IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT018Oct2015

In the matter between:

Altron TMT Holdings (Pty) Ltd	Applicant
and	
Altech Technology Holdings (Pty) Ltd	First respondent
Gradolite (Pty) Ltd	Second respondent
Companies and Intellectual Property Commission	Third respondent

Coram: Delport P.A.

Decision handed down on 22 February 2016

Decision

INTRODUCTION

[1] The applicant applies to the Companies Tribunal ("Tribunal") in terms of section 160 of the Companies Act 71 of 2008 ("Act" / "Companies Act") and regulations 142 and 153 of the Companies Act (GNR 351 of 26 April 2011) ("Companies Act regulations" / "regulations") for a default order that the first respondent ("first respondent" / "the company") be ordered to change its name because the name does not comply with sections 11(2)(a) and 11(2)(c) of the Companies Act.

BACKGROUND

[2] The applicant is Altron TMT Holdings (Pty) Ltd, a company incorporated in terms of the Companies Act.

[3] The first respondent is Altech Technology Holdings (Pty) Ltd, cited together with Gradolite (Pty) Ltd and the Companies and Intellectual Property Commission as second and third respondents respectively.

[4] The applicant applies for an order, as set out in para 8 of the supporting affidavit of one Peter Riskowitz, duly authorised thereto by a board resolution of 15 September 2015:

> “8.1 directing the First Respondent to change its name to one which does not incorporate the trade mark ALTECH, or any other trade mark/ word that is confusingly and/or deceptively similar to it;
>
> 8.2 in the event that the First Respondent fails to comply with the order set out in paragraph 8.1 above within 3 months from the date of the order, that the Third Respondent be directed, in terms of Section 160(3)(b)(ii) read with Section 142 of the Act, to change the name of the First Respondent to "1972/003212/07 (Pty) Ltd", as the First Respondent's interim company name on the Companies Register.”

[5] The applicant served a copy of the CTR 142 application, as filed with the Tribunal on 21 October 2015, on the first respondent on 29 October 2015 and on the second respondent on 28 October 2015.

[6] The service on the first respondent and second respondent was not within the period of five days as stipulated in reg 142(2), but this is not material, also in light of the finding in this matter.

[7] A copy of the application was apparently not served on the third respondent. The relief sough in respect of the third respondent is not possible in terms of the Act under the circumstances and facts of this matter, and the omission is therefore not material.

[8] Neither of the respondents served with the application filed a response with the Tribunal on the due date (see reg 143(1) and reg 153).

[9] The basis for this application, as per para 5 of the supporting affidavit, is that the applicant and Clidet No 426 (Pty) Ltd (“the sellers”) were the owners of the entire issued share capital (“sale shares”) in the first respondent. The second respondent purchased the sale shares from the sellers, and the purchase and sale agreement sets out the agreed terms and conditions of the sale as well as certain consequential obligations required of the first respondent (and by implication of its new shareholder, the second respondent). This included the changing of the name of the first respondent (and the name of its subsidiary, Altech West Africa, which is not at issue in this matter), to the effect that references to or use of the applicant's trade marks (ie “Altech”) are removed from the name of the first respondent.

APPLICABLE LAW

[10] The powers of the Companies Tribunal in respect of company names are provided for in section 160, which reads as follows (the indicated emphasis is mine):

“160. 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—

…

(b) may make an administrative order directing—

(i) the Commission to—

(aa) reserve a contested name…"

[11] The persons who can apply are therefore the person notified by the applicant on the basis of eg s 12 (3) (a) (i) or, alternatively, any person *with an interest* in the name of a company. The application must be in the prescribed manner and form for a determination whether the name, or use of the name, or, alternatively, the reservation, registration, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act.

EVALUATION

[12] Section 160(1) refers to a "*name*, or the reservation, registration or *use of the name*, or the transfer of any such reservation or registration of a name." [my emphasis].

[13] This would appear that the Tribunal has jurisdiction:

13.1 over the compliance with s 11 of the reservation and registration or the transfer of any such reservation or registration of a name, but also

13.2 over the name itself and the use of that name (other than in respect of the indicated acts in 13.1).

[14] This is a possible interpretation, but the jurisdiction of the Tribunal in respect of the *name* itself and *the use of the name* is, I think, qualified by s 160(2)(b) that provides, as far as it is relevant here, that an application in terms of s 160(1) may be made 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* ie if there was no notice as contemplated in s 160(1), which is not applicable here.

[15] It would therefore seem that the remedies in s 160 are limited to "objections" after the date of the *reservation* or *registration* of that name, as provided for in, *inter alia*, ss 11, 12 and 14 of the Companies Act.

[16] The "good cause" in s 160(2)(b) refers, in my opinion, to the time period that may have elapsed *since reservation or registration* and the reason why the applicant has allowed that time to lapse before bringing the application and is not a separate substantive ground. I think this is the intention with "good cause" based on s 160(2)(a) that prescribes a particular period for application in respect of the specific act, with those outside that category, ie as in s 160(2)(b), to be on "good cause" (see also *Comair Limited v Kuhlula Training, Projects and Development Centre (Pty) Limited* CT007Sept2014 of 27 February 2015 and *Guccio Gucci S.p.A. v Gucci Galz Productions (Pty) Ltd* CT028Mar2015 of 15 February 2016).

[17] If I am not correct in the assumption/s above, granting of relief in this instance will, in essence, amount to an order for specific performance, due to, apparently, breach of contract. This is a power that does not seem to fall within the jurisdiction of the Companies Tribunal. The Companies Tribunal does not have concurrent jurisdiction in these matters with the High Court and only has the powers expressly provided for in the Companies Act, eg as in s 160.

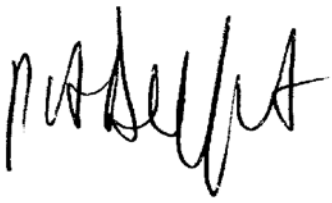
[18] To interpret s 160 as the applicant requests the companies Tribunal to do would, in the context of the Companies Act, lead to insensible results (see para 17 above).

"A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.": *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

[19] In light of the finding above it is not required to decide on the merits of the application of s 11(2) of the Companies Act.

ORDER

[20] The application is refused.



MEMBER OF THE COMPANIES TRIBUNAL