

**IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA**

**Case No: CT0011FEB 2015**

**In the matter between:**

**THE COOL PROJECT**

**APPLICANT**

**AND**

**COMPANIES AND INTELLECTUAL PROPERTY COMMISSION  
(CIPC)**

**RESPONDENT**

**Coram: K. Y. Tootla**

**Decision handed down on 16 JUNE 2015**

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**DECISION**

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**INTRODUCTION:**

- [1] The Applicant is **MARTIN JEAN BAUWENS**, adult male, lawyer of Blouberg, Cape Province South Africa, brings an application in terms of Regulation 153 of the Companies Act under cover of Form CTR 142, and later a default application under cover of CTR 145 and a supporting affidavit that the name "THE COOL PROJECT" be reserved as a company name for a company for which he has applied for; and which CIPC has refused to reserve on the basis that various comparative names exists on the CIPC database, that is, "COOL AGENT CARPENTRY AND PROJECTS; COOLERS CONSTRUCTION AND PROJECTS "etc.

**PROCEDURE:**

- [2] The Applicant made an application objecting to the decision of CIPC and requesting the Tribunal to reverse the decision of CIPC. The Applicant served the application on CIPC on 20 February 2015 but to date no response has been received from CIPC.

The Applicant requests registration of the company name “The Cool Project” on the basis that the rejected name is not confusingly similar to existing names as mentioned on COR 9.5 and that the word “cool” in the proposed name refers to “fashionable” or “hip”, and not to cold or cooling devices; and also that the word “cool” may not be appropriated by other parties.

- [3] The Application was made within the required period and it was served via email on the Respondent in terms of the Regulations which amounts to proper service

#### **EVALUATION:**

- [4] It can also be noted that the Applicant’s application has to be made in terms of Section 160 of the Act and Regulation 153, which section is printed on FORM CTR 142.
- [5] The Applicant has filed an application of objection in terms of Section 11 of the Act but has not mentioned Section 12 which would have further assisted his case. A name determination has to be made in terms of Section 160 (1) and the reservation should satisfy the requirements of this Act as set out in Section 11 and Section 12. However, the Applicant has in his affidavit explained why he believes that he has lodged his objection; and disputes that the name applied for is confusingly similar to the names mentioned in the COR9.5 (which have already been registered within the meaning in particular in terms of Section 11(2)(b) of the Act).
- [6] To determine whether or not a proposed company name applied for meets the requirements of Section 11 (2)(b), requires an in-depth enquiry and complex determination of law, fact and application of the law to the facts which is not within the domain of CIPC as that is within the jurisdiction of the Companies Tribunal.
- [7] Note that if the Respondent is aware of any relevant facts, Section 12 (3) provides clearly that “if upon reserving a name that there are reasonable grounds for considering that the name may be inconsistent with the requirements of Section 11 (2) (b) - see (i) and (ii), then the Commission may by written notice require the Applicant to serve a copy of the Application on interested parties. The CIPC has not done that.

- [8] Based on Section 12 (3), it can be deduced that the CIPC cannot refuse to reserve proposed company name on the basis that the CIPC has identified conflicts and also that so-called “comparative names” exist on the register.
- [9] Unless the name is the same (not similar or comparable) as another name or an already reserved name, the CIPC has no option but to register the name. Only where it has reasonable grounds that the alleged offending name is considered to be inconsistent with the requirements of section 11(2)(b) or (c) can it direct that a notice be sent to interested parties. In this particular case, the interested parties would be all those parties mentioned on the COR 9.5 form.
- [10] However, for the CIPC to state that the Applicants’ name is confusingly similar to those names of interested parties mentioned in the COR 9.5 form without a proper enquiry and without the authority to do so in terms of the Act, the Applicant has the right to apply for a default judgment herein.

#### **APPLICABLE LAW:**

- [11] Regulation 142 provides as follows:

“(2) The applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days after filing it.”

The copy of the application was served correctly on CIPC correctly serve but not on any of the companies mentioned in the CoR 9.5 notice as that is the responsibility of CIPC.

- [12] In terms of regulation 153 (1) read with regulation 143 (1), the first respondent has 20 days to respond, failing which the Applicant is entitled to apply for a default order as provided for in regulation 153 (1).
- [13] The jurisdiction of the Companies Tribunal is stated in section 160 of the Act and is as follows:

- “(1) A person to whom a notice is delivered in terms of this Act with respect to an application for reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company’s name, or any other person with an interest in the name of a company, may apply to the Companies Tribunal **in the prescribed manner and form for a determination whether the name, or the reservation, registration or use of the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act.**
- (2) 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.
- (3) After considering an application made in terms of subsection (1), and any submissions by the applicant **and any other person with an interest in the name or** proposed name that is the subject of the application, the Companies Tribunal—
- (a) **must make a determination** whether that name, or the reservation, registration or use of the name, or the transfer of the reservation or registration of the name, **satisfies the requirements of this Act;** and (b) may make an administrative order directing— (i) the Commission to— (aa) **reserve a contested name**, or register a particular defensive name that had been contested, for the applicant; (bb) register a name or amended name that had been contested as the name of a company;
- (cc) cancel the reservation of a name, or the registration of a defensive name; or
- (dd) transfer, or cancel the transfer of, the reservation of a name, or the registration of a defensive name; or (ii) a company to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within a period and on any conditions that the Tribunal considers just, equitable and expedient in the circumstances, including a condition exempting the company from the requirement

to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.”

[14] In addition, Section 160(3) (b) (ii) provides that the Tribunal may make an administrative order directing a Respondent to reserve the name.

**ORDER:**

[15] That the CIPC reserve the name “THE COOL PROJECT” within 30 days of receipt hereof.  
There is no order as to costs.

[16] The Applicant is to liaise with CIPC regarding the process of approval of the name.

*K.y. tootla (electronically signed)*

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**KHATIJA TOOTLA**

**Member of the Companies Tribunal**

**16 June 2015**