IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("The Tribunal")

CASE NO: CT00157ADJ2019

In Re: In an Application in terms of Section 160 of the Companies Act 71 of 2008 ("the Act") for a determination that the company name THE 4TH MAN BUILDERS WAREHOUSE does not satisfy the requirements of Section 11(2) of the Companies Act 71 of 2008 ("the Act").

In the matter between:

MASSTORES (PTY) LTD **THE APPLICANT**

AND

THE 4TH MAN BUILDERS WAREHOUSE (PTY) LTD

(2015/112590//**07)** **FIRST RESPONDENT**

AND

CIPC **SECOND RESPONDENT**

Coram K. Tootla

Decision delivered on 30 October 2019

DECISION

INTRODUCTION:

[1] The Applicant applies in terms of section 160 of the Companies Act 71 of 2008 ("Act" / "Companies Act") and regulations 143 and 153 of the Companies Regulations (GN R351 in GG 34239 of 26 April 2011) ("regulations") for a default order that the First Respondent be ordered to change its name to one which does not incorporate and is not confusingly and or/deceptively similar to the Applicant's BUILDERS WAREHOUSE trade mark; and to record the Registration number followed by (Pty) Ltd as the First Respondent's company name on the companies register; and further or alternative relief; and that the use of the name "BUILDERS WAREHOUSE " by the First Respondent is in contravention of sections 11 (2) (b) and (c).

[2] The Applicant, is Masstores (Pty) Ltd a company having its primary place of business at Massmart House, 16 Peltier Drive, Sunninghill, Ext 6, Sandton, Gauteng.

[3] The First Respondent is The 4th Man Builders Warehouse (Pty) Ltd, a company incorporated in terms of the Companies Act 71 of 2008, with registration no. 2015/112590/07, having its registered address at 42-42 12 Street, Orange Grove, Johannesburg, Gauteng, 2192.

[4] The Second Respondent is CIPC, established by the Act as a juristic person to function as an organ of state, located at the DTI Campus, Meintjies Street, Pretoria.

BACKGROUND:

[5] The copy of the application was served by the Applicant's attorney on the First Respondent's registered address on 18 September 2019 via the Sheriff by pinning on the principal gate of a block of flats in terms of Rule 4(1) (a) (v) of the Uniform Rules of Court Rules and same was filed within the requisite time period with the Tribunal.

[6] In terms of regulation 153 (1) read with regulation 143 (1), the first respondent has 20 days to respond, failing which the Applicant is entitled to apply for a default order as provided for in regulation 153 (1). There has been no response or opposition to the Application by the First Respondent.

[7] In December 2016, the Applicant became aware of the registration of the First Respondent and addressed a letter to the First Respondent to notify the First Respondent of the applicant's rights in the trade mark and its contravention thereof so that the First Respondent can rectify same.

[8] However, it is noted that the Applicant attempted to serve the aforesaid letter of demand on 26 January 2018 via the Sheriff on the First Respondent which service was effected by the sheriff by affixing the said letter of demand on the principal door of the company's registered address as no other service was possible after a diligent search at the given address. The Sheriff states in Annexure B18 that 'the given address is a block of flats and that the Defendant's flat number is required'. This indicates that the address provided to the Sheriff was insufficient, albeit that may be the address provided by the First Respondent to the CIPC as its registered address.

[9] Although the Applicant did not receive any response or acknowledgement to its letter of demand from the First Respondent, it is clear that the application and the letter of demand did not come to the attention of the First Respondent due to the method of service adopted.

EVALUATION:

[10] The Tribunal is concerned with the service of the application by affixing on the principal door as it seems that the application did not come to the attention or knowledge of the First Respondent. The gap between January 2018 and September 2019 is also glaring as far as time periods are concerned. The First Respondent may have moved out of the premise.

[11] It seems that the application did not come to the attention of the First Respondent as it is a block of flats and the process was pinned to the main gate of the block of flats. It was not pinned to the exact flat door where the First Respondent resided or carried on business at, or claimed as its registered office on the CIPC records.

[12] The Applicant has not taken the time to investigate via a tracing agent whether the First Respondent has moved out of the block of flats or continues to reside there or does business there; nor has it applied for substituted service in terms of Rule 7 (3) (a) of the Regulations to the Companies Act as it ought to do if there is no other method of serving the document.

[13] In the circumstances, I am satisfied that the application has not come to the attention or knowledge of the First Respondent and hence the application is refused. There has not been satisfactory compliance with Regulation 153(2) (b) to the Companies Act.

[14] In the circumstance the merits of the matter cannot be dealt with.

ORDER:

Application is dismissed.

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K. Tootla

Member of the Companies Tribunal

Pretoria

30 October 2019