COMPANIES TRIBUNAL OF SOUTH AFRICA

Case/File Number: CT001Oct2015

In the matter between:

RISHAAD DAWOOD **Applicant**

and

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION **Respondent**

in respect of the reservation of the company name "PRESS COUNCIL OF SOUTH AFRICA"

Presiding Member	:	Khashane La M. Manamela (Mr.),
Date of Decision	:	21 December 2015

DECISION (Reasons and an Order)

Khashane La M. Manamela

[1] On 23 May 2014 the Companies and Intellectual Property Commission, the respondent herein, issued a notice[1] to Mr. Rishaad Dawood, the applicant herein. The respondent confirmed in terms of the notice that the name "PRESS COUNCIL OF SOUTH AFRICA" had been reserved in the applicant's name for a period of six months.[2] The applicant did not follow on the name reservation and it eventually lapsed. It is submitted that the name lapsed due to failure to register it because of "other circumstances".[3] However, these circumstances are not explained.

[2] The applicant appears to have reapplied for the abovementioned company name. On 15 September 2015 the respondent advised the applicant that the name could not be approved.[4] As a reason for the refusal to approve the name, the respondent stated that it considered that "The word COUNCIL connote [sic] Governmental patronage unless of course you file CoR 9.1 manually (namereservationsandregistrations@cipc.co.za) [sic] together with the said proof of Governmental ties as well as certified ID copies of directors for our consideration."[5]

[3] Evidently unhappy with the aforesaid outcome the applicant launched this application. The applicant submits that it served the application on the

[1] See Form CoR9.4 dated 23 May 2014 by the Commissioner of the Companies and Intellectual Property Commission (the CIPC), included as part of the papers. The papers are not paginated and therefore reference to documents will be accompanied by some level of description.
[2] The period stated in the notice is from 23 May 2014 to 22 November 2014.
[3] See Form CTR 145 dated 11 November 2015 filed by the applicant in support of an application for default order.
[4] See Form CoR9.5 dated 15 September 2015 issued by the CIPC.
[5] *Ibid.*

respondent by electronic mail on 09 October 2015.[6] The respondent is not taking part in these proceedings and consequently the applicant has filed a further application for a default order.[7] Table CR 3 of Annexure 3 of the Companies Regulations, 2011 (the Regulations)[8] provides for delivery of documents through the method of electronic mail.[9] Therefore, I am satisfied that the application was adequately served as contemplated in regulation 153 of the Regulations.[10]

[4] The applicant rejects the reason furnished by the respondent for refusal to reserve the impugned name.[11] Due to their brevity, I reflect the applicant's submissions in support of this application:

- "The word *Council* does NOT connote governmental patronage. Some government institutions are run by councils, for example, the municipalities, but there are scores of other organisations or institutions that have nothing to do with government that are run by councils. Churches, for example, might be managed by a council of elders.
- Organizations like ours around the world are known as Press Councils, for example, the New Zealand Press Council, the Indian Press Council, the Press Council of Malaysia.

[6] See affidavit by Mr. Rishaad Dawood of 12 November 2015 (attached to Form CTR 145) in support of the application for default order. There is further what appears to be an extract from an electronic mail by the applicant to someone in the CIPC on which the registry section of this Tribunal is copied of 06 and 09 October 2015.
[7] Regulation 153 of the Companies Regulations, 2011 provides for an application for a default order.
[8] The Companies Regulations were made by the Minister of Trade and Industry in terms of s 223 of the Companies Act 71 of 2008 and published under GN R351 in Government Gazette 34239 of 26 April 2011 (Companies Regulations).
[9] Table CR 3 of Annexure 3 is in terms of Regulation 7 of the Companies Regulations.
[10] Regulation 153 reads as follows, the material part: "(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." [underlining added for emphasis]
[11] See para 2 above.

- Over the years the Organization have [sic] been known as the Press Council and we would confuse millions of people if we suddenly changed our name.
- The Organization is being established by the South African Press through the below founding industry and professional bodies:
  - The Print and Digital Media South Africa (PDMSA)
  - The Association of Independent Publishers (AIP)
  - The Forum of Community Journalist [sic] (FCJ)
  - The South African National Editors' Forum (SANEF) "

[5] The issues raised in this application are matters of novelty. Therefore, I find it quite regrettable that the respondent did not assist this Tribunal by filing a detailed explanation regarding its reasons for refusal to reserve the impugned name. Without such details, I am limited to only the encryptic words of the respondent above. Yet, the respondent's brief reasons and the applicant's submissions will be considered against the applicable legal principles.

[6] Section 11 of the Companies Act 71 of 2008 (the Act) provides criteria for names of companies. Section 11(2) lay out some proscriptions regarding company names. It reads as follows in the material part:

"(2) The name of a company must-
(a) …
(b) …
(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company-
(i) is part of, or associated with, any other person or entity;
(ii) is an organ of state or a court, or is operated, sponsored, supported or endorsed by the State or by any organ of state or a court;
(iii) …

(iv) is owned, operated, sponsored, supported or endorsed by, or enjoys the patronage of, any-
(aa) foreign state, head of state, head of government, government or administration or any department of such a government or administration; or
(bb) international organisation…"

[I added the underlining]

[7] In the notice advising the applicant of the refusal to reserve the impugned name, the respondent stated that the word COUNCIL included in the name connotes "Governmental patronage".[12] I assume that there is reliance on section 11(2)(c)(iv) of the Act quoted above in this regard. Actually, even section 11(2)(c)(ii) appears to be applicable, but not much turns on these.

[8] In my view there is merit in the respondent's assertion that the name Council may be indicative of some governmental link or association. However, I am not certain that this is the only meaning or association that is attributable to the word. As for the meaning of the word, the *The Oxford Large Print Dictionary* says the following of the word "council": "*noun* **1** an assembly of people to advise on, discuss, or organize something. **2** an elected body organizing municipal affairs." From the aforesaid it appears that the applicant's submission that the word (i.e. council) is capable of use in organisations that have no association with government may have merit.[13] In fact, I find nothing herein suggesting that the word cannot be used in both contexts. However, due to the nature of the order I

[12] See para 2 above.
[13] See para 4 above.

will be making herein, I do not consider it necessary to be detained by this element of the discussion any longer. I move on to something else.

[9] In terms of section 12(2) of the Act,[14] the respondent cannot refuse to reserve a proposed company name on the basis that the name connotes association with government or any ground based on section 11(2)(c) of the Act. This also applies to grounds based on section 11(2)(b). In fact, the Act provides only two instances in which the respondent can refuse to reserve a proposed name, but none avails the respondent for current purposes. Both instances are in terms of section 12(2) of the Act.[15]

[10] The first instance is when the use of the name is prohibited in terms of section 11(2)(a) of the Act (for example, when the name is the same as another company name; defensive name; trade mark or mark). The second instance is when the name is already reserved in terms of the Act. In all other instances the

[14] Section 12(2) and section 12(3), to be discussed a bit later, read as follows: "(2) The Commission must reserve each name as applied for in the name of the applicant, unless -
(a) the applicant is prohibited, in terms of section 11(2)(a), from using the name as applied for; or
(b) the name as applied for is already reserved in terms of this section.
(3) If, upon reserving a name in terms of subsection (2), there are reasonable grounds for considering that the name may be inconsistent with the requirements of-
(a) section 11(2)(b) or (c)-
(i) the Commission, by written notice, may require the applicant to serve a copy of the application and name reservation on any particular person, or class of persons, named in the notice, on the grounds that the person or persons may have an interest in the use of the name that has been reserved for the applicant; and
(ii) any person to whom a notice is required to be given in terms of subparagraph (i) may apply to the Companies Tribunal for a determination and order in terms of section 160; or
(b) section 11(2)(d)-
(i) the Commission may refer the application and name reservation to the South African Human Rights Commission; and
(ii) the South African Human Rights Commission may apply to the Companies Tribunal for a determination and order in terms of section 160."

[15] *Ibid.*

respondent is enjoined (the word "must"[16] is used in the section) to reserve the name. The respondent is not rendered helpless in this regard. For, where reasonable grounds exist to consider the reserved name to be inconsistent with the provisions of the Act, the respondent may, among others, by notice require the applicant of the reserved name to serve a copy of the application and name reservation on interested persons. This is in terms of section 12(3) of the Act.[17]

[11] I have previously had the privilege of dealing with sections 12(2) and 12(3) of the Act in respect of decisions of the respondent in, among others, the matters of ***RV Handfield-Jones (on behalf of Collision Reduction Services) v Companies and Intellectual Property Commission***, case/file number: CT007Feb2014, decided on 31 October 2014, and ***Dwight Godby Jefferys v Companies and Intellectual Property Commission***, case/file number: CT018May2014, decided on 31 October 2014.[18] I find the discussions in those matters relevant for a determination to be made herein. Therefore, I rely on the theme and logic of those decisions in finding that the respondent was incorrect in refusing to reserve the impugned name. It is also not insignificant that the respondent had before approved the impugned name in favour of the applicant.[19] Therefore, the applicant is successful.

[16] "The Commission must reserve each name as applied for in the name of the applicant, unless". I added the underlining.
[17] See footnote 14 above.
[18] Both decisions can be accessed on this Tribunal's website: www.companiestribunal.org.za.
[19] See para 1 above.

[12] I hasten to emphasise that, clearly from the above, I did not find that the impugned name satisfies the requirements of the Act. As stated above, I find myself precluded by the abovementioned reasons from even getting that far in this matter. The respondent has simply taken an incorrect route, so to speak. It clearly considered the name to be inconsistent with the provisions of the Act, but did not follow the prescribed statutory route. In my view, the choice of this route by the respondent leaves no room for determination by this Tribunal, except that without a determination the applicant will almost be remediless. This, in my view, will have the same effect as if the impugned name has been ruled unsatisfactory of the requirements of the Act. In some of the decisions I have had the privilege of making previously, I attempted a different approach in the orders made therein, including drawing the attention of the CIPC to the requirements of section 12 of the Act.[20] But, I am not encouraged by the results to follow the same approach in this matter.

[13] I therefore make the following order:

a) the Companies and Intellectual Property Commission, the respondent herein is directed to reserve, by not later than 31 January 2016, the name PRESS COUNCIL OF SOUTH AFRICA for the applicant;

b) the Companies and Intellectual Property Commission, the respondent herein is directed to confirm the reservation of the name PRESS

[20] See para 14 of ***RV Handfield-Jones (on behalf of Collision Reduction Services) v Companies and Intellectual Property Commission***; para 26 of ***Dwight Godby Jefferys v Companies and Intellectual Property Commission***, case/file number: CT018May2014, decided on 31 October 2014.

COUNCIL OF SOUTH AFRICA for the applicant by furnishing the applicant with Form CoR9.4 or any other applicable form or notice in this regard by not later than 31 January 2016.

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Khashane La M. Manamela

Member, Companies Tribunal

21 December 2015