

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT006MAY2015

In the matter between:

Origin Solution (Pty) Ltd

Applicant

And

Companies and Intellectual Commission ("CIPC")

Respondent

Coram: Kganyago M.F

Decision handed down on the 20th August 2015

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DECISION

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- [1] This is an application in terms of section 60 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 to refuse to reserve their proposed name "Adeptability (Pty) Ltd."
- [2] On the 28th April 2015, the applicant applied to the respondent for the reservation of the name Adeptability. On the 29th April 2015 the respondent refused to reserve the said name. The respondent in their letter of the 29th April 2015 stated the list of names which they deemed comparative. Based on that they refused to reserve the applicant's proposed name.
- [3] The applicant's application was duly served on the respondent on the 12th May 2015. The respondent in their answer to the applicant's application stated that they stand by their decision, however they will abide by the Companies Tribunal's decision.
- [4] Section 12 (1), (2) and (3) of the Act read as follows:-

*“(1) A person may reserve one more names to be used at a later time, either for a newly incorporate company, or as an amendment to the name of an existing company, by filling 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 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) (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 subparagraph (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.”*

- (5) Regulation 9(4) of the Companies Regulations, 2011 (“the Regulations”) reads as follows:

*“If the Commission has accepted the reservation of a name that the Commission considers may be contestable on any ground contemplated in section 12(3), the Commission, when issuing Form 9.4 in response to that application, must also issue---*

*(a) A notice of a Potentially Contested Name, in Form CoR 9.6, to the applicant if the name is contestable in terms of section 12(3)(a), read with section 11(2)(b) or (c); or*

*(b) A notice of Potentially Offensive Name, in Form Cor 9.7, to the South African Human Rights Commission and to the applicant, if the name is contestable in terms of section 12(3)(b), read with section 11(2)(d).”*

- (6) The applicant do concede that there is an existing company with name Adeptability. However, the applicant contend that the said company is providing services in the health industry and is based in the Free State Province. The applicant is conceding that there are some similarities in their proposed name and that of the existing company.
- (7) In terms of section 11(2)(b) of the Act, the name of a company must not be confusingly similar to name, trade mark, mark, word or expression of another company, unless the owner has authorised the use of it. In the present case there is no consent from the owner of the existing name authorizing the applicant to use it. Whether the other company is providing services in the health sector or is based in the Free State Province is immaterial. The main issue is whether there are similarities which had the likelihood of confusion.
- (8) In terms of section 12(2)(b) of the Act the Commission must reserve each name as applied for unless the name as applied for is already reserved. In the present case there an existing name with some similarities which has already been

registered. Therefore, in my view the applicant's proposed name offends the provisions of section 11(2)(b) of the Act, and the Commission must not reserve it.

- (9) The respondent has rejected the applicant's proposed name before it was reserved. Therefore, in my view the applicant will not even have the remedy as provided for in section 12(3) of the Act and regulation 9(4) wherein the Commission will be compelled to issue a written notice that requires the applicant to serve on the affected parties. The Commission would have been compelled to comply with the provisions of section 12(3) of the Act if it had already reserved the applicant's proposed name. In the present case the similarities were picked up before the name was reserved.
- (10) Under the circumstances the respondent was correct in refusing to reserve the applicant's proposed name.

- (11) In the result I make the following order:

11.1 The applicant's application is refused.

11.2 The decision of the respondent to refuse to reserve the applicant's proposed name is confirmed.

Dated at Polokwane on this 20th day of AUGUST 2015.

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**M.F KGANYAGO**

**MEMBER OF THE COMPANIES TRIBUNAL**