

**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case: CT016Apr2016

JOAO PAULO PICCIOCHI SALCEDAS PAES

Applicant

THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

Respondent

Presiding Member of the Companies Tribunal: Lucia Glass

DECISION (Reasons and Order)

1) This is an application for an order to compel the Companies and Intellectual Property Commission (CIPC) to set aside the CIPCI's COR 9.5 notice, dated 22.3.16, reference number 111332267 refusing the 4 name reservations.

2) The Deponent to the Applicant's papers is Joao Paulo Picciochi Salcedas Paes who avers that he applied for 4 company name reservations using the required form CoR9.1. where all 4 names were refused by the CIPCI.

3) The names which were refused are the following;

Process Engineering Solutions South Africa

Process Engineering Services South Africa

Process and Project Engineering Solutions

Process and Project Engineering Services

4) The Applicant advises that the name Process Engineering Solutions South Africa, had the following conflicting names;

Madlala Utilities and Process Engineering Solutions

and

Simple Process Engineering Solutions.

5) The Applicant avers that he used the CIPCI e Services Enterprise Name Search and Enterprise Number Enquiry, on 6 April 2016, which verified that these two companies were in the deregistration process.

6) The Applicant is of the view that the requested company name has been declined based on names of companies that are no longer in business and the Applicant believes that the argument for declination is therefore contestable.

7) The Applicant avers that the words 'Process Engineering Solutions' is in use by a number of Companies, so it appears that the use of comparative names is acceptable to an extent, provided that there are other words in the company name that distinguishes one company

from another. He believes that the submitted name includes the words "South Africa" which differentiates the requested name from existing company names.

8) The Applicant requests the Companies Tribunal to take these facts into consideration and reserve the company name "Process Engineering Solutions South Africa".

9) The CIPCI advised in an email to the Applicant, that the Applicant's name can not be approved due to the fact that it is confusingly similar to names already registered in particular, in terms of Sec 11 (2)(b) of the Act. The Applicant was advised by CIPCI to insert a distinguishing element that will sufficiently be capable of differentiating the name from names already registered within the meaning of the CIPCI name register in terms of Sec 11 (2) of the Act.

10) **APPLICABLE LAW**

Section 160 of the Act: Disputes concerning reservation or registration of company names.

"(1) A person to whom a notice is delivered in terms of this Act with respect to an application for 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 a 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

(a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or

(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;

(b) may make an administrative order directing—

(i) the Commission to—

(aa) reserve a contested name, **or** register a particular defensive name that had been contested, for the applicant; (italics and bold emphasis added)

(bb) register a name or amended name that had been contested as the name of a company; or

(cc) cancel the reservation of a name, or the registration of a defensive name; or

(dd) transfer, or cancel the transfer of, the reservation of a name, or the registration of a defensive name; or

(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.

Section 11 of the Act

11. Criteria for names of companies

(2) The name of a company must-

(b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless - (*italics and bold emphasis added*)

(i) in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies; (*italics and bold emphasis added*)

In the case of a company name similar to a defensive name or to a business name referred to in paragraph (a)(ii), the company, or a person who controls the company, is the registered owner of that defensive name or business name;

(iii) in the case of a name similar to a trade mark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trade mark or mark, or is authorised by the registered owner to use it; or

(iv) in the case of a name similar to a mark, word or expression referred to in paragraph (a)(iv), the use of that mark, word or expression by the company is permitted by or in terms of the Merchandise Marks Act, 1941;

[Para. (b) inserted by s. 6 of Act 3/2011]

Evaluation of facts and Reasons for decision

11) The Companies Tribunal is tasked to determine, whether the applicant has shown good cause that the names applied for be approved by CIPCI and whether the Tribunal has the powers to make an order directing the CIPCI to reserve the names applied for.

12) In terms of Section 160 (3) (b), the Companies Tribunal may make an administrative order directing the CIPCI to reserve the contested name.

13) In order to show good cause the Applicant has to prove that there are no conflicts and therefore no names confusingly similar to the names which the Applicant seeks to have approved, on the CIPCI database of names.

14) The Applicant's case rests on the following;

His name "Process Engineering Solutions South Africa" had the following conflicting names; Madlala Utilities and Process Engineering Solutions and Simple Process Engineering Solutions. The Applicant avers that because both these conflicting Companies were in the process of deregistration, they were not conflicting. Unfortunately these names are still registered on the CIPCI data base, and it is my view that because they have not been deregistered they can not be counted as names of Companies not in business. It is also my view, that these Companies may not become finally deregistered. And also once deregistered they may apply to become registered again. Thus it is my view that this is not good cause shown that they are not conflicting names because these companies are not deregistered and even if they become deregistered they may become registered again.

The Applicant avers that the words "Process Engineering Solutions" is in use by a number of Companies, and it appears that the use of comparative names is acceptable to an extent, provided that there are other words in the Company name that distinguishes one Company from another. The applicant believes that the submitted name includes the words 'South Africa' which differentiates the requested name from existing Company names. It is my view that the words "South Africa" are not distinguishing words. These are common words used in South African Companies. The names listed by CIPCI on the CIPCI database, are different as they all have distinguishing words added to the common words, such as "Madlala" and "Simple". For example if the Applicant were to add "ABC" to the word "Process Engineering Solutions" this would distinguish his name from the names listed on the database.

15) The name "Process Engineering Solutions" may also suggest that the Applicants entity is the mother body or associated in the course of trade with all " Process Engineering Solutions" Companies registered, and thus it is confusingly similar as prohibited in Section 11 (2) of the Act. This applies to all four names which the CIPCI refused as they do not have distinguishing words.

Findings

16) After considering the facts and the law, it is my view that the name Process Engineering Solutions together with the other three names applied for are confusingly similar to all the

other registered conflicting names, which may confuse the public into believing that these are all of the same business as the conflicting Companies' names, and is not sufficiently capable of differentiating from the names already registered within the meaning of Section 11 of the Act.

ORDER

The order prayed for by the applicant is refused and the decision of CIPC is upheld.

LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 23rd May 2016