the CIPC notice, in its entirety, is granted.

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LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 29 April 2017