



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT005JUL2019

In the matter between:

ADAPT MARKETING (PTY) LIMITED

Applicant

(Registration Number: 1997 / 018113 / 07)

and

ADAPT MARKETING CONSULTANCY (PTY) LIMITED

Respondent

(Registration Number: 2016 / 544942 / 07)

Issue(s) for determination: This is an objection to the registration of the company name Adapt Marketing Consultancy (Pty) Limited in terms of sections 11(2) and 160 of the Companies Act, 2008 (Act No. 71 of 2008) read with regulations 13, 142 and 153 of the Companies Regulations, 2011.

Coram: Lindelani Daniel Sikhitha

Date of handing down of decision: 30 October 2019

DECISION (Reasons and Order)

INTRODUCTION

- [1] The Applicant in this matter is Adapt Marketing (Pty) Limited, with Registration Number: 1997 / 018113 / 07 which is a private company duly incorporated and registered in accordance with the company laws of the Republic of South Africa. The Applicant's registered address is situated at 26 Abelia Road, Kloof, Kwa-Zulu Natal Province, 3610, Republic of South Africa.¹
- [2] The Respondent in this matter is Adapt Marketing Consultancy (Pty) Limited with Registration Number: 2016 / 544942 / 07 which is a private company duly incorporated and registered in accordance with the company laws of the Republic of South Africa. The Respondent's registered address is situated at 365 Boundary Road, Jackal Creek Golf Estate, Johannesburg, Gauteng Province, 2126, Republic of South Africa.²
- [3] This is an Application for Relief in terms of which the Applicant objects to the registration of the company name of the Respondent, being Adapt Marketing Consultancy (Pty) Ltd, in terms of sections 11 and 160(2)(b) of the Act, read with regulations 13, 142 and 153 of the Companies Regulations, 2011 ("the Regulations"). In short, the Applicant contends that the Respondent's name is contrary to the provisions of sections 11(2) of the Act. The Applicant seems to

¹ Refer to a copy of Certificate issued by the Commissioner of Companies & Intellectual Property Commission on Friday, January 25, 2019 at 09:00 with title: "Disclosure Certificate: Companies and Close Corporations".

² Refer to a copy of Certificate issued by the Commissioner of Companies & Intellectual Property Commission on Wednesday, April 24, 2019 at 11:06 with title: "Disclosure Certificate: Companies and Close Corporations".

be making the following contentions as the basis of its objection to the Respondent's name:

- 3.1 that the Respondent's company name incorporates Adapt Marketing which is the trade name of the Applicant;
- 3.2 that the Respondent's company name is confusingly similar to Adapt Marketing which is the trade name of the Applicant; and
- 3.3 that the Respondent's company name is deceptively similar to Adapt Marketing which is the trade name of the Applicant.

[4] The Applicant filed the Application for Relief (Form CTR 142) on the 12th day of July 2019. In terms of its Application for Relief, the Applicant is requesting the Companies Tribunal to grant an order in terms of which the Respondent is ordered to change its name to one which does not incorporate and is not confusingly and/or deceptively similar to the Adapt Marketing (Pty) Ltd trade name of the Applicant.

FORM AND SUBSTANCE OF THE APPLICATION FOR RELIEF AND DEFAULT ORDER IN TERMS OF THE REGULATIONS

[5] This is an Application for Relief in terms of which the Applicant is objecting to the company name of the Respondent in terms of sections 11(2) and 160 of the Act read with applicable Regulations. This is one of those matters which requires

that I should first deal with some preliminary issues which relates to the form and substance that the current Application for Relief should comply with.

[6] I should therefore begin such an exercise by first having a look at the provisions of regulation 13(a) which deals with the form of the applications of the nature similar to the current Application for Relief in order to determine if such application is indeed in compliance thereof. The relevant parts of regulation 13(a) read as follows:

“(a) A person may apply in Form CTR 142 to the Tribunal in terms of section 160 if the person has received... a Notice of a Potentially Contested Name, in Form CoR 9.6 or a Notice of a Potentially Offensive Name, in Form CoR 9.7, or has an interest in the name of a company as contemplated in section 160(1)....” [Own emphasis added.]

[7] As already stated, the current Application for Relief is contained in Form CTR 142 (Application for Relief). I am therefore satisfied that the current Application for Relief does comply with regulation 13(a) of the Regulations as outlined above.

[8] In terms of regulation 142(1) of the Regulations, a person may apply to the Companies Tribunal for an order in respect of any matter contemplated in the Act or the Regulations by completing and filing with the Companies Tribunal’s recording officer:

8.1 an Application in Form CTR 142; and

8.2 a supporting affidavit setting out the facts on which the application is based.

- [9] The current Application for Relief is made in Form CTR 142 and it is supported by a Sworn Affidavit deposed to by Anthony Driman who is the sole director of the Applicant. The deponent is duly authorised to launch the current Application for Relief and to depose to the Sworn Affidavit on behalf of the Applicant by virtue of him being the sole director of the Applicant. However, the Sworn Affidavit deposed by Anthony Driman does not fully set out the facts on which the application for name objection of the Respondent is based. Should the Applicant want its Application for Relief to be entertained by the Companies Tribunal, it should therefore file a supplementary affidavit which fully set out the facts on which its name objection application is based.
- [10] In terms of regulation 142(2) of the Regulations, the Applicant is required to serve a copy of the Application for Relief together with the Sworn Affidavit and any attachment thereto on each respondent cited in the Application for Relief, within 5 (five) business days calculated from the date of filing of the Application for Relief with the Companies Tribunal.
- [11] As it appears from the papers placed before me, the current Application for Relief was allegedly served upon the Respondent on the 15th day of July 2019 at around 15:40. Service of the Application for Relief was effected by email communication addressed to the email address: BACELA.V@hotmail.com. There are no details provided with regard to, amongst other things, the owner of the aforementioned email address, an explanation as to how the Applicant obtained the aforementioned email address and confirmation as to whether such email

address is used by the Respondent to receive email communications (documents and notices).

[12] Be that as it may, in terms of regulation 7 of the Regulations, a notice or document to be delivered for any purpose contemplated in the Act or the Regulations may be delivered in any manner:

12.1 contemplated in section 6(10) or (11) of the Act; or

12.2 set out in Annexure 3 - Table CR3 ("Table CR3") to the Regulations.

[13] In terms of Table CR3, a notice or document to be delivered for any purpose contemplated in the Act or the Regulations may be delivered in any manner set out in Table CR3. In terms of Annexure 3 – Table CR3, delivery of a document or notice to any person (including a company) may be done in any of the following manners:

13.1 By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or

13.2 By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or

13.3 By sending the notice or a certified copy of the document by registered post to the person's last known address; or

13.4 By any other means authorised by the High Court; or

13.5 By any other method allowed for that person in terms of the rows contained in Table CR3.

[14] In terms of Table CR3, delivery of any notice or document to a company or similar body corporate should be done by handing the notice or a certified copy of the

document to a responsible employee of the company or body corporate at its registered office or its principal place of business within the Republic. If there is no employee willing to accept service, delivery of any notice or document should be done by affixing the notice or a certified copy of the document to the main door of the office or place of business of the company or body corporate.

[15] I am therefore not satisfied that the Application for Relief was adequately served upon the Respondent. The Applicant failed to provide details regarding the owner of the email address used to serve the Application for Relief, an explanation as to how it obtained the email address and confirmation as to whether such email address is the email address used by the Respondent to receive email communications (documents and notices). Absent such explanation and confirmation, I will not be in a position to decide as to whether there was adequate service of the Application for Relief upon the Respondent.

[16] It is imperative that I should refer to the provisions of regulation 153(1) and (2) of the Regulations as I am dealing with an Application for Default Order. The relevant provisions of regulation 153(1) and (2) read 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.

(2) On an application in terms of sub-regulation (1), the Tribunal may make an appropriate order–

(a) after it has heard any required evidence concerning the motion; and

(b) if it is satisfied that the notice or application was adequately served.” [Own emphasis added.]

[17] Be that as it may, the Applicant did indeed proceed to file its Application for Default Order (Form CTR 145) in terms of regulation 153 of the Regulations on the 20th day of September 2019.

[18] The Application for Default Judgment should therefore be dismissed on the basis that the Application for Relief was not adequately served upon the Respondent. The Applicant is at liberty to reissue the Application for Relief and to have it served upon the Respondent in the manner provided for in Table CR3. Since the Respondent is a Company, it is advisable for the Applicant to serve the Application for Relief by having it hand delivered to the registered office or principal place of business of the Respondent.

THE ORDER

I therefore make the following order:

- 1) The Application for Default Order in terms is dismissed.
- 2) There is no order as to costs.

LINDELANI DANIEL SIKHITHA

Member of the Companies Tribunal

30 October 2019