

In the matter between:

CSIR

Applicant

And

Meraka Media Proprietary Ltd

Respondent

Coram: Kganyago M.F

Decision handed down on the 11th December 2013

DECISION

INTRODUCTION

- [1] The applicant has brought an application in terms of section 160 of the Companies Act 71 of 2008 ("The Act"). The application was sent to the respondent on 07/11/12 per registered mail. The respondent did not serve or file any notice to oppose. The 20 business days have lapsed since the registered mail was sent to the respondent. The applicant is now applying for a default order against the respondent.

BACKGROUND

- [2] According to the applicant, they are the proprietor of the trade marks "Meraka" and "Meraka Institute" logo. The applicant contend that they have been using the trade marks "Meraka" and "Meraka Institute" logo in relation to its products and services since October 2003.
- [3] According to the applicant, the dominant and memorable portion of the company name is "Meraka" is indential to the applicant's "Meraka" trade mark. The

applicant contend that the remaining portion of the company's name, "Media", is purely descriptive and therefore cannot distinguish the company's name from the applicant's name and trade mark. The applicant further contend that the area of trade of the respondent, overlap with their "Meraka" trade.

- [4] The applicant is therefore of the view that the respondent's name, is therefore confusingly similar to their registered "Meraka" and "Meraka Institute" logo trade marks and therefore fails foul of the provisions of section 11(2)(a)(iii) of the Companies Act.
- [5] The applicant is seeking an order that the respondent be ordered to change its name by virtue of the provisions of section 11(2)(b) on the basis that it falsely implies or suggest, or is otherwise reasonably likely to mislead a person to believe, incorrectly, that the respondent is part of, or associated with the applicant.

APPLICABLE LAW

- [6] Section 11(2) (a) (iii) of Act, reads as follows:

"(2) The name of company must-

(a) not be the same as-

(i)...

(ii)...

(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 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."

- [7] Section 11(2)(b) of the Act reads as follows:-

“(2) The name of a company must-

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

(i) in 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) in the case of a company name similar to a defensive name or to a business name referred to in paragraph (a)(ii), the company or a person who controls the company, is the registered owner of that defensive name or business name;

(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, or

(iv) in the case of a name similar to a mark, word or expression referred to in paragraph (a)(iv), the use of that mark, word or expression by the company is permitted by or in terms of the Merchandise Marks Act, 1941.”

[8] 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 the use of the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act.”

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

“If a person served with an initiating documents 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

- [10] The applicant has brought an applicant seeking an order that the company name Meraka Media Proprietary Limited, does not satisfy the requirement of section 11 of the Act.
- [11] The mere fact that the name of one company is similar to the other, does not on that ground alone justify a conclusion that it does not satisfy the requirements of section 11 of the Act. It must be shown that the name is likely to deceive or mislead the members of the public and that it is the same or similar to that of another and as a result is likely to lead to confuse the members of the public.
- [12] To determine whether there is reasonable likelihood that members of the public may be confused into believing that the business of the one is, or is connected with that of another, I will take into consideration whether the two entities are conducting or trading in a common field of activity. In terms of section 11(2)(b) of the Act, the name of the Company must not be confusingly similar to a name, trade mark, mark or expression contemplated in paragraph (a), unless there are some exclusions as mentioned in subsection 2(b)(i) to (ii).
- [13] The applicant content that their business activity and that of the respondent do overlap. Before me I am having the unchallenged version of the applicant. I don't have any reason why I should not accept their version. I agree with the applicant that the company's name "Media", is purely descriptive, and there is a likelihood of deception or confusion. There is also a likelihood of an unfair advantage, and that will be detrimental to the well known "Meraka" or "Meraka Institute" trade marks which has been the applicant's registered trade marks.

FINDINGS

- [14] Under the circumstances, in my view, the applicant has succeeded in showing that the respondent's name of Meraka Proprietary Limited offends the provisions of section 11 of the Act by incorporating the applicant's registered trade mark. The use of the entity name by the respondent is likely to mislead the members of

the public into believing the respondent is associated with the applicant when it is not.

ORDER

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

[16] The respondent is ordered to change its name to one that is not incorporating the applicant's "Meraka" trade mark or 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 11th day of DECEMBER 2013.

M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL