IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

("The Tribunal")

CASE NO: CTR 009/09/2013

In an Application in terms of Section 223 (1) of the Companies Act 71 of 2008 ("the Act") for a determination that the approved trademark name STRINGS ATTACHED be reserved as Company name in favour of the Applicant and for an objection to the Second Respondent's company name.

In the matter between:

CLAYTON RAMOABI MATABANE **APPLICANT**

AND

THE COMMISSSIONER

(COMPANIES AND INTELLECTUAL PROPERTY **FIRST RESPONDENT**

PLYR No Strings Attached Technology and Trading **SECOND RESPONDENT**

Coram: Khatija Tootla

Decision handed down on 30 March 2014

DECISION

INTRODUCTION:

[1] The Applicant is **CLAYTON RAMOABI MATABANE**, an adult male businessman lodged an application for the registration of his Trademark STRINGS ATTACHED on 20 March 2013 and which he claims was subsequently approved under TM 2013/07429 which was registered on an unknown date. .

[2] The First Respondent is the Commissioner (CIPC) and the second Respondent is **PLYR No Strings Attached Technology and Trading**, a company registered in accordance with the Company Laws of the Republic of South Africa, with no registration number provided nor has the Applicant provided the registration date of the said company.

ISSUE AND BACKGROUND:

[3] The Applicant has not mentioned in terms of which section of the Act it applies either in the CTR 142 or 145 forms save to state in the default application that it is made in terms of Reg 153(1), which obviously refers to the default order applied for, No mention is made whatsoever of the specific section in terms of which it states that the name reservation of the Respondent is to be approved.

It can be noted that the documents have been served on both the Respondents but there has been no response from either of the Respondents. Note that the Applicant does not point out in terms of which section or sections of the Act the relief is claimed, save to state in the founding affidavit that it is in terms of Section 223 (1) of the Act.

[4] The Applicant is requesting the Tribunal to make an order that its registered trade mark be approved as its company name, due to it being reserved by CIPC as indicated on the CoR 9.4 notice. It is clearly evident that CIPC confirmed that the name 'STRINGS ATTACHED" has been reserved in favour of the applicant from 6/09/2013 to 7/03/2014 under reservation number 718204717.

[5] Strangely enough the Applicant in its founding affidavit states that it is also lodging an objection in terms of Section 223(1) of the Act to reserve the trademark name for his company on the grounds that the names listed on the CoR 9.4 notice (items 1-4) all have comparative names to that of STINGS ATTACHED.. He goes on further to state that the name of the Second Respondent is not in accordance with his trademark; and that if he had to change his trademark it would inconvenience him financially as well as the time invested in developing his business would be costly.

[6] He points out further that if he is allocated the name Strings Attached, it would not prejudice the second Respondent, but he does not justify this assertion nor does he provide any information about this Respondent, for instance, the registration date and whether his trademark is well –known and deserves protection in terms of Section 11; and whether his trademark was registered before the Second Respondent's company name or after to assist his case.

[7] It seems that the Applicant is claiming that the Respondent's name is in contravention of his trademark but has not justified it in any way save for making the allegation that he registered the trade mark first, whilst he failed to take cognisance of the fact that the second Respondent's company was already registered before his company and his trademark and whether the second respondent's company was well-known in terms of the Law.

[8] In any event, the Applicant's application has not been made in terms of the Act and the Regulations as Section 223 (1) of the Act is the incorrect section nor is it applicable to the situation at hand.

In the circumstances it is unclear from the Application exactly which section is applicable and why the Applicant believes it has a right in terms of the Act to do so.

EVALUATION:

[9] The Applicant has not filed a proper application in terms of Section 11 of the Act for an objection to a name reservation nor has it applied the law in terms of Section 12.

[10] Although the applicant has filed an objection to the name of the second respondent as stated above as prescribed by regulation 142 (1) (a), it has not mentioned the sections of the law and the specific regulations in terms of which it has applied, wherein lies the real problem. Note that Regulation 142 (3) clearly states that the section of the Companies Act on which the application is made, must (my emphasis) be indicated. This is clearly a peremptory provision and the Companies Tribunal cannot *mero motu* condone non-compliance; and the principles of substantial compliance as set out in section 6 (9) and (10) do not apply especially as the incorrect section has been quoted which remains unjustified.

[11] Regulation 142 (3) (a) requires that the application must "…indicate the basis of the application, stating the section of the Act or these regulations in terms of which the Application is made." The Applicant does not comply with this basic requirement, as form CTR 142 does not provide (nor does the affidavit) that the name "offends against the provisions of sections 11 (2) or any other section of the Companies Act".

[12] In any event the Applicant did have the option to request CIPC to extend the name reservation and thereafter to pursue the correct course of action if it was justified in doing so, as this would depend on all the facts at hand and the relevant Law.

[13] A cursory reading of Section 160 of the Act indicates that the original relief applied for by the Applicant in the CTR 142 form is not possible against the second Respondent as there are various glaring and critical defects in the applicant's case as pointed out above, in that there are various deficiencies in the formalities in respect its papers. The confusion with regard to the Applicant's application compounds itself as it moves from one situation to another.

APPLICABLE LAW:

[14] Regulation 142 provides as follows:

"(2) The applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days after filing it."

The copy of the application was, however, apparently only served on the first respondent on 23 September 2013, almost thirteen days after filing with the Tribunal on 9 September 2013 and on second respondent via registered post on 25 September 2013 and yet the Applicant has not seen it fit to serve the application on the other parties mentioned in the CoR 9.4 notice who have similar name/s to the Applicant's trademark but requires the Tribunal to look into the matter.

[15] In terms of regulation 153 (1) read with regulation 143 (1), the first respondent has 20 days to respond, failing which the Applicant is entitled to apply for a default order as provided for in regulation 153 (1).

This becomes an academic argument as to the default of the both Respondents as the Applicant's case must be justified for a default order to be granted. It is evident that the papers are indeed inadequate as the Applicant has misguided himself on the applicable law and procedure.

[16] The jurisdiction of the Companies Tribunal is stated in section 160 of the Act and is as follows:

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

(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."

[17] It can be noted that although the Applicant did make an application within the three month period as indicated by Section 160 (2), the Applicant has also not mentioned that the application is being made in terms of Section 160 anywhere in its papers nor has the Applicant justified his Application.

FINDINGS:

[18] In view of the fact that the Applicant has not complied with Reg. 142 (3) (a) which is peremptory provision, the Tribunal is of the view that it cannot entertain the matter any further with regard to the actual merits. Despite the fact that the Tribunal has jurisdiction to deal with the objection only, it cannot do so as the Applicant's papers are regrettably not in accordance with section 160 nor has the peremptory provision of Reg 142(3) (a) been complied with.

[19] However, with regard to reservation of the trademark name of the Applicant as his company name, the Tribunal has no jurisdiction to entertain this matter as the relevant matter with correct documentation ought to have been referred to CIPC for extension of such reservation which it has not deemed fit to do.

ORDER:

[20] The Applicant's application is dismissed with no order as to costs.

k. tootla *(electronically signed)*

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KHATIJA TOOTLA

Member of the Companies Tribunal

30 March 2013