

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT014AUG2015

In the matter between:

EDCON LIMITED

First Applicant

EDCON HOLDINGS (PTY)LTD

Second Applicant

And

EDCO HOLDING (PTY) LTD

Respondent

Coram: Kganyago M.F

DECISION HANDED DOWN ON THE 20TH JANUARY 2016

DECISION

- [1] The applicants have brought an application in terms of section 160 read together with section 11(2) of the Companies Act 71 of 2008 ("the Act"). The applicants are seeking an order that the respondent be directed to change its name to one which does not incorporate a mark confusingly and/or deceptively similar to the first applicant's EDCON trade mark. The applicants are further seeking that in the event that the respondent fails to comply with order within three months from the date of the order, the second respondent be directed to change the respondent's name to "2013/164752/07 (Pty)Ltd", as the respondent's interim company name on the Companies Register. However, as per the papers filed, there is no second respondent who has been cited.
- [2] The applicant's form 142 was filed with the Tribunal on the 18th August 2015, and was served on the respondent on the 24th August 2015 by the sheriff.
- [3] The respondent did not serve or file any opposing papers. The 20 days within which the respondent is required to serve and file opposing papers if any has

lapsed. The applicants are now applying for a default order in terms of Regulation 153(1) of the Companies Regulation, 2011 ("the Regulations").

- [4] According to the applicants, they became aware of the existence of the respondent during August 2014, before its business was described on the electronic records of the Companies and Intellectual Property Commission. On the 3rd September 2014, the applicant's attorneys addressed a letter to the respondent requesting it to voluntarily change its name. They did not receive any response from the respondent. They addressed a reminder to the respondent on the 19th September 2014, and again they did not receive any response. They sent a final reminder on the 28th November 2014 and again they did not receive any response.
- [5] They started compiling evidence to be used in support of the objection and it took them some time to accumulate and compile information, and that contributed to the delay in lodging the objection against the respondent.
- [6] In terms of section 160(2) (b) of the Act, the application may be made on good cause shown at any time after the reservation or registration of the name that is the subject of the application in any other case.
- [7] The Act has not defined what can be regarded as good cause. Our courts have also not expressly defined good cause. The requirement of good cause entails a consideration of the merits of each case in order to arrive at a just and equitable outcome in a specific case.
- [8] The applicants have stated that they first became aware of the existence of the respondent during August 2014. However, the application was filed with the Tribunal on the 18th August 2015 a year later. In my view the applicants were supposed to apply to the Tribunal immediately once it became aware of the registration of the Respondent's name. Taking a long time to apply, in some instances might be construed as condoning the act. The applicants have explained their delay up to the 28th November 2014.

- [9] The period from the 28th November 2014 up to the 18th August 2015 has not been explained in details. What they are stating is that they were still compiling evidence and doing some formal investigation. I am not persuaded by their submission. When they wrote the first letter to the respondent, they had the information about the respondent. What more information and evidence which they still needed is not stated in their affidavit.
- [10] What I must determine is whether what they have stated in their founding affidavit can amount a reasonable explanation in order to constitute good cause why they delayed in applying to the Tribunal.
- [11] Under the circumstances, I am of the view that they have failed to give a reasonable explanation why they have delayed in applying to the Tribunal. The applicants have therefore failed to show good cause why they delayed in referring their application to the Tribunal.

ORDER

- [12] In the result I make the following order.

12.1. The applicants' default application is hereby refused.

M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL