



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA  
("THE TRIBUNAL")**

**CASE NUMBER: CT002JUN2016**

**In the matter of:**

**MOSSEL BAY YACHT AND BOAT CLUB**

**APPLICANT**

**and**

**MOSSEL BAY YACHT AND BOAT CLUB (PTY) LTD**

**RESPONDENT**

**Coram: PJ Veldhuizen**

**Order delivered: 29 August 2016**

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**ORDER & REASONS**

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**A. INTRODUCTION**

**1. THE PARTIES**

- 1.1. The Applicant is **MOSSEL BAY YACHT AND BOAT CLUB** ("the Applicant), a social club, owned and operated by its members.

- 1.2. While the Applicant is a registered Non-Profit Organization, the Applicant is not a company as defined in the Companies Act 71 of 2008 ("the Act").
- 1.3. The Applicant's registered address is at Short Street, Mossel Bay.
- 1.4. While the Applicant has been in operation since 1956, it has not registered its club name as a company name with CIPC nor has it filed a trade mark application in respect thereof.
- 1.5. The Respondent is **MOSSEL BAY YACHT AND BOAT CLUB (PTY) LTD** ("the Respondent"), a company incorporated in terms of company laws of the Republic of South Africa with a registered office address at No 77 Bland Street, Mossel Bay. The Respondent bears company registration number 2015/145297/08.

**B. THE APPLICATION**

2. This is an application in terms of Regulation 153 of the Companies Regulations, for a Default Order pursuant to an application made by the Applicant in terms of Section 160 of the Act.
3. The Applicant alleges that the use of the Respondent's company name offends the requirements of Section 11 of the Act and requests that Respondent be directed to choose a new name "completely dissimilar" to that of the Applicant's club name.
4. The Applicant objects to the name of the Respondent, on the basis of their earlier

intellectual property rights in the Respondent's company name.

5. In amplification of 3 above, the Applicant alleges that the Respondent's use of its company name offends against the Act in that:

5.1. "The Applicant has reason to believe that the intentions of this registration was (sic) not pure"; and

5.2. "The Respondent's use of the name may confuse the community, general public, suppliers etc"; and

5.3. "This could easily lead to misrepresentation and hence unethical conduct."

**C. THE LEGISLATION**

6. The regulation of disputes concerning the reservation or registration of company names and the jurisdiction of the Tribunal is set out in Section 160 of the Act and the Applicant particularly relies on:

(1) –

*A person to whom a notice is delivered in terms of this Act with respect to an application for a reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company's name, or any other person with an interest in the name of a company, may apply to the Companies Tribunal in the prescribed manner and form for the determination whether the*

*name, or the reservation, registration or use of the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act.*

*(2) –*

*An application in terms of subsection (1) may be made –*

*(b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case.*

*(3) –*

*After considering an application made in terms of subsection (1), and any submissions by the Applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Companies Tribunal –*

*(a) must make a determination whether that name, or the reservation, registration or use of the name, or the transfer of the reservation or registration of the name, satisfies the requirements of this Act; and*

*(b) may make an administrative order directing –*

*(ii) a company to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within a period and on any conditions that the Tribunal considers just, equitable and expedient in the circumstances, including a condition exempting the company from the requirement to pay the prescribed fee for filing the Notice of Amendment contemplated in this paragraph.*

7. The restrictive criteria for the names that may be chosen by a company is set out in Section 11 (2) of the Act and the Applicant presumably relies on Section 11(2)(c) which provides:

*(2) – The name of a company must –*

*(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**<sup>1</sup>;*

**D. POINTS FOR DETERMINATION**

8. Were the Tribunal's procedural requirements met?

8.1. The Applicant is required to establish good cause in terms of section 160(2)(b) of the Act.

8.2. The Applicant has not addressed the issue of good cause in its application nor has it indicated when it became aware of the Respondent's existence. I am therefore not satisfied the requirement contemplated in section 160(2)(b) has been met.

9. Service / Jurisdiction

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<sup>1</sup> My emphasis

9.1. The Applicant has provided a letter from their attorneys purporting to be proof of service but this letter does not take the issue of service anywhere. It does not indicate what was attached to the correspondence and in fact, the correspondence is entitled "Notice of Objection to CIPC". In any event, the correspondence does not indicate receipt by the Respondent of the papers.

9.2. Accordingly, I am not satisfied that the papers have been served on the Respondent.

**E. EVALUATION OF EVIDENCE**

10. For the reasons set out above, it is unnecessary for the Tribunal to deal with the evidence and the matter falls to be refused on procedural grounds alone.

**F. DECISION**

11. The Application is refused.

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**PJ VELDHUIZEN**  
**MEMBER OF THE COMPANIES TRIBUNAL**  
**CAPE TOWN**