



## COMPANIES TRIBUNAL OF SOUTH AFRICA

Case/File Number: CT025Aug2015

In the matter between:

**STACEY JANE KLEINHANS**

Applicant

and

**COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION**

Respondent

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Presiding Member : Khashane La M. Manamela (Mr.)

Date of Decision : 02 November 2015

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### DECISION (Reasons and an Order)

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**Khashane La M. Manamela**

[1] The applicant lodged with the respondent an application to reserve a company name (i.e. Form CoR 9.1<sup>1</sup>) dated 19 January 2015. The applicant proposed for reservation the name “THOROUGHbred CAPITAL”. On the same date the respondent issued to the applicant a “Notice Refusing Name Reservation” of the applicant’s proposed name and stated therein that “Comparative Names exist”.<sup>2</sup> The so-called comparative names were stated as “THOROUGHbred CAPITAL INVESTMENTS (TCI)” and “THOROUGHbred FINANCE COMPANY”.

[2] Seven months later on 27 August 2015 the applicant launched this application and requested this Tribunal to grant as relief approval of the reservation of the proposed name “THOROUGHbred CAPITAL”.

[3] The application is very frugal in submissions made for the relief sought. It simply states that the proposed name is to be registered and used in the future by a company known as NEWSHELF 1271 (Pty) Ltd (Newshelf). Further, that THOROUGHbred CAPITAL INVESTMENTS (TCI), a company bearing one of the so-called comparative names is to be liquidated and deregistered by its proprietors in the future. Newshelf will thereafter conduct business under the name THOROUGHbred CAPITAL. Newshelf owns all issued shares in TCI.

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<sup>1</sup> Form CoR 9.1 is the Application to reserve a company name. See Table CR 1 – Prescribed Forms of Annexure 1 to the Companies Regulations, 2011. Company Regulations, 2011 were published by the Minister of Trade and Industry in terms of section 223 of the Companies Act 71 of 2008 and under GN R351 in Government Gazette 34239 of 26 April 2011

<sup>2</sup> Notice Refusing Name Reservation is Form CoR 9.5. A copy of the notice is included as part of the papers in this matter.

However, no submission is made as to the reason for bringing the application late.<sup>3</sup>

[4] Section 160(2) of the Companies Act 71 of 2008 (the Act) deals with the time period within which an application of this nature is to be brought. Sections 160(1) and (2) of the Act read 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.”

[italics added]

[5] It appears that the applicant received from the respondent the notice refusing to reserve the proposed name dated 19 January 2015 by electronic mail. There is nothing suggesting that notice was not sent and received on that date or

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<sup>3</sup> See paragraph [2] above.

around that date. The following was, among others, stated at the bottom of the notice:

“In terms of section 160 of the Companies Act, 2008, and Regulation 13 of the Companies Regulations, 2011, the person to whom this notice is delivered may apply to the Companies Tribunal for an order confirming or varying this Notice in whole or in part, or setting aside this Notice and directing the Commission to reserve the name as applied for.

An application to the Companies Tribunal as discussed above may be made in Form CTR 142 any time within 20 business days after the date of this Notice, or later with leave of the Tribunal.”

[6] It is not necessary, for current purposes, to comment on the difference in time periods stated in the notice (i.e. 20 business days) and section 160(2)(a) of the Act (i.e. three months), including other aspects of the statements from the notice stated above. The applicant issued this application in August 2015.<sup>4</sup> By whatever count or time period this application was lodged out of time. Although I am not suggesting that this is permissible in terms of the Act, there is no submission as to the reasons for the delay, if any. Therefore, the application cannot succeed.

[7] In the result I make the following order:

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<sup>4</sup> Form CTR 142 of the application is dated 20 August 2015 and reflects this Tribunal’s date stamp of the 27 August 2015.

- a) the application is refused.

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**Khashane La M. Manamela**  
**Member, Companies Tribunal**  
**02 November 2015**