

REPUBLIC OF SOUTH AFRICA



COMPANIES TRIBUNAL

Case/File Number: CT007Nov2013

In the matter between:

MATTHEW WILFRED ALBERTS

Applicant

and

**COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

Respondent

in respect of the respondent's notice refusing name reservation (for the proposed name "GOGLOBAL")

Presiding Member of the Tribunal

: Khashane Manamela

DECISION (Reasons and Order)

[1] The applicant challenges the refusal by the respondent to reserve the name *GOGLOBAL* as proposed by the applicant for reservation.¹ The respondent has identified conflicts with or existence of [what is referred to as] *comparative names*, as follows: *GOGLOBAL 123* and *GOGLOBAL ADVERTISING AND GRAPHIC D-ZIGNS*.²

[2] It is submitted by the applicant that, the so-called comparative names, being “*GOGLOBAL 123*” and “*GOGLOBAL ADVERTISING AND GRAPHIC D-ZIGNS*”, among others, include additional differentiating wording to the proposed name *GOGLOBAL*; one of the proprietor to the comparative names (*GOGLOBAL ADVERTISING AND GRAPHIC D-ZIGNS*) is in final deregistration process³, and that the proposed name is in a mobile software field or industry⁴, which field is different to the names identified as comparative by the respondent.

[3] The respondent is not opposing this application. The applicant submitted that, it served the application by courier, although this appears to be at the same time as when the application was filed.⁵ Although this appears to be almost jumbled way of doing things, I will accept – for current purposes – that, the service upon the CIPC, as the respondent⁶ is adequate and the application for a

¹ See annexure “A” to the affidavit filed in support of the application.

² See COR 9.5 issued by the respondent on 04 November 2013.

³ See document for Enterprise details included in the papers (undated; unmarked or indexed).

⁴ See paragraph numbered 4 of the affidavit.

⁵ See electronic mail from the applicant to the registrar of this Tribunal dated 11 December 2013.

⁶ I have also reflected the CIPC as the respondent [upon analysis of the merits hereof] although in the Form CTR 142 dated 12 November 2014, the applicant is duplicated as the respondent.

default order is therefore properly before me.⁷ However, I will condone these as technical irregularities.⁸

[4] I previously found in the matters of **Dwight Godby Jefferys v Companies and Intellectual Property Commission** (Case/File Number: CT018May2014) and **RV HANDFIELD-JONES (on behalf of Collision Reduction Services (Pty) Ltd) v Companies and Intellectual Property Commission** (Case/File Number: CT007Feb2014), both decided on 31 October 2014 that, the CIPC cannot refuse to register proposed names on the basis other than as provided in section 11(2) of the CA 2008 (due to the name being, identical (the words “same as” are used)⁹. Where the impugned company name is not the same as another, even if deemed confusingly similar to¹⁰ other company names etc. or as a name or names which “falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company, is part of, or associated with, any other person or entity”¹¹ section 12 of the CA 2008 calls for the CIPC to register the name and thereafter consider requiring the applicant for a particular name to take steps regarding notice to interested parties. This statutory provision is to be read with regulation 8 of the Companies Regulations. I dealt with these extensively in those two decisions and no purpose will be served by repetition in this matter.

⁷There is no formal CTR 145 filed in terms of regulation 153 of the Companies Regulations, despite the registrar of the Companies Tribunal requesting same. The Companies Regulations were made by the Minister of Trade and Industry in terms of section 223 of the Companies Act 71 of 2008 and published under GN R351 in Government Gazette 34239 of 26 April 2011.

⁸ See regulation 154(3) of the Companies Regulations, 2011

⁹ Section 11(2)(a) of the CA 2008.

¹⁰ Section 11(2)(b) of the CA 2008.

¹¹ Section 11(2)(c)(i) of the CA 2008.

[5] Consequently, I do not consider the refusal by the respondent to register the name proposed by the applicant to be in terms of the Companies Act 71 of 2008. I have fully discussed the basis for this finding and referred to this Tribunal's decisions in *Dwight Godby Jefferys* and *RV Handfield-Jones*. Therefore, except for aligning the administrative order to be made herein in order to befit the circumstances of this matter, I will rely on my very detailed exposé in those decisions.

[6] I therefore make an administrative order in the following terms:

- a) the application is postponed *sine die*;
- b) the Companies and Intellectual Property Commission (the CIPC) is requested, within 20 business days from date of this order, to serve on the applicant and file with the Registrar of the Companies Tribunal a revised notice in respect of the applicant's proposed name "GOGLOBAL" wherein the CIPC states under which provisions of the Companies Act 71 of 2008 the application for reservation of the applicant's proposed name "GOGLOBAL" in terms of CoR9.1 dated 29 October 2013 from the applicant was refused;
- c) should the revised notice in terms of b) above, include that the CIPC considers the applicant's proposed name "GOGLOBAL" to be inconsistent with the provisions of one or more of either subsections

11(2)(b) or (c) or (d) of the Companies Act 71 of 2008, the CIPC is requested, within 20 business days from date of this order, to consider reserving the applicant's proposed name "GOGLOBAL" and simultaneously or thereafter advise the applicant accordingly, as well as the Registrar of the Companies Tribunal, and thereafter consider acting further in terms of either section 12(3)(a)(i) or section 12(3)(b)(i) of the Companies Act, as the case may be;

- d) upon expiry of a period of 20 business days from date of this order without the applicant receiving a revised notice as contemplated in paragraph b) of this order or receiving confirmation of reservation of the applicant's proposed name "GOGLOBAL", the applicant may request in writing the Chairperson of the Companies Tribunal, through the Registrar of the Companies Tribunal, to assign the matter to any member or members of the Companies Tribunal for a hearing of the matter on the papers as filed or with additional or supplementary submissions, and all other relevant documents.

Khashane Manamela

Member, Companies Tribunal

05 January 2015