

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT014Sept2014

In the matter between:

Isakhono Heads (Pty) Ltd

Applicant

and

Companies and Intellectual Property Commission ("CIPC")

Respondent

Coram: Delport P.A.

Decision handed down on 2 July 2015

Decision

INTRODUCTION

- [1] The applicant applied to the respondent for the reservation of the name "Be You Fragrances".
- [2] The respondent refused the application on 1 July 2014 because, in its opinion, there exists "comparative names".
- [3] The applicant applies in terms of s 160(3)(b) of the Companies Act 71 of 2008 ("Act" / "Companies Act") and regulations 142 and 153 of the Companies Act (GNR 351 of 265 April 2011) ("Companies Act regulations" / "regulations") for a default order that the respondent reserves the name "Be You Fragrances".
- [4] The applicant filed an application dated 10 July 2014 on form CTR 142 as prescribed by regulation 142 (1) (a), together with a supporting affidavit as required by regulation 142 (1) (b). There is no date stamp from the

Companies Tribunal ("Tribunal") on the CTR 142, and it cannot be determined when it was lodged.

- [5] There is a lot of email correspondence between the applicant and the Tribunal and apparently also the respondent, but it cannot be ascertained whether the application was served on the respondent and whether it was within the periods prescribed by the regulations.
- [6] An email from the applicant to the Tribunal dated 10 February 2015 states: "I sent you the CTR 142 form and I copied FanFan Gaba on the mail sent to both of on the 19 August 2014.", whatever this may mean.
- [7] In terms of regulation 153 (1) read with regulation 143 (1), the respondent, if properly and duly served, has 20 days to respond from the date of filing of the application with the Tribunal, failing which the applicant is entitled to apply for a default order as provided for in regulation 153 (1).
- [8] No response was filed within the period stated above and the applicant therefore applied on 20 March 2015 to the Tribunal on CTR 145 in terms of regulation 153 (2) that the Tribunal make a default order in terms of regulation 153 (1).

EVALUATION

- [9] The serving of the documents and the procedure followed were obviously, from what is stated above, fundamentally flawed. However, to refuse relief to the applicant will not be in the interest of justice and there is no indication that the respondent will be prejudiced.
- [10] Section 12 (2) of the Companies Act provides that the CIPC must reserve a name unless the applicant is prohibited to use the name by virtue of s 11 (2) (a) or if it is already reserved.
- [11] If, upon reserving the name, there are reasonable grounds for considering that the name may not comply with ss 11 (2) (b) or (c) the CIPC *may* require the applicant to serve a copy of the application and name reservation on the

relevant person (this is any person who may have an interest in the use of the name).

- [12] The person on whom the notice was served can apply to the Tribunal for a determination or an order in terms of s 160 that deals with disputes concerning reservation or registration of company names.
- [13] However, if read with the regulations, the CIPC has two alternatives in respect of names as in ss 11 (2) (b) and (c). In the first instance it can refuse to reserve the name if it does not satisfy *any* of the requirements of s 11, ie also sub-ss (2) (b) and (c): reg 9 (3) (c) (i).
- [14] This regulation, however, seems to be in conflict with s 12 (2) that provides it *must* reserve the name, except for names as mentioned in s 12 (2) (a) and (b) and may be *ultra vires*.
- [15] In the second instance it *must* register the name (except for names as mentioned in s 12 (2) (a) and (b), which includes names in terms of s 11 (2) (a)) but if there are reasonable grounds for considering that the name may be inconsistent with the requirements of s 11 (2) (b) or (c), it *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 that person can apply to the Companies Tribunal in terms of s 160 to determine if the name satisfies the requirements of the Companies Act.
- [16] The matter as above was also dealt with in *Renier A Schuld v Companies and Intellectual Property Commission* CT002Oct2014 and see also notes on s 12 in *Henochsberg on the Companies Act 71 of 2008*.

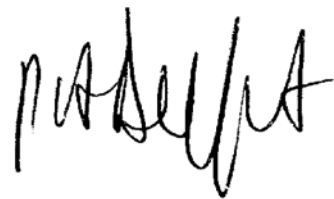
FINDING

- [17] In terms of s 12 the CIPC must reserve the name “Be You Fragrances”.

[18] The CIPC *may* require the applicant to serve a copy of the application and name reservation on the relevant person, ie someone who may have an interest in the name that may not comply with s 11 (2) (b) and/or (c).

ORDER

[19] The CIPC must reserve the name “Be You Fragrances” as provided for in s 12 (2) of the Companies Act.

A handwritten signature in black ink, appearing to be 'M. S. J. A.', is positioned above a horizontal line.

MEMBER OF THE COMPANIES TRIBUNAL