

**COMPANIES TRIBUNAL**  
**REPUBLIC OF SOUTH AFRICA**

**Case:CT016NOV2015**

**In the matter between;**

**BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT**

**Applicant**

A Company incorporated in accordance with the laws of Germany

**AND**

**Z4 International (PTY) LTD**

**Respondent**

**Registration 2013/196021/07**

---

**DECISION (Reasons and Order)**

---

Presiding Member of the Tribunal: Lucia Glass

**Introduction**

- 1) This Default Judgment application is based on the provisions of Regulation 153 of the Companies Act 71 of 2008 (the Act) read together with the provisions of Sections 11 and 160(3)(b)(ii) of the Companies Act, requesting a default order against the Respondent, in that the name 'Z4' of the Respondent name, contains the entirety of the Applicant's 'Z4' trademarks, and thus does not satisfy the requirements of section 11 of the Act.
- 2) In this Application the Applicant seeks an order from the Companies Tribunal to the effect that the respondent be ordered to change its name to a name which does not incorporate a mark which is confusingly and, or deceptively similar to the Applicant's Z4 trade mark and or in the event that the Respondent fails to comply with the order set out above within 3 months, that the Respondent's name be recorded, in terms of Section 160(3)(b)(ii) read with section 14(2) of the Act, as its registration number followed by (Pty) Ltd, as the Respondent's interim company name on the Companies Register.

### **Preliminary Issues**

- 3) On the 26th November 2015, the Applicant had its Application for Relief, Form CTR 142 issued with the Companies Tribunal.
- 4) In terms of Regulation 142(2) of the Regulations, the Applicant was required to serve a copy of the Main Application on the Respondent within five (5) days of filing thereof and the Main Application should therefore have been served on the Respondent on or by 3rd December 2015.
- 5) The application was sent by email to Zaakira Bhamjee, the director of the Respondent, on the 27th November 2015, a copy of the email is attached to the papers, to an email address which the Applicant obtained from investigators one year prior.
- 6) The Sheriff Halfway House was instructed to serve a copy of the Application on the Respondent's registered address, being 1 Parsley street, Marlboro Gardens. The Sheriff duly attended at this address, on 1st December 2015, to serve the Main Application on the Respondent, but was told by a Mr Yunus Bhamjee, who identified himself as the father of Zaakira Bhamjee, that she had left the address and her present address is unknown. A copy of the Sheriff's return is attached to the papers.
- 7) The Sheriff one TC Siebert of Halfway House - Alexandra, renders a non return of service on the registered address of the Respondent, at 1 Parsley Street, Marlboro Gardens wherein it is stated; ' Application could not be served since I was informed by Unus Bhamjee, the father that the defendant has left c/o Ms Zaakira Bhamjee, 1 Parsley Street, Marlboro Gardens and her present address is unknown.
- 8) A further email was forwarded to the Director of the Respondent, which is attached to the papers.

### **Evaluation of the service of this application on the Respondent (a company)**

- 9) Service is to comply with the methods and times for delivery of documents as stated in Annexure 3 Table CR 3, of the Act, under the heading 'Nature of Person to whom the document is to be delivered', and the subheading, 'A COMPANY OR SIMILAR BODY CORPORATE', which states the following; 'by handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered

office or its principal place of business within the Republic or if there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business'.

- 10) The Sheriff rendered a return of non service because he was advised that one Zaakira Bhamjee had left the given address and present address was unknown.
- 11) As per Annexure 3 Table CR 3, of the Act, in the event where and when documents are to be served on a Company and there is no employee willing to accept service, then the application is to be served, by affixing the notice or a certified copy of the document to the main door of the office or place of business. I am not certain that the Sheriff was legally entitled to claim a proper return of service, if the Application was affixed to the door, due to the fact that the present occupier was not willing to accept the service, as in this scenario, it was not an employee who would not accept service but a father of the Director of the Respondent.

#### **Findings on the service of the application**

- 12) It is my view that this Application was not properly served on the Defendant Company in terms of Annexure 3 Table CR3, and the fact that the Sheriff rendered a return of non service. The email has no value as it is not in terms of a proper service on Companies and also in this particular case the email address was obtained from an investigator almost a year prior to when it was despatched.
- 13) The Tribunal can not proceed to go into the merits of the case before it is convinced that the defendant was properly served in terms of the Act.
- 14) After weighing up the law and the facts, I am consequently satisfied that the respondent was not properly served and it's lack of participation in these proceedings may very well be due to a lack of service.
- 15) In terms of Sec 7(3)(a) of the Companies Regulations, if it proves impossible to deliver a document in any manner provided for in the Act or the Regulations, and if any person other than the Tribunal is required to deliver the document, the person may apply to either the Tribunal or the High court for an order of substituted service. It is my view that this may very well be the correct manner to proceed to have this application served and adjudicated upon.

16) It does concern me, that the Respondent Company was registered in 2013, and the Applicant became aware of this registration, in November 2014 almost a year after it was registered, where after the Applicant instructed one Potter to investigate the Respondent. Potter was able to provide the Director of the Respondent's email address on the 19th December 2014. Almost a year later an email was sent to the Director of the Respondent, on the 21 January 2015. And almost a year later the Applicant files its Application with the Tribunal, which this Tribunal is to adjudicate upon at the end February 2016.

17) My understanding and interpretation of Section 160(2)(b) of the Act is that 'An application in terms of subsection (1) may be made- (a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or (b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case.' the application to the tribunal is to be made, as soon as possible after it has come to the attention of the Applicant. My interpretation of the above section, 'any time after the date of the reservation or registration of the name, application must be made 'as soon as possible' after it has come to the attention of the Applicant. In this instance, it has been years after it came to the attention of the Applicant that the name of the Defendant was similar to the Applicant's trademarks, and on this score alone, I am doubtful that I would consider granting relief, as prayed in the application, even if there was proper service.

## ORDER

The Application is dismissed due to lack of proper service on the defendant.

---

LUCIA GLASS

MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated this 26.2.16