

COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No CT006JUL2016

CHARLES ALLEN ROUX

Applicant

and

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
(CIPCI)

Respondent

DECISION and ORDER

Presiding Member of the Companies Tribunal: Lucia Glass

1) The Applicant applies to the Companies Tribunal for an order setting aside the CIPCI notices (dated 21 June 2016 Notice reference 935404605 and 24th June 2016 Notice reference 935730368) concerning the Applicant's name reservation INTEGRATED ENERGY or INTEGRATED ENERGY HOLDINGS or INTEGRATED ENERGY SA and directing the CIPCI to reserve the name as applied for by the Applicant.

2) The Deponent to the founding affidavit is Mr Charles Allen Roux who avers that he is the potential Equity holder and Director of the proposed Company.

3) He avers that on the 17th June 2016 a name reservation was applied for, with the name INTEGRATED ENERGY. On the 21 June 2016 he received a Notice via correspondence from the CIPCI, refusing the name reservation. In the correspondence it stated 'kindly insert the distinguishing element that will sufficiently be capable of differentiating your name from the names already registered within the meaning of your name register in terms of Section 11 (2)'. On the 23rd of June 2016 he applied for a name reservation for the following two alternative names, which he believed to be sufficiently differentiating his name from the names already registered being INTEGRATED ENERGY HOLDINGS AND INTEGRATED ENERGY SA. He then received correspondence on the 24th June 2016 refusing the name reservation and that the following names were already on the CIPCI database;

Integrated Energy Services corporation

Integrated Energy Investments

Integrated Energy solutions.

4) The Applicant applies to the Tribunal for an order confirming or varying this notice in whole or in part, or setting aside this Notice and directing the CIPCI to reserve one of the names applied for.

5) Applicant further avers that the Company; 'Integrated Energy Investments' has the status of Final Deregistration and that the company; 'Integrated Energy Services corporation' is in the deregistration process. He further states that this will see the removal of two of the comparative names in the near future. Applicant researched the company; 'Integrated energy solutions', in order to determine the likelihood of impinging on other company's names, rights and commercial exposure and found that none of the company's listed by CIPCI, had web sites. Applicant avers that even though these companies may be in business, their exposure appears to be limited and the allocation of the name he applied for, will not impact on their business and commercial activity in the bigger commercial picture.

6) The Applicant contends that the reservation and use of the name 'Integrated Energy' should not be detrimental to another entity and create any commercial confusion and therefore applies for relief, from the Notice refusing the name reservation dated 21st June 2016 and should the name 'Integrated Energy' not be

granted alternatively the reservation and use of either the name 'Integrated Energy Holdings' or 'Integrated Energy SA' should be granted.

7) The following Sections of the Companies Act 2008 apply

The Criteria for names of companies

Section 11 (1) Subject to subsections (2) and (3), a company name—

(a) may comprise words in any language, irrespective of whether or not the words are commonly used or contrived for the purpose, together with— (i) any letters, numbers or punctuation marks; (ii) any of the following symbols: +, &, #, , %, =; (iii) any other symbol permitted by the regulations made in terms of subsection (4); or (iv) round brackets used in pairs to isolate any other part of the name, alone or in any combination; or

(b) in the case of a profit company, may be the registration number of the company together with the relevant expressions required by subsection (3).

(2) The name of a company must— (a) not be the same as, or confusingly similar to— (i) the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names; (emphasis added)

Section 12. (1) *A person may reserve one or more names to be used at a later time, either for a newly incorporated company, or as an amendment to the name of an existing company, by filing an application together with the prescribed fee.*

*2) The Commission must reserve each name as applied for in the name of the applicant, **unless the name as applied for is— (a) the registered name of another company, close corporation or co-operative; (b) the name of a registered external company; or (c) already reserved in terms of this section.***

(3) If, upon reserving a name in terms of subsection (2), there are reasonable grounds for considering that the name may be inconsistent with the requirements of— (a) section 11(2)(a) or (b)— (i) the Commission, by written notice, may require the applicant to serve a copy of the application and name

reservation on any particular person, or class of persons, named in the notice, on the grounds that the person or persons may have an interest in the use of the name that has been reserved for the applicant; and (ii) any person to whom a notice is required to be given in terms of subparagraph (i) may apply to the Companies Tribunal for a determination and order in terms of section 160; or (b) section 11(2)(c)— (emphasis added)

EVALUATION

8) The Act states clearly that the name applied for must be consistent with the requirements of Section 11(2)(a) or (b) of the Act.

Section 11(2) of the Act, states that the name of a company must not be the same as, or confusingly similar to the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names.

9) In this instance the Applicant does not elucidate on why he believes that the names are not the same or not confusingly similar to the companies already registered with similar names, as stipulated in Section 11 (2). The Applicant does not prove that the names applied for are not confusingly similar as per Section 11 (2), but embarks on a different route, that the companies which are already registered on the CIPCI database, with similar names, are being **deregistered**. (emphasis added) This deregistration process, is not covered by Section 11 and to my knowledge is not covered by the Act at all, in connection with name reservations.

10) It is my view that even though they may be in the process of deregistration, these companies may decide to re instate the registration of the company on various grounds in terms of Section 82 of the Act.

11) Furthermore the Applicant advises that he carried out a general internet search for the registered company, 'Integrated energy solutions' in order to determine the likelihood of impinging on other company's names, rights and commercial exposure and found that none of the company's listed had web sites. Applicant avers that even though they may be in business, their exposure appears to be limited and the

allocation of his name Integrated energy to another entity will not impact on their business and commercial activity in the bigger commercial picture.

12) It is my view that this has nothing to do with Section 11, where he is to seek relief. It is my view that most companies which do not have websites do so for particular reasons. The fact that a company will not impact on another company's business will not exonerate the applicant from registering a company name which is similar to those already registered.

13) The names applied for are not consistent with the requirements of Section 11(2)(a) or (b) of the Act. It is my view that the company names already registered on the CIPCI data base, are too similar to the Applicant's company reservation names, which will create confusion and the general public may regard the Applicant's potentially registered name and the already registered company names, as horses from the same stable and this may be detrimental to the business of the already registered companies.

ORDER

The application is refused.

An order confirming the CIPCI notice, in its entirety, is granted.



LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 31st August 2016