

**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case: CTR 007/05/2013

In the matter between;

**THE ASSOCIATION FOR OPERATIONS MANAGEMENT OF SOUTHERN AFRICA
(Registration Number 1999/024216/08) Applicant**

and

**THE COMMISSIONER NO. COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION Respondent**

Presiding Member of the Tribunal: Lucia Glass

DECISION (Reasons and Order)

Introduction

- 1) This is a name reservation dispute. Respondent refusing the name reservation of "SAPICS" on grounds that a comparative name exists namely "SAPIC".
- 2) The applicant requests that the tribunal grant an order setting aside the Commissioner's Notice Refusing the Name Reservation of SAPICS in favour of the Applicant and directing the Commission to reserve the name SAPICS as applied for.
- 3) The reasons given are that the Applicant's registered name is "The Association for Operations Management of Southern Africa" (Association incorporated under

Section 21), the shortened name of the company as reflected in its Memorandum of Association is "SAPICS".

- 4) That the Companies Act 71 of 2008 (the Act) does not make provision for the registration of a shortened or translated name and consequently the applicant intends changing its name from "The Association for Operations Management of Southern Africa" to "SAPICS NPC".

Preliminary Issues

- 5) This application was properly served on the 14th May 2013 by Elri Jacobs Statutory Services, and stamped by the Companies and Intellectual Property Commission.
- 6) The Deponent to the Applicant's papers is Jacobus van Wyk Rossouw, who avers that he is a Director of the Applicant and that he is duly authorised to depose to the affidavit.

Background / Evidence

- 7) It is averred that in 1966 an Association was formed with the name "South African Production and Inventory control society" or "SAPICS" as the shortened name/acronym.
- 8) The applicant submits that in 1999 an association incorporated under Section 21 was registered with the name "South African Production and Inventory Control Society" under registration number 1999/024216/08. The Acronym for the registered company is SAPICS.
- 9) The applicant has resolved to change its name from "The Association for Operations Management of Southern Africa" to "SAPICS" and in so doing revert to the shortened acronym of the original name of the association as this is the name by which the applicant has widely become known. Further that the Act does not make provision for the registration of a shortened or translated name and consequently the applicant's amended Memorandum of Incorporation will similarly not incorporate a reference to the shortened name.
- 10) The applicant resolved to reserve the name SAPICS with a view to affecting a change of name from "The Association for Operations Management of Southern Africa"

to SAPICS. To that end, application to reserve the name SAPICS under form COR9.1 was submitted on the 11th of April 2013.

11) On the 16th of April 2013 under CoR9.5 the Commissioner issued notice refusing the name reservation on grounds that conflicts were identified with an entity "SAPIC". In refusing the name the Commissioner indicated that the reasons for the refusal was "comparative names exist".

12) On the 18th April 2013 a CIPC company report was generated in respect of the entity SAPIC which report reflects inter alia that:

SAPIC was registered on the 2nd June 1969.

The entity is a private company conducting business in an industry described as "private households, extraterritorial organisations, representatives of foreign government and other activities not adequately defined".

13) It is averred that the name SAPICS has been widely used by the Association since 1966 with no conflict in respect of the name with any other entity, including SAPIC.

GROUND FOR THE RELIEF SOUGHT

14) It is alleged that the name SAPICS represents the shortened acronym for the full name of the association as originally formed in 1966.

15) It is further alleged that SAPICS was reflected as the shortened form of the name in the Applicant's substituted Memorandum of Association registered by the Registrar of Companies and Close corporations in 2007 and the shortened form of the name is reflected as the "short name" with the Companies and Intellectual Properties Commission.

16) It is alleged that the name which has been widely used by the Association since 1966 with no conflict in respect of the name with any other entity, including SAPIC.

RELIEF SOUGHT

17) The tribunal is to set aside the Commissioner's notice refusing the name reservation of SAPICS in favour of the Applicant and directing the Commission to reserve the name SAPICS as applied for.

APPLICABLE LAW

18) The Act states the following;

Reservation of name and defensive names

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;

Evaluation

19) The applicant accepts that the name SAPICS is similar to the name SAPIC. The applicant also mentions in its papers that the Commission has not directed the Applicant to serve a copy of the Application on SAPIC pursuant to the provisions of Section 12(3) (a) of the Act. The act clearly states that :

(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

Findings

20) It is my view that SAPIC which name is almost identical to applicant's application for the reservation of the name SAPICS may have an "interest in the use of the name". In this instance no communication with SAPIC was ever entered into. SAPIC was never informed

of this application in writing, verbally or served documents notifying it of this application. I can not make an order setting aside the Commissioner's notice refusing the name reservation of SAPICS in favour of the Applicant and directing the Commission to reserve the name SAPICS as applied for until SAPIC becomes a participant in these proceedings in which it has a vested interest.

ORDER

I proceed to make the following order;

The Respondent is directed to issue a written notification to ***the applicant that the applicant is to serve a copy of this application and name reservation on SAPIC.***

LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 14th January 2014