

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT012MAY2015

In the matter between:

KGANYA BRANDS (PTY) LTD

First Applicant

KGANYA INVESTMENT HOLDINGS (PTY) LTD

Second Applicant

And

LESEDING HO KGANYA TRADING SUPPLY (PTY) LTD

First Respondent

COMMISSIONER OF THE COMPANIES AND INTELLECTUAL

PROPERTY COMMISSION

Second Respondent

Coram: Kganyago M.F

Decision handed down on the 2nd October 2015

DECISION


- [1] The applicants in this matter have 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 applicants are seeking an order in terms of section 160(3) of the Act that the first respondent be directed to change its name to one which does incorporate the word KGANYA or SEDI LA KGANYA or any other word confusingly and/or deceptively similar to its KGANYA trade mark. The applicants are also seeking a costs order against the first respondent.
- [2] Against the second respondent the applicants are seeking an order that in the event the first respondent fails to comply with the order of this Tribunal within three months of the order, the second respondent must be directed to change the first respondent's name on the Companies Register.

- [3] The first respondent was duly served with the application at its registered address by the sheriff on the 21st May 2015 to one Mampe Culling.
- [4] The first respondent did not serve or file any opposing papers. The 20 days within which the first 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 Regulation").
- [5] After perusal of the documents filed, I am satisfied that members of the public are likely to be confused or deceived into believing that a connection exists between the applicants and first respondent. Furthermore, there is a likelihood that members of the public are likely to be confused or deceived into believing that the first respondent forms part of the applicants' as a result of its use and registration of a name that is confusingly similar to the applicants' KGANYA or SEDI LA KGANYAG'S trade mark.
- [6] Under the circumstances, in my view, the applicants have made out a good case for a default order to be granted.

ORDER

In the result I make the following order.

- [7] The applicants' default order is granted.
- [8] The first respondent is ordered to change its name to one which does not incorporate the word KGANYA or SEDI LA KGANYA or any other word that is confusingly and/or deceptively similar to its KGANYA trade mark within three months of receipt of this decision.
- [9] Should the first respondent fail to comply with the order as set out in paragraph 8 within three months of receipt of the order, the second respondent is directed to change the first respondent's name on the Companies Register.
- [10] The first respondent is exempted from paying the prescribed fee relating to change of name at CIPC.



M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL