IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00876ADJ2021

In the matter between:

CHARMAIN SORENSEN **APPLICANT**

and

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC) **RESPONDENT**

Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 15 February 2022

DECISION (Reasons and an Order)

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1. INTRODUCTION

1.1. Applicant is Charmain Sorensen, an adult businesswoman residing at 310 Boundary Road, North Riding, Randburg, Gauteng.

1.2. Respondent is the Companies and Intellectual Property Commission ("CIPC), a juristic person established in terms of section 185(1) of the Companies Act 71 of 2008 ("the Act").

1.3. This is an application in terms of Section 160 of the Act for a determination order:

a. that Respondent's decision not to approve the proposed name "So and So" be set aside, and
b. that Respondent be directed to reserve the said proposed name.

2. BACKGROUND

2.1. On 26 November 2021 Applicant applied for reservation of the name "So and So'' with the Respondent.

2.2. On the same day Respondent informed Applicant in a letter that the name "So and So'' was refused because the proposed name is confusingly similar to the existing names "So Sho" and "So So Silky."

2.3. On 30 November 2021 Applicant applied to this Tribunal for relief. The application was served electronically on 18 December 2021 on Respondent. The *dies induciae* for filing a response having expired, Applicant then approached this Tribunal on 02 February 2022 for the matter to be adjudicated on a default basis.

3. ISSUES

3.1 Applicant's reason for choosing the named is that the word "So" relates to her surname.

3.2 Respondent's ground for refusing to register Applicant's proposed name is because it is confusingly similar to names already registered in its name register, in particular in terms of Section 11(2) of the Act.

4. APPLICABLE LAW

4.1 **Section 11** of the Act provides as follows: "11. **Criteria for names of companies.** —

(1) ....

(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;

...

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

(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; …

(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company—

(i) is part of, or associated with, any other person or entity;"

4.2 **Section 12** of the Act is entitled: **Reservation of name and defensive names,** and provides:

(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 **-**

(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.

(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)(b) or (c)-

(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;

5. EVALUATION

5.1 In terms of section 12(2) of the Act, Respondent must reserve the name as applied for by 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.

It is clear that if the name "So and So" is not **the same as** the other names in the register, CIPC must reserve the name.

5.2 In terms of section 12(3) of the Act, Respondent can object only once it has reserved the name "So and So", if it has reasonable grounds for considering that the name may be inconsistent with the requirement of section 11(2)(b) or (c). Respondent can thereafter, by written notice, request the Applicant to serve a copy of the application and the name reservation on any particular person or class of persons' name in the notice, on the grounds that the person/s may have an interest in the use of the name that has been reserved for the Applicant. Any person to whom a notice is required to be given may apply to the Tribunal for a determination and order in terms of Section 160(3) of the Act.

5.3 What is "confusingly similar" in section 11(2)(b) has to be examined carefully to determine whether this is in fact so. When referring to the case law on the subject, it is trite that it must be as alike in a manner that will confuse the reasonable person, i.e. the "ordinary reasonable careful man, i.e. not the very

careful man nor the very careless man" (*Link Estates (Pty) Ltd v Rink Estates (Pty) Ltd* 1979 (2) SA 276 (E) at 280).

5.4 This reasonable man (person) should further be qualified as in *Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA (Pty) Ltd* 1993 (2) SA 307 (A) at 315F-G: "A rule of long standing requires that the class of persons who are likely to be the purchasers of the goods in question must be taken into account in determining whether there is a likelihood of confusion or deception."

5.5 As to the requirement for confusingly similar, the test, as in the case of passing-off, should be: "...a reasonable likelihood that ordinary members of the public, or a substantial section thereof, may be confused or deceived into believing that the goods or merchandise of the former are the goods or merchandise of the latter or are connected therewith."

5.6 The name "So and So" has only the word "So" in common with the other names registered on Respondent's database. The inclusion of the word "and" sufficiently distinguishes the name under which Applicant wishes to conduct business, from the names of those entities already registered on respondent's database.

5.7 On the evidence at hand Applicant proposed name is neither confusingly similar and falsely implies, nor could reasonably mislead a person to believe incorrectly, that her business is part of, or associated with the any of the entities registered on Respondent's database.

6. **FINDINGS**

6.1 In light of the above, I find that Respondent erred in refusing the reservation of the name "So and So."

6.2 Respondent's recourse is to reserve the name as applied for and issue a notice requiring Applicant to serve a copy to any person or entity whose name is mentioned in the notice, allowing the latter to oppose the reserved name.

6.3 The person or entity cited in the notice will then have three months within which to file a name dispute with this Tribunal, on the ground that the approved name is confusingly similar to its already registered name.

7. ORDER

7.1 The application for an order to set aside Respondent's decision is granted: Respondent's decision not to approve the proposed name "So and So" is set aside.

7.2 Respondent is directed to furnish Applicant with a notice of reservation within fifteen (15) business days from the date of this order.

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ADV. ISHARA BODASING