



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("THE TRIBUNAL")**

CASE NUMBER: CT009MAR2018

In the matter of:

RAM TRANSPORT (SOUTH AFRICA) (PTY) LTD

APPLICANT

and

RAM CONTAINER SALES AND HANDLING (PTY) LTD

FIRST RESPONDENT

COMMISSIONER OF THE COMPANIES AND

INTELLECTUAL PROPERTY COMMISSION

SECOND RESPONDENT

Coram: PJ Veldhuizen

Date of Hearing: Not Applicable – Default Order

Order delivered: 26 June 2018

DEFAULT ORDER & REASONS

A. INTRODUCTION

1. THE PARTIES

- 1.1. The Applicant is **RAM TRANSPORT (SOUTH AFRICA) (PTY) LTD** (“the Applicant”), a private company duly incorporated and existing under the company laws of South Africa, having its registered place of business at 27 Wrench Road, Isando, Gauteng, 1609.
- 1.2. The First Respondent is **RAM CONTAINER SALES AND HANDLING (PTY) LIMITED** (“the First Respondent”), a private company incorporated in terms of company laws of the Republic of South Africa with registered office address at 12 Gokul Road, Effingham, Durban, KwaZulu-Natal, 4037.
- 1.3. The Second Respondent is the **COMMISSIONER OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION** appointed in terms of Section 189 of the Companies Act 71 of 2008 ("the Act"), who is cited in his official capacity as the person responsible for the function of the Commission in terms of the Act.

B. THE APPLICATION

2. This is an application for a Default Order against the First Respondent. The application is based on sections 11(2) and 160(3)(b)(ii) read with Regulation 153 of the Act. No relief is sought against the Second Respondent.
3. The Applicant is the registered proprietor in South Africa of several trade marks incorporating or comprising the word “**RAM**”. The Applicant comprehensively set

out details of the registered trade marks in its founding affirmation.

4. The Applicant's registered rights predate the First Respondent's registration by 14 years.
5. The Applicant has made extensive and considerable use of its **RAM** trade mark for many years and has developed a reputation and goodwill related to the use thereof.
6. The Applicant alleges that the **RAM** trade mark (and the reputation and goodwill thereof) is an asset of considerable commercial value and importance to the Applicant and that any unauthorized use of this trade mark or confusingly or deceptively similar marks is damaging to this asset and to the business of the Applicant.
7. The Applicant demonstrates the value it places in the **RAM** trade mark indicating *inter alia*:
 - 7.1. "...massive annual marketing and advertising campaigns in order to promote its services rendered under the RAM trademark.";
 - 7.2. Advertising and marketing spend of over 60 million Rand in the years 2015, 2016 and 2017 alone.
8. In addition, the Applicant further alleges that its distinctive **RAM** trade mark

qualifies for protection as a well-known trade mark within the meaning of sections 34(1)(c) and 35 of the Trade Marks Act 1993 (“the Trade Marks Act”).

9. The Applicants seek an Order directing the First Respondent to change its name to a name that meets the requirements of the Act.

C. POINTS FOR DETERMINATION

10. Were the Tribunal’s procedural requirements met?

- 10.1. Applicant is required to establish good cause in terms of section 160(2)(b) as why there has been a delay in bringing this application after becoming aware of the First Respondent’s registration.

- 10.2. The Applicant has been open with the Tribunal that the objection to the use by the First Respondent of the RAM trade mark in its company name has been a long-standing dispute and ranges back as far as 2014.

- 10.3. The Applicant has set out the steps it has taken since 2014 to date to have First Respondent change its name which steps included:

- 10.3.1. written demands to the First Respondent;

- 10.3.2. negotiations with the First Respondent;

10.4. When negotiations broke down with the First Respondent, the Applicant established from the Second Respondent in 2016 that the First Respondent had been placed in the process of deregistration for failure to pay its annual returns. The Applicant monitored the deregistration process of the First Respondent until January 2018 when First Respondent was taken out of deregistration and presumably placed back into “*in business*” status by Second Respondent. Applicant again attempted to elicit an undertaking from the First Respondent that it would change its name to one that met the requirements of the Act but the First Respondent failed to do so.

10.5. It would appear that the requirement for an Applicant to show “*good cause*” why an application was launched at a particular date would be to prevent potential prejudice to a person doing business under a registered company name by a belated challenge which may negatively affect the goodwill that person has built up. In this case such a prejudice, if indeed there is any, would not be as a result of the Applicant’s conduct but that of the First Respondent. The First Respondent knew that there was an objection to its name and traded on regardless.

10.6. Accordingly, the Tribunal accepts that the Applicant has satisfied the requirement contemplated in section 160(2)(b).

11. Service / Jurisdiction.

11.1. The Applicant has served the papers in accordance with Act and the Respondent has failed to answer within the required time period.

11.2. The Tribunal enjoys jurisdiction to hear the matter and to grant the relief sought.

D. EVALUATION OF EVIDENCE

12. The deponent to the founding affirmation and Applicant's attorney of record in the supporting affidavit have usefully directed the Tribunal to the provisions of the Act and Regulations set out above. The Applicant has demonstrated their rights in the trade mark, the value in the trade mark and *inter alia* the likelihood of confusion and incorrect perception the use of the name by the First Respondent may have among members of the public . In the premises, the Tribunal accepts that the use of the Applicant's registered trade mark by the First Respondent in its company name is in contravention of section 11(2) of the Act.

13. The First Respondent has been provided an opportunity to be heard and has not filed any papers in this matter. The Second Respondent has similarly not filed any papers in this matter and presumably abides the decision of the Tribunal.

14. The Tribunal therefore accepts the uncontested version put up by the Applicant and grants the relief as set out in E below.

E. DECISION

15. The Applicant is granted a Default Order in terms of section 160(3) of the Companies Act 71 of 2008 and Regulation 153 of the Companies Regulations of 2011 in the following terms:

15.1. It is determined that the First Respondent's company name does not satisfy the requirements of the Act.¹

15.2. An administrative order is issued directing the First Respondent to choose a new name, and to file a notice of amendment to its Memorandum of Incorporation within 30 days of this administrative order.²

15.3. The First Respondent is ordered to pay the costs of this application.³

PJ VELDHUIZEN

MEMBER OF THE COMPANIES TRIBUNAL

CAPE TOWN

¹ Section 160(3)(a) of the Act

² Section 160(3)(b)(ii) of the Act

³ Regulation 156(1) of the Act