IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

("The Tribunal") **CASE NO: CT003SEP2014**

Re: In an Application in terms of an unknown section of the Companies Act 71 of 2008 ("the Act") with regard to refusal of a name reservation.

In the matter of:

IRIT GOLAN **THE APPLICANT**

Decision delivered on 05 November 2014

DECISION

INTRODUCTION:

[1] The Applicant whose address as reflected on the CoR 9.5 form is 6 Gary Street, Rivonia, Johannesburg brings an application in terms of an unknown section of the Act under cover of Form CTR 142 and a supporting affidavit for a re-consideration of the name ONE ACADEMY which CIPC has refused to reserve (on the basis that five "comparative names " exist).

PROCEDURE:

[2] The Applicant has initiated the proceedings and lodged its application within 20 business days from the date of the notice from CIPC being 12 August 2014. However, the Applicant has not deemed it fit to serve the application on CIPC nor is CIPC a respondent herein to enable CIPC to respond to this application why such a decision not to reserve the name " One Academy" was made.

EVALUATION:

[4] The Applicant has not mentioned in terms of which section of the Act it applies in the CTR 142 form save to state that the name "One Academy" will be used without association to driving, fashion or computer schools and that for that reason it cannot be closely associated with the five organisations mentioned in the CoR 9.5 form issued by CIPC. It can be mentioned that the services rendered by a company is not the deciding factor to refuse a reservation but that it would be taken into consideration in respect of a trademark as set out by the Supreme Court of Appeal in *Metterheimer and Another v Zonquasdrif Vineyards CC and Others* 2014 (2) SA 204 (SCA) at 209, which illustrates an important distinction between the provisions of the Trade Marks Act and that of the Companies Act. In the former the particular goods and/or services can be a determining factor in respect of the test for confusion. The Companies Act on the other hand is not concerned with the goods/and or services, and the name *per se* must be evaluated to determine viz. confusion.

[5] Note that the Applicant does not point out in terms of which section or sections of the Act the relief is claimed. The Applicant L. Goran has not stated in what capacity he makes the application and does not explain who the "we" is referred to in the affidavit. Despite this, the Applicant is requesting the Tribunal to make an order that One Academy be reserved as its company name as it has registered the academy domain name as oneacademy.co.za and 1 academy.co.za and that the requested name "One Academy" does not compete with any of the comparative names mentioned in the CoR 9.5 (despite not having served the papers on CIPC).

[6] The Applicant's reasoning that it will exclude certain services which may indicate the services/products offered by the 5 companies mentioned as comparative names is not a justification for the request to overturn the decision of CIPC as can be argued in terms of the aforementioned case.

For that to be done, the Applicant ought to have shown that the name" One Academy" is not the same, confusingly similar or does not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly…..in terms of Section 11 (2) (a), (b), (c) as the five comparative names and the Applicant has failed to address this issue as well.

[7] In any event, the Applicant's application has not been made in terms of the Act and in the circumstances it is unclear exactly which section is applicable and why the Applicant believes it has a right in terms of the Act to do so. Note that Regulation 142 (3) clearly states that the section of the Companies Act on which the application is made, must (my emphasis) be indicated. This is clearly a peremptory provision and the Companies Tribunal cannot *mero motu* condone non-compliance; and the principles of substantial compliance as set out in section 6 (9) and (10) do not apply especially as no section has been quoted nor is there a proper justification for the application.

[8] Regulation 142 (3) (a) requires that the application must "…indicate the basis of the application, stating the section of the Act or these regulations in terms of which the Application is made." The Applicant does not comply with this basic requirement, as form CTR 142 does not provide (nor does the affidavit) that the name "is in accordance with the provisions of sections 160 (3) or any other section of the Companies Act".

ORDER:

The application for an order as requested is dismissed with no order as to costs.

k.y. tootla (electronically signed)

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KHATIJA TOOTLA

Member of the Companies Tribunal

05 November 2014