

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT003MAY2015

In the matter between:

EATALY S.R.L

First Applicant

EATALY DISTRIBUZIONE SRL

Second Respondent

And

EATALY CAFÉ AND CUCINA (PTY) LTD

Respondent

CORAM: KGANYAGO M.F

DECISION HANDED DOWN ON THE 30TH SEPTEMBER 2015

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**DECISION**

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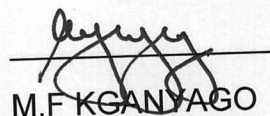
- [1] The applicants in this matter have brought an application in terms of section 160(1) and (2) read together with section 11(2) of the Companies Act 71 of 2008 ("the Act"). The applicants are seeking an order in terms of section 160(3) of the Act that the respondent be ordered to choose a new name that does not contain the element EATALY and to file a new memorandum of incorporation to that effect.
- [2] The respondent was served with the application at its registered address by the sheriff on the 07th May 2015.
- [3] The respondent did not serve or file any opposing papers. The 20 days within which the respondent is required to serve and file opposing papers if any has lapsed. The applicants are now applying for a default order in terms of Regulation 153(1) of the Companies Regulations, 2011 ("the Regulations").

- [4] 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 respondent. Furthermore, there is likelihood that the members of the public are likely to be confused or deceived into believing that the respondent forms part of the applicants as a result of its use and registration of a name that is confusingly similar to the applicants' EATALY trade mark registration.
- [5] Under the circumstances, in my view the applicants have made a good case, for a default order to be granted.

### ORDER

In the result I make following order:-

- [6] The applicants' default order is granted.
- [7] The respondent is ordered to choose a new name that does not incorporate the applicants' EATALY trade mark, and file a new memorandum of incorporation with CIPC within 20 business days from the date of this order.
- [8] The respondent is exempted from paying the prescribed fee relating to change of name at CIPC.
- [9] Should the respondent fail to comply with order, the Register of Companies is directed to change the respondent's company name.

  
M.F. KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL