IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT1260ADJ2022

In the *ex parte* application of

INSIDEDATA GROUP PROPRIETARY LIMITED **APPLICANT**

Presiding Member: Brian Jennings

Date of handing down of decision: 28 August 2023

DECISION

Introduction

1 The Applicant is Insidedata Group Proprietary Limited (registration number M2010023383), represented by Shane Peter Moore of Moore Attorneys Incorporated (authorised by a written resolution passed by the board of directors on 3 February 2022).

2 The Applicant has requested the Companies Tribunal ("**Tribunal**") for an order of substituted service.

Background

3 The Applicant is the registered holder of various trademarks styled as UNIPRINT. During July 2019, the Applicant's attorneys discovered that a company, unrelated to the Applicant, had been incorporated under the name Uniprint Holdings Proprietary Limited ("**First Respondent**"), despite the name being substantially similar to the Applicant's trademarks.

4 After sending two letters of demand to the First Respondent in respect of this name dispute, which letters were not met with a response by the First Respondent, the Applicant filed an application to the Tribunal for relief on 2 February 2023. On 9 February 2023, the Applicant requested the Sheriff for Rustenburg to serve its name dispute application on the First Respondent. However, the Sheriff was unsuccessful and issued a return of non-service, which stated that it attempted to serve the application on the First Respondent at its registered address, but the occupants thereof refused to provide the Deputy Sheriff with their names and there were no visible signs that the First Respondent had a presence at its registered address.

5 As a result of the return of non-service, the Applicant filed this present application for an order of substituted service on 24 July 2023.

Service in terms of the Companies Act and the Regulations

6 Before considering an order of substituted service, I find it necessary to first briefly evaluate the different forms of service provided for in the Companies Act No. 71 of 2008 ("**Companies Act**") and the regulations to the Companies Act ("**Regulations**").

7 Regulation 142(2) provides that –

"*The applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days after filing it*."

8 In addition to Regulation 142(2), regulation 7(1) stipulates that –

"*(1) A notice or document to be delivered for any purpose contemplated in the Act or these regulations may be delivered in any manner -*

(a) contemplated in section 6(10) or (11); or

(b) set out in Table CR 3."

9 I do not find it necessary to consider section 6(10) or (11) of the Companies Act, but will instead consider Table CR-3 in Annexure 3 of the Regulations. Table CR-3 sets out various forms of delivery and the respective dates and times for deemed delivery.

10 Table CR-3 states that, methods of delivery applicable to "any person" include –

10.1 by fax, if the person has a fax number;

10.2 by electronic mail, if the person has an address for receiving electronic mail;

10.3 by registered post to the person's last-known address;

10.4 by any other means authorised by the High Court; or

10.5 by any other method allowed for that category of persons in terms of Table CR-3.

11 The Applicant elected to have the name dispute application served on the First Respondent by way of Sheriff, which would fall under the method in paragraph 10.4.

12 I point out that I do not believe that a lack of response from the Applicant's efforts in trying to contact the First Respondent at its registered address (being its last known address) would have rendered service via registered post to the registered address of the First Respondent as ineffective or invalid. The registered address of a company is, in the eyes of the law, its principal place of business, and service thereto is valid. In *Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate (Pty) Ltd (Nedbank Ltd intervening) 2013 (1) SA 191 (WCC)*, the Western Cape High Court held that "*the 2008 Act requires the registered office and the principal place of business for jurisdictional purposes to be at one and the same address.*"[1] The allowance under the Companies Act 61 of 1973 for a distinction between a company's registered address and its principal place of business was removed under the Companies Act.

13 Therefore, service by registered post on the registered address of the First Respondent would have been valid and effective. While the principle of *audi alteram partem* is central to our law of procedure, and various forums often probe into whether service was valid or not, this does not mean that an applicant is required to follow a respondent to the ends of the earth. If an applicant has taken reasonable steps to serve on the respondent in terms of

[1] Par 19.

methods and procedures set out in our legislation, regulations and rules, then service will be valid.

14 Despite the above conclusion, and its implication that a request for an order of substituted service would not be proper as the Applicant has not exhausted the more regular means of service, I would not dismiss this application for this reason. It is clear that the First Respondent could not be located at its registered address.

Substituted service

15 As set out in the Applicant's affidavit, Regulation 7(3) provides the following –

"*If, in a particular matter, it proves impossible to deliver a document in any manner provided for in the Act or these regulations-*

(a) if any person other than the Tribunal is required to deliver the document, the person may apply to either the Tribunal or the High Court for an order of substituted service".

16 The Tribunal is therefore empowered to provide the Applicant with direction as to how to serve its name dispute application on the First Respondent, so that it is reasonably likely that the name dispute application would come to the attention of the First Respondent.

17 The Applicant has, in its affidavit, submitted that service on –

17.1 the residential addresses of the active directors of the First Respondent;

17.2 alternatively, the email address of the incorporators of the company, the names and identity numbers of whom appear to be the same as those of the active directors of the First Respondent; or

17.3 alternatively, the mobile phone numbers of the directors,

would be reasonably likely to come to the attention of the First Respondent and thus constitute effective service.

18 Service on any of the contact details listed above would normally be effective, if there is sufficient evidence to support that the residential addresses, email address, or mobile phone numbers that the Applicant purports to serve on are those of the directors. I discuss each method of service, as proposed by the Applicant, and the evidence in this regard below:

18.1 The Applicant avers that it located the physical addresses of the active directors through the use of a tracing agency. The relevant tracing agent has deposed to a confirmatory affidavit, in which he confirms that he traced the active directors to the physical addresses set out in his tracing report which is annexed to his confirmatory affidavit as "Annexure A". However, this tracing report is nowhere to be found in the Applicant's bundle of documents.

18.2 The Applicant avers that the email addresses are contained on the First Respondent's company registration certificate (paragraph 10 of its affidavit). However, in the First Respondent's registration documents, attached as Annexure SS3, no email address is visible for the incorporators.

18.3 There is no mention of which mobile phone numbers the Applicant would contact, and how it has determined that such mobile phone numbers belong to the active directors of the First Respondent.

19 In absence of sufficient evidence that would confirm that the proposed physical addresses, email addresses and mobile phone numbers belong to the active directors of the First Respondent, I cannot grant an order of substituted service on the grounds sought by the Applicants.

20 Nevertheless, the Applicants include a prayer for any alternative relief. It is clear that the Applicants have gone above and beyond to comply with the rules and procedures of the Tribunal. It also seems that the tracing agents report was not included out of error.

21 Therefore, I would make an order that the Applicant serve its name dispute application on the First Respondent at the physical addresses of the active directors, as set out in its affidavit, provided that supplements its name dispute application without sufficient proof as at how it determined that such physical addresses belonged to the active directors, particularly in the event that it applies for a default order.

Order

In the circumstances, the application is granted and the Applicant is directed to

a) serve its name dispute application on the physical addresses of the active directors of the First Respondent; and

b) supplement its name dispute application with the tracing agent's report or other evidence confirming such physical addresses.

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BRIAN JENNINGS
MEMBER OF THE COMPANIES TRIBUNAL