

COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case: CT001JUL2015

Ex parte application;

CIB INSURANCE ADMINISTRATORS (PTY) LTD

Applicant

Presiding Member of the Companies Tribunal: Lucia Glass

DECISION (Reasons and Order)

Introduction

1) This is an application to the Companies Tribunal for an order compelling the Companies and Intellectual Property Commission (CIPC) to set aside the CIPC's notice, COR 9.5 (refusing the name reservation of "CIB"), dated 5th June 2015, reference number 926852107, and to reserve the name "CIB". The Applicant does not mention under which Section of the Companies Act 71 of 2008 ("the Act") this application is made and it is assumed that it is in terms of Section 160 of the Act.

2) The Deponent to the Applicant's papers is Wilhelm Ludwig Joachim von La Chevallerie, who is the Managing Director of the Applicant and avers that by this position he is authorised to depose to his affidavit on behalf of the Applicant.

Background / Evidence

3) The name "CIB" was applied for and was refused by CIPCI on a form COR9.5 (attached to the papers) due to the fact that the following comparative names existed:

CIB Information Technologies,

CIB Insurance Company,

CIB Life.

4) In respect of the name "CIB Information Technologies", the Applicant avers that the comparative name "CIB Information Technologies" was reserved by the Applicant and was never utilised and should therefore not be regarded as a conflict.

5) In respect of the name "CIB Insurance Company", the Applicant avers that the comparative name "CIB Insurance Company" is a subsidiary of the Applicant and should therefore be eliminated as a conflict in terms of Section 11(2)(b)(i) of the Companies Act 71 of 2008 ("the Act").

6) In respect of the name "CIB Life", the Applicant avers that the comparative name "CIB Life" has changed its name to Insurisk Financial Consultants as per Annexure "B", (which is attached to the Applicant's founding affidavit) and should therefore not be considered to be in conflict with the "CIB".

7) Based on the above it is averred that there are no conflicts and therefore no confusingly similar names to "CIB" and that the Companies Tribunal is to set aside the CIPC's Notice refusing the Name Reservation dated 5th June 2015 (reference number 926852107) and direct the name reservation for "CIB" to be reserved.

8) APPLICABLE LAW

Section 160 of the Act: Disputes concerning reservation or registration of company names.—

"(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;

(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; (emphasis added)

(bb) register a name or amended name that had been contested as the name of a company; or

(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.

Evaluation

9) The Companies Tribunal is tasked to determine, whether the applicant has shown good cause and whether the Tribunal has the powers to make an order directing the CIPCI to reserve the name "CIB".

10) In this instance the CIPCI was unaware that the existing names relate to the applicant.

11) The Applicant has shown good cause that there are no conflicts and therefore no confusingly similar names to the name "CIB".

12) It follows that there are no third parties involved at all, the so called confusingly similar names mentioned in the CIPC's Notice refusing the Name Reservation dated 5th June 2015 (reference number 926852107), were all related to the Applicant and have no bearing on third parties.

11) In terms of Section 160 (3) (b) the Companies Tribunal may make an administrative order directing the CIPCI to reserve the contested name.

Findings

12) After considering the facts and the law, it is my view that the CIPCI was unaware of the relationship (as mentioned above) between the applicant and the comparative names referred to in the form, COR 9.5.

13) In this instance if the CIPCI had known of the facts as set out above, then I have no doubt, it would have reserved the name "CIB".

ORDER

I proceed to make an administrative order in terms of Section 160 directing the CIPCI to set aside the CIPCI's notice, COR 9.5 (refusing the name reservation of "CIB"), dated 5th June 2015, reference number 926852107, and to reserve the name "CIB", reference number being 926852107.

LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 21 October 2015