

COMPANES TRIBUNAL
REPUBLIC OF SOUTH AFRICA

CASE NO: CT020MAR2015

In the *ex parte* application of:

GEORGE VESTER (TATA KEMPTON PARK)

Applicant

(Identity number: [7.....])

And

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

Respondent

Decision handed down on 10 NOVEMBER 2015

DECISION

INTRODUCTION

[1] The Applicant applied to the Respondent for the reservation of the names "TATA KEMPTON PARK" and "KEMPTON PARK TATA" on 22 February 2015 in terms of section 12 of the Companies Act No. 71 of 2008 ("the Act").

[2] The Respondent refused the reservation of the name "TATA KEMPTON PARK" on 03 March 2015.

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- [3] The Applicant request that the Respondent be ordered to reserve the name "TATA KEMPTON PARK" as the Applicant's proposed company name.

BACKGROUND

- [4] The Applicant is George Vester , an adult male motor dealer principal residing at [1....] A. S., Kempton Park.
- [5] • The Respondent is Companies and Intellectual Property Commission, a juristic person established in terms of section 185 of the Act.
- [6] The applicant seeks against the Respondent the following relief:

"DEFAULT ORDER TO REGISTER COMPANY NAME"

APPLICABLE LAW

- [7] , Before Ideal with the relief sought, I wish to highlight what I believe to be the relevant applicable Regulations of the Act.

Regulation 8 of the Act: Company names

- [8] Regulations 8 (5) and (6) read as follows:

" (5) *If a proposed company name is the same as a name registered as a business name in terms of the Consumer Protection Act, 2008 (Act 68 of 2008), as contemplated in section 11 (2) (a) (ii), the application or notice filed to reserve or use that name must include satisfactory evidence that –*

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- (a) *The name is so registered for the use of the company concerned or of a person controlling the company; or*
- (b) *The registered user of that name has executed the necessary documents to transfer the registration of that name to the company concerned.*
- (6) *If a proposed company name -*
 - (a) *is similar to the name of another company, close corporation or co-operative, and is claimed to be justifiable on the grounds that -*
 - (i) the company concerned; and
 - (ii) the other company, close corporation or co-operative, as the case may be, are both part of the same group of companies; or
 - (b) falls within any category of names restricted in terms of section 12 (2) (c), and is claimed to be justifiable on the grounds that the company to use that name is in fact part of, associated with, operated by, sponsored by, supported by, endorsed by, owned by, conducted by, or enjoys the patronage of, as the case may be, a person or entity contemplated in that section,

The application or notice to use that name must include satisfactory evidence supporting that claim."

Regulation 9 of the Act: Reservation of company names

(9) Regulation 9 reads as follows :

" (1) *An application to reserve a name in terms of section 12 (1) must be made in Form CoR 9.1, may include as many as four alternative names listed in order of preference, and must be accompanied by —*

- (a) *the fee set out in Table CR 1; and;*
- (b) *any relevant documentation or evidence required in terms of regulation 8 in respect to each name included in the application. "*

EVALUATION

[101 The Deponent to the Applicant's affidavit George Verster in paragraph 4 states that:

" 4.

1. *Application was made on the 22 February 2015 for registration of a new Company with the name "TATA Kempton Park"*
2. *This name was refused by the CIPC on the 3 March 2015, on the basis that there was conflict with the names "TATA Africa Holdings, and Vaal TATA", as well as "Brits TATA", nothing that the requested name is confusingly similar to names already registered.*

3. *All the names mentioned above are TATA vehicle dealership (with exception of the TATA Holdings Company, which forms part of the same Group).*
4. *The application as made also relates to a new Group, there is no restriction on the use of the name "TATA", and given that other dealership use local geographic names to reflect their names of TATA dealership business, this should not restrict the use of TATA dealership business, this should not restrict the use of TATA Kempton Park, as this is a defined geographic area, which is delimited in the TATA dealership agreement. ,,*

[11] The main question to be asked, in dealing with what the Tribunal is required to decide on, is whether the reasons submitted by the Respondent are justified in terms of Regulation 8 of the Act.

FINDING

[12] The Respondent's refusal of the application for name reservation reads as follows:

" We regret to inform you that no name has been approved for your use for the following reason(s)

The geographical word used in the name is not descriptive enough. Please qualify the name further with words describing the principal business.

Unfortunately none of your name/s can be approved due to the fact that it is confusingly similar to name/s already registered within the meaning of our name register in particular in terms of Section 11 (2) (b) of the Companies Act.

[13] The Applicant received from the Respondent, on 03 March 2015, Notice Refusing Name Reservation on Form CoR 9.5 containing the following - reason(s).

Conflicting names

[14] The Notice Refusing Name Reservation states that, the following "conflicts were identified", "TATA AFRICA HOLDINGS (SA)", "VAAL TATA" in respect of proposed name "TATA KEMPTON PARK".

[15] Further, that the following "conflicts were identified", "BRITS TATA", "TATA MA TATA TOURS" and "TATA LAND PROPERTIES AND ACCOMODATION" in respect of proposed name "KEMPTON PARK TATA".

Comparative names

[16] Notice Refusing Name Reservation states that, the following "Comparative Names Exist", "TATA AFRICA HOLDINGS (SA)", "VAAL TATA" in respect of the proposed name "TATA KEMPTON PARK".

[17] Further, the following "Comparative Names Exists", "BRITS TATA", "TATA MA TATA TOURS" and "TATA LAND PROPERTIES AND ACCOMODATION" in respect of the proposed name "KEMPTON PARK TATA".

[18] The Tribunal is to decide, whether the Applicant's application to reserve company names "Tata Kempton PARK" and "KEMPTON PARK TATA" is in

compliance with Regulation 8 of the Act read together with Regulation 9 of the Act.

[19] The reasons given by the Applicant are the following:

191. . *"All the names mentioned above are TATA vehicle dealership (with the exception of the TATA Holdings Company, which forms part of the same Group)."*

192. *"The application as made also relates to a new Group, there is no restriction on the use of the name "TATA", and given that other dealership use local geographic names to reflect their names of TATA dealership business, this should not restrict the use of TATA Kempton Park, as this is a defined geographic area, which is delimited in the TATA dealership agreement. "*

[20] The application or notice to use the names "TATA" lacked satisfactory evidence supporting the Applicant's claim and/or reasons in compliance with Regulation 8 of the Act, to use the name "TATA".

[21] It is *my* considered view that the application *is* incomplete and therefore not in compliance with Regulation 8 off the Act.

[22] Regulation 8 (6) provides that an application or notice to use a name similar to the name of another company, close corporation or co-operative or a names restricted in terms of section 11 (2) (c) must include satisfactory evidence supporting justifiable claim(s) that the company concerned and the other

company, close corporation or co-operative, as the case may be, are both part of the same group of companies or that the company to use that name is in fact part of, associated with, operated by, sponsored by, supported by, endorsed by, owned by, conducted by, or enjoys the patronage of, as the case may be.

ORDER

In the result the following order is made:

- a) The Application is postponed *sine die*;
- b) The Applicant is requested to file, manually, with the Respondent in respect of the proposed names "TATA KEMPTON PARK" and "KEMPTON PARK TATA" form CoR9.1 (Application to reserve a company name) supported by satisfactory evidence to use the name "TAT'A" from either Tata Africa Holdings, any other company, close corporation or co-operative as contemplated in Regulation 8 of the Act.
- c) The Respondent is requested by no later than 18 December 2015, to advise the Applicant, as well as the Registrar of the Companies Tribunal the outcome of the Applicant's 'new' application.



MMOLEDI MALOKANE
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(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

