

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT008AUG2017

In the matter between:

VITAL HEALTH FOODS (PTY) LTD **Applicant**

and

VITAL HEALTH GROUP (PTY) LTD **Respondent**

Issue for determination: Objection to the registration of the company name Vital Health Group (Pty) Ltd in terms of sections 11 and 160 of the Companies Act, 2008 (Act No. 71 of 2008) read with regulation 13 of the Companies Regulations, 2011.

Coram: Lindelani Daniel Sikhitha

Decision handed down on 01 November 2017

DECISION (Reasons and Order)

INTRODUCTION

[1] The Applicant in this matter is Vital Health Foods (Pty) Ltd, with Registration Number: 1951/003081/07 and with its registered business address situated at Lavender Lane, Kuils River.

[2] The Respondent in this matter is Vital Health Group (Pty) Ltd with Registration Number: 2016/007040/07, and with its registered business address situated at 4th Floor, Corporate Park, 403 Gardener Street, Durban, Kwa-Zulu Natal, 4000 as fully set out in the Disclosure Certificate: Companies and Close Corporations.[1]

[3] This is an application in terms of which the Applicant objects to the registration of the company name Vital Health Group (Pty) Limited in terms of sections 11 and 160 of the Companies Act, 2008 (Act No. 71 of 2008) ("the Act") read together with Regulation 13 of the Companies Regulations, 2011 ("the Regulations").

[4] In essence, the Applicant is seeking a determination by the Companies Tribunal in respect of the registration of the name Vital Health Group (Pty) Ltd. The Applicant is hereby seeking protection of its name and goodwill and its various trademark registrations, registered under Natural Formulas Limited. I am informed that Natural Formulas Limited is a subsidiary company of the Applicant which owns Vital intellectual property and manages trademarks licensing agreements and royalties for all the Applicant's registered trademarks.

[5] The Applicant brought an Application for a Default Order (Form CTR 145) in terms of Regulation 153 of the Regulations. I will deal with the issues regarding the

[1] Refer to a copy of Respondent's Disclosure Certificate: Companies and Close Corporations issued by the Commissioner of Companies & Intellectual Property Commission on Tuesday, August 8, 2017 at 09:08.

Application for Default Order when I deal with the procedural aspects of the current application below.

BACKGROUND AND COMPLIANCE WITH PROCEDURAL MATTERS

[6] 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 by the Companies Act, 2008 (Act No. 71 of 2008) ("the Act") or the Regulations by completing and filing with the Companies Tribunal's recording officer:

6.1 an Application in Form CTR 142; and

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

[7] In terms of Regulation 142(2) of the Regulations, the Applicant is required to serve a copy of the Application and supporting affidavit on each respondent cited in the Application, within 5 business days after filing it with the Companies Tribunal.

[8] The current Application together with the Affidavit ("the Supporting Affidavit") deposed to by Sonja Jean Lombard in terms of sections 11 and 160 of the Act read together with Regulation 13 of the Regulations was filed with the Companies Tribunal on the 10th day of August 2017.[2]

[9] I did peruse through the Application and supporting documents attached thereto and I am not satisfied that the current Application is in substantial compliance with Regulation 142 of the Regulations. I have noted that the Applicant did insert

[2] Refer to stamped copy of the Application for Relief dated 28 July 2017.

its details on the space intended for the details of the Respondent on Form CTR 142. Consequently, Form CTR 142 is therefore substantially defective because the correct details of the Respondent have not been inserted.

[10] The Applicant did file its Application for Default Order (Form CTR 145) in terms of Regulation 153 of the Regulations on the 06th day of October 2017. In terms of the Affidavit in support of the Application for Default Order deposed to by Sonja Jean Lombard dated 05 October 2017, the Applicant alleges in paragraph 3 thereof that two attempts to serve notice on the Respondent have failed.

[11] It is important that I should make reference to the provisions of Regulation 153(1) and (2) of the Regulations which 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."*

[12] In terms of Regulation 142(2) of the Regulations, the Applicant is required to serve a copy of the Application and supporting affidavit on each respondent cited in the Application, within 5 business days after filing it with the Companies Tribunal. This procedural requirement has not been complied with by the Applicant in this matter. I am therefore not satisfied that the current Application was adequately served upon the Respondent. The Application for Default Order should therefore fail on this ground.

[13] In terms of Regulation 7(3) of the Regulations, if in a particular matter, it proves impossible to deliver a document in any manner provided for in the Act or the Regulations and if any person other than the Companies Tribunal is required to deliver the said document, then such person may apply to either the Companies Tribunal or the High Court for an order of substituted service.

[14] Due to the fact that the Applicant is alleging that it is impossible to serve the current Application upon the Respondent, it should have considered other available avenues provided for in terms of Regulation 7(3) of the Regulations. It is common cause that the Applicant did not bring any application to either the Companies Tribunal or the High Court for an order allowing it to serve the current Application upon the Respondent by way of substituted service.

[15] It follows therefore that the Application for Default Order should fail on the basis that the Applicant failed to serve the Application and the Supporting Affidavit upon the Respondent within 5 business days after filing it with the Companies Tribunal.

[16] The application is accordingly dismissed.

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LINDELANI DANIEL SIKHITHA

Member of the Companies Tribunal

01 November 2017