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IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT006Jan2017

In the matter between:

Warren Norman Schmidt

Applicant

and

Companies and Intellectual Property Commission

Second respondent

Coram: Delport P.A.

Decision handed down on 28 April 2017

Decision

INTRODUCTION

- [1] The applicant applies for a default order that the first respondent be ordered to reserve a name in terms of s 12 of the Companies Act 71 of 2008 ("Companies Act" / "Act").
- [2] Regulations 142 and 153 of the Companies Act (GNR 351 of 26 April 2011) ("Companies Act regulations" / "regulations") regulate an application to the Companies Tribunal ("Tribunal") as well as the application for a default order under certain circumstances.
- [3] The jurisdiction of the Tribunal in this matter is as determined in s 160(1) of the Companies Act.

BACKGROUND

- [4] The applicant is Warren Norman Schmidt (ID [6...]) apparently also on behalf of a company K2016540861/07.
- [5] The respondent is the Companies and Intellectual Property Commission ("CIPC"), which is tasked with the administration of, *inter alia*, the reservation of company names in terms of the Act.
- [6] The applicant applied for the reservation of various names for the company, including "The Future", Secret Society", "The Smiths" and "Smith and Smith".
- [7] The CIPC refused all the applications based on the fact that a "confusingly similar name exists" "within the meaning of our name register in particular in terms of Sec 11(2)(b) of the Companies Act" and notified the applicant accordingly on 6 January 2017 with COR 9.5 referenced 960360797.
- [8] Unfortunately this is where the clarity in this matter stops. The documents filed with the Tribunal are riddled with mistakes and deficiencies.
- [9] The applicant filed a CTR 142 with the Tribunal on 25 January 2017 requesting "relief from the companies tribunal".
- [10] Regulation 142(3) clearly requires that the application must indicate the basis of the application, stating the "...section of the Act or the regulations in terms of which the Application is made;..." The statement "relief from the companies tribunal" does not comply with this requirement.
- [11] The applicant apparently served form CTR 142 and the supporting affidavit on the first respondent as he now applies for a default order in terms of regulation 153 as is evidenced from an application on CTR 145 submitted to the Tribunal on 30 March 2017
- [12] The supporting affidavit for the application for a default order merely states "I served notice to the CIPC via email and received a response defending their decision and acknowledging my communication."

- [13] There are a multitude of emails provided, but none of these are part of the affidavit and are in fact not even referred to in the affidavit.
- [14] There is no indication whether the addressees in those emails comply with the requirements of Table CR3 of Annexure 3 of the Regulations.
- [15] Various notices of the CIPC also indicate how service must be done in respect of the CIPC if it is effected by email. The affidavits do not state if these requirements were complied with.
- [16] It is impossible therefore to determine whether the documents were served on the CIPC in the manner that it should have been done. An (apparent) employee of the CIPC does not necessarily represent the CIPC or can accept delivery in the name of and for the CIPC.
- [17] In terms of regulation 154(3) the Tribunal can condone any “technical irregularities” in any of its proceedings. The deficiencies as detailed above are material and are, in my opinion, not “technical irregularities”. To condone it would make a mockery of the clear prescriptions of the Act and the Regulations.
- [18] No finding is made on the merits of the application.

ORDER

- [19] The application is refused.

Prof P.A. Delport

MEMBER OF THE COMPANIES TRIBUNAL