COMPANIES TRIBUNAL

(REPUBLIC OF SOUTH AFRICA)

Case No: CTO16MAY2019

CT00065ADJ2019

In the matter between:

Talis Holdings (Pty) Ltd	Applicant
(Reg No. 2013/159097/07)	
and	
Talis Project (Pty) Ltd	Respondent
(Reg No. 2012/216259/07)	

DECISION

Introduction

1. **Talis Holdings (Pty) Ltd**(Talis Holdings)**,** the applicant is challenging the continued registration and use of the respondent's name **Talis Projects (Pty) Ltd**(Talis Projects) on grounds that the registration and use of the name offends against the provisions of Section 11(2) of the Companies Act 71 of 2008(the Companies Act). Accordingly, the applicant is seeking for an order directing the respondent to change its name "Talis Projects" to a name that does not incorporate and is not confusingly similar to the "Talis" name, trade mark and or trading style.

2. The application was properly served on the respondent on 27 May 2019. The respondent did not deliver opposing affidavit to the

application, instead, the respondent delivered a letter on 12 June 2019 through its legal representatives, whereby the respondent:

2.1. Informed the applicant that respondent cannot be involved in litigation due to its financial situation;
2.2. Disputes that the applicant has furnished evidence to support a claim that the respondent's name offends against the provisions of Section 11(2) of the Companies Act; and
2.3. Indicates that the respondent is in the process of closing down the business especially in view of the fact that deregistration is taking place.

Parties

3. The applicant is Talis Holdings (Pty) Ltd, a private company duly registered in terms of the Companies Act of South Africa with registration number 2013/159097/07, having its registered address at 12th Floor Radisson Blue Hotel, Cnr West and Rivonia Street, Sandton, 2128. The applicant was incorporated as a Close corporation in the year 2010 and converted into a private company in the year 2013

4. The respondent is Talis Projects (Pty) Ltd, a private company duly registered in terms of the Companies Act of South Africa with registration 2012/216259/07, having its registered address at 33 Bloukrans Place, Albertsdal, Alberton, Gauteng, 1448. The respondent was incorporated on 4 December 2012.

Facts

5. The applicant was originally a shelf close corporation registered on the 21 May 2010 under the name “Business Card Express Norwood CC” with close corporation number 2010/072932/23. On 7 August 2013, the applicant’s name was changed to Talis Holdings CC and on 3 September 2013, the applicant was converted to a private company, accordingly, its name was changed to Talis Holdings (Pty) Ltd. The applicant has been conducting business in South Africa under the Talis name and trade mark since around 7 August 2013.

6. The applicant has given detailed evidence showing the industry the applicant is involved in, particulars of registered “Talis” trademarks owned by the applicant, resources spent in promoting, advertising and marketing the “Talis” name and trademarks and the reputation gained by the applicant over time from August 2013. It is not necessary to detail the information given by the applicant in this respect.

7. The applicant first became aware of that the respondent’s registered company name incorporates the word “Talis” in early 2019 when the applicant’s attorneys conducted a name search for the word “TALIS” on the Companies and Intellectual Properties Commission (CIPC) database. There is no doubt that applicant acted within reasonable time of becoming aware of the registration of the respondent’s name (the contested name)

8. The applicant, duly represented by its chairperson and sole director is of the view that registration of the respondent’s name is against the requirements of the provisions of section 11(2) of the Companies Act. Consequently, the applicant served the respondent with an objection to the registration and continued use of its company name Talis Projects.

9. Through correspondence by the respondent's attorneys, the respondent disputes that applicant has made out a case for the relief sought and indicates that because of financial difficulties, it(the respondent) will not engage in litigation concerning the dispute.

Legal issues and facts

10. Section 11(2) of the Companies Act provides against unauthorised registration of a company name which:
    10.1. is the same as the name of another company or close corporation;
    10.2. is the same as a name registered for use of another person as a business name;
    10.3. is the same as the registered trade mark belonging to another person;
    10.4. is confusingly similar to the name of another company, trade mark or mark belonging to another person; or
    10.5. falsely implies or suggests, or is such as would reasonably mislead a person to believe incorrectly that that company is part or associated with another registered company or entity.

11. It is clear that the intention of Section 11(2) is to protect the rights in respect of company names, registered trade marks or marks that are already in existence or use at the time of registration of the contested name.

12. I am therefore enjoined to first enquire whether at the time of registration of the contested name, the applicant's Talis name was already registered or in use by the applicant and therefore entitled to

claim protection arising from non-compliance with Section 11(2) of the Companies Act in relation to registration of any name incorporating the word “Talis”. If the applicant succeeds to show that it is indeed entitled to claim protection, I should then proceed to the second leg of enquiry being to consider the merits of the application.

13. The order of dates of registration or use of company names or trade marks incorporating the word “Talis” by the respective parties will assist in settling the enquiry relating to the applicant’s claim of entitlement to protection.

14. The record shows that applicant underwent changes to amongst others, the kind of a juristic person it was and its name, since incorporation. On the other hand, the respondent never made any name change or change of the kind of juristic person it is since incorporation. An answer to this enquiry is to be found in the dates on which the applicant started using the word “Talis” in its name and or Trade mark or the date on which such a name or trade mark incorporating such word was registered by the applicant, whichever occurred first. The uncontested evidence of the applicant is that it started using the mark and or the name on or about 7 August 2013.

15. The respondent was registered under the name Talis Projects (Pty) Ltd on 4 December 2012, which name is still in use to date. The applicant was registered as a close corporation under the name Business Card Express Norwood CC on 21 May 2010 until 7 August 2013 when it changed its name to Talis Holdings.

16. It is clear from the above that the respondent's name Talis Projects (Pty) Ltd was registered as such in 2012 while the applicant only commenced using the Talis name and or trade mark in 2013. In light of this evidence, the applicant's claim of entitlement to protection against registration of the respondent must fail.

17. The applicant has mildly thrown in the allegation that the respondent's status reflects as "Deregistration process" as one of the grounds for the request for the relief sought. Section 160(3)(a) empowers the Tribunal to make a determination whether the contested company name complies with the requirements of the Companies Act. This provision is enacted for the purpose of providing for remedies in respect of disputes concerning *reservation or registration of company names*, it has nothing to do with issues of non-compliance with the requirement of submission of annual returns and deregistration of non-compliant companies.

18. The tribunal is a creature of the statute and should thus not be expected to act outside its jurisdiction. In the result the tribunal shall not enter the deregistration arena. It will be up to the respondent to either accelerate the deregistration process by actively driving the process or to submit the returns and keep the company registered or to allow the company registration to die a natural death.

Conclusion

19. The applicant has failed to establish the following:

19.1. That the applicant had a right to claim protection against registration of a company name incorporating the word “Talis” when the respondent’s name was registered in 2012;

19.2. Good cause for the Tribunal to entertain the substance of the application; and

19.3. That registration of the respondent’s name is contrary to the provisions of Section 11(2) of the Companies Act

Order

The application is dismissed.

Dated at Pretoria on this the **20th** day of **September 2019**

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Ms M. Ramagaga

Member of the Companies Tribunal