



COMPANIES TRIBUNAL OF SOUTH AFRICA

Case Number: CT00397ADJ2020

In the matter between:

M-TECH AUTOWORX (PTY) LIMITED

Applicant

and

MTECH AUTO WORX (PTY) LIMITED
(Registration Number: 2018/616428/07)

Respondent

Presiding Member	:	Khashane La M. Manamela (Mr.)
Date of Decision	:	30 March 2021

DECISION (Order and Reasons)

Summary: Objection to the respondent's name MTECH AUTO WORX under s 160 of the Companies Act 71 of 2008 (the Act) – ostensibly based on the provisions of s 11(2)(b)(i) and s 11(2)(c)(i) of the Act, that the respondent's name is confusingly similar to the applicant's name M-TECH AUTOWORX, and/or denotes an association between the applicant and the respondent – held: although not directly cited, a case has been made out on the basis that the two names are the same, as envisaged by s 11(2)(a)(i) of the Act, apart from a finding of confusing similarity between the two names, as contemplated by s 11(2)(b)(i) of the Act – held: that the application is granted

Khashane La M. Manamela

Introduction

[1] On 30 November 2018, MTECH AUTO WORX, the respondent in this application, was registered as a private company by the Companies and Intellectual Property Commission (the CIPC). Already existing at the time and also as a private company on the CIPC register of companies was M-TECH AUTOWORX, the applicant in this application. The applicant appears (from its registration number)¹ to have been incorporated in 2014. Evidently, this was about four years before the incorporation of the respondent. The applicant complains that the respondent's company name MTECH AUTO WORX does not satisfy the requirements of the Companies Act 71 of 2008 (the Companies Act) with regard to its own company name M-TECH AUTOWORX. It is argued by the applicant that, due to the similarity of the two names, potential clients assume an association between the applicant and the respondent, when this is not the case.

[2] Ostensibly, the applicant brought this application under section 160(1)² of the Companies Act. The applicant is objecting to the use of the name MTECH AUTO WORX by the respondent. The matter is before me on an unopposed basis. There is no appearance on behalf of the respondent. The papers were served on the respondent by

¹ The applicant's registration number is 2014/135407/07.

² Section 160 reads in the material part: "(1) A person to whom a notice is delivered in terms of this Act with respect to ... 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 ... registration or use of the name ... satisfies the requirements of this Act. (2) An application in terms of subsection (1) may be made- (a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or (b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case."

way of electronic mail or email on 02 July 2020.³ The applicant furnished proof of service of the application. Therefore, the application will be determined as a request for default order.⁴

[3] After the matter was allocated to me, I caused to be sent to the applicant communication enquiring about the origin of the email address. I also enquired whether there was communication between the applicant and the respondent, around the time the application was served on the respondent. One of the applicant's directors responded and confirmed under oath that the email address used is that of the respondent and further that she spoke to the respondent's sole director who confirmed receipt of the papers in the application. The respondent's director also reportedly advised the applicant's director that the respondent would not be opposing the application. I am satisfied that the application was adequately served.⁵

Applicant's case and applicable legal principles (a discussion)

[4] The applicant submits that it became aware or found out about the existence of the respondent in 2018. It says that potential clients assume that the respondent is associated with or related to the applicant.

³ This method of delivery of documents is recognised in terms of Table CR3 of Annexure 3 to the Companies Regulations, 2011 (the Companies Regulations), read with regulation 7, also of the Companies Regulations.

⁴ Regulation 153 reads in the material part: "(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. (2) On an application in terms of sub-regulation (1), the Tribunal may make an appropriate order - (a) ...; and (b) if it is satisfied that the notice or application was adequately served. (3) Upon an order being made in terms of sub-regulation (2), the recording officer must serve the order on the person described in subsection (1) and on every other party."

⁵ Regulation 153(2)(b). See footnote 4 above.

[5] This suggests that the applicant's case is based on sections 11(2)(b)(i) and/or 11(2)(c)(i)⁶ of the Companies Act. Section 11(2)(b)(i) provides, that a company name must not be confusingly similar to, for example, another company name. The applicant's submission actually appears to suggest that the respondent's company name falsely implies or suggests or is such as would reasonably mislead a person to believe incorrectly that the respondent is part of or associated with the applicant.⁷ The latter submission would suggest a case based on section 11(2)(c)(i).

[6] But from the incontrovertible facts of this matter there appears a clear case based on section 11(2)(a)(i) of the Companies Act. This provision proscribes a company name which is the same as, for example, another company's name. Section 11(2) of the Companies Act reads in the material part:

“(2) The name of a company must-

(a) not be the same as -

...

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 trademark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No. 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

...

(b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless -

⁶ See par [6] below, for a reading of the material part of s 11(2) of the Companies Act.

⁷ Section 11(2)(c)(i).

- (i) in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies;
- (ii) ...;
- (iii) in the case of a name similar to a trade mark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trade mark or mark, or is authorised by the registered owner to use it ...”

[7] As already indicated section 11(2)(a)(i) proscribes the existence of a company name which is the same as that of another company. This is not a direct submission made by the applicant. But when the applicant’s name M-TECH AUTOWORX is considered against the respondent’s name MTECH AUTO WORX, there is no doubt the former is the same as or identical to the latter.

[8] The two remain identical, despite the existence of a dash between the letter “M” and the word “TECH” in the applicant’s name. The dash is visibly missing from the respondent’s name. Equally, no difference is made by the presence of a gap or space between the words “AUTO” and “WORX” in the respondent’s name (i.e. “AUTO WORX”). The gap or space is clearly missing from the applicant’s name. Further, in the applicant’s name the two words (i.e. “AUTO” and “WORX”) are joined as one word “AUTOWORX”. But all these do not detract from the conclusion that the respondent’s name is the same as the applicant’s name.

Conclusion

[9] Considering what appears above, the respondent’s name is not satisfactory of the requirements of section 11(2)(a)(i) of the Companies Act. Although, somewhat

superfluous once the finding based on section 11(2)(a)(i) is made, there is also a basis for a finding premised section 11(2)(b)(i) of the Companies Act. Plainly, the respondent's name is confusingly similar to the applicant's name. Therefore, the respondent's name also does not satisfy the requirements of the Companies Act in this regard. An appropriate order will be made for its amendment.

[10] This Tribunal has jurisdiction to grant a costs order under regulation 156 of the Companies Regulations.⁸ The applicant did not ask for any costs with the granting of the application. This may be due to some sort of unawareness on the part of the applicant or the fact that the applicant participates in these proceedings without the involvement of a legal representative. But, in fact, no costs order is warranted against the respondent under the specific circumstances of this matter. Therefore, no costs order will be made.

Order

[11] For the reasons appearing above, an order is made in the following terms:

- a) that, the respondent's registered company name "**MTECH AUTO WORX (PTY) LTD**" does not satisfy the requirements of section 11(2) of the Companies Act 71 of 2008;

⁸ Regulation 156(1) of the Companies Regulations reads: "Upon making an order, the Tribunal may make an order for costs."

- b) that, the respondent is directed to choose a new name and file a notice of amendment to its Memorandum of Incorporation reflecting a name which is satisfactory of the requirements of the Companies Act 71 of 2008, and
- c) that, the respondent is directed to complete the activities ordered in b) hereof within 60 calendar days of date of service of this order upon the respondent in terms of regulation 153(3) of the Companies Regulations, 2011.

Khashane La M. Manamela
Member, Companies Tribunal
30 March 2021