

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CTR 005/01/2013

In the matter between:

OSG Corporation

Applicant

And

OSGO Industrial Supplies CC

Respondent

Coram: Kganyago M.F

Decision handed down on the 09th December 2013

DECISION

INTRODUCTION

[1] The applicant is applying for a default order in terms of regulation 153 of the Companies Act 71 of 2008. The applicant has initiated an application against the respondent in terms of section 11(2) of the Companies Act 71 of 2008 (“the Act”), seeking an order that the respondent be ordered to change its name to one not incorporating the applicant’s OSG trade mark or a confusingly similar name.

BACKGROUND

[2] The applicant has initiated an application on the 15th January 2013. The applicant is seeking the Tribunal to order the respondent to change the name OSO Industrial Supplies cc, on the basis that it offend the provisions of section 11(2) of the Companies Act 71 of 2008.

[3] The respondent was duly served on the 18/01/13 by the sheriff. On receipt of the application, the respondent informed the applicant that they will change its name. However, that has not happened.

[4] The respondent did not file any opposing papers and 20 days has lapsed after service of form CTR 142. The applicant is now applying for a default order.

APPLICABLE LAW

[5] Section 11(2) (a) of the Act reads as follows:-

“(2) The name of a company must-

(a) not be the same as-

(i) the name of another company, domesticated company, registered external company, close corporation or co-operative;

(ii) a name registered for the use of a person, other than the company itself or a person controlling the company, as a defensive name in terms of section 12(9), or as a business name in terms of the Business Names Act, 1960 (Act 27 of 1960), unless the registered user of that defensive name or business name has executed the necessary documents to transfer the registration in favour of the company;

(iii) a registered trade mark belonging to a person other than the company, or a mark in respect of which an application has been filed in the Republic for registration as a trade mark or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act 194 of 1993), unless the registered owner of that mark has consented in writing to the use of the mark as the name of the company; or

(iv) a mark, word or expression the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act 17 of 1941) except to the extent permitted by or in terms of that Act.”

[6] Section 12(2) of the Act reads as follows:

“(2) The Commissioner must reserve each name as applied for in the name of the applicant, unless-

(a) the applicant is prohibited, in terms of section 11(2) (a), from using the name as applied for, or

(b) the name as applied for is already reserved in terms of this section”.

[7] Section 160(1) of the Act reads as follows:-

“(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, satisfied the requirements of this Act”.

[8] Regulation 153(1) of the Act reads as follows:-

“(1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.”

EVALUATION

[9] Section 11(2)(a) of the Act prohibits the name of a company to be the same as the name of another company. Section 11(2) (b) of the Act prohibits names of Companies that are confusingly similar.

[10] Before me I am having the unchallenged version of the applicant. The respondent on receipt of the applicant’s application, offered to change its name. In my view, that was an acknowledgement by the respondent that its name offend the provisions of section 11(2). I agree with the applicant that the letter “O” from the respondent’s name does not make a difference to make the members of the public to differentiate between the applicant and the respondent.

There is therefore a likelihood that members of the public will be confused by the two names. In my view, the two names are confusingly similar.

FINDINGS

[11] Therefore, after considering the applicant's application for a default order, it is my finding that the respondent's name does not satisfy the requirements of the Act more especially section 11(2).

ORDER

[12] The applicant's application for a default order is granted.

[13] The respondent is ordered to change its name to one that is not confusingly similar to that of the applicant within 20 working days after receipt of this decision.

Dated at POLOKWANE on this 09th day of DECEMBER 2013.

M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL