

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT008Dec2013

In the matter between:

Crossfit Inc

Applicant

and

World Crossfit Federation (Pty) Ltd

First respondent

Companies and Intellectual Property Commission

Second respondent

Coram: Delport P.A.

Decision handed down on 11 May 2015

Decision

INTRODUCTION

- [1] The applicant applies in terms of section 160 of the Companies Act 71 of 2008 (“Act” / “Companies Act”) and regulations 142 and 153 of the Companies Act (GNR 351 of 265 April 2011) (“Companies Act regulations” / “regulations”) for a default order that the first respondent (“first respondent” / “the company”) be ordered to change its name because it does not comply with sections 11(2)(b) and 11(2)(c) of the Companies Act.

BACKGROUND

- [2] The applicant is Crossfit Inc, a company incorporated under the “company laws of the United States of America” (sic).
- [3] The respondent is World Crossfit Federation (Pty) Ltd, a shelf company that changed its name to its present name on 28 June 2012.

- [4] The applicant applied for the registration of the name Crossfit in terms of the Trade Marks Act No. 194 of 1993 on 13 August 2013. I do not understand the statement in the affidavit of the applicant that the filing was “well before” the first respondent changed its name. The application for the registration of the logo is, for obvious reasons, not important.
- [5] The applicant served a copy of the CTR 142 application, as filed with the Tribunal on 9 December 2013, on the first respondent on 11 December 2012.
- [6] No response by the respondent was filed on the due date.

APPLICABLE LAW

- [7] The applicable portions of s 11(2)(b) of the Companies Act provides *inter alia* that the name of a company must not be confusingly similar to
- a *registered trade mark* belonging to a person other than the company, or
 - a mark in respect of which an application *has been filed* or
 - a well-known trade mark as contemplated in section 35 of the Trade Marks Act.
- [8] The applicable portions of s 11(2)(c)(i) of the Companies Act provides *inter alia* that the name of a company must not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company is part of, or associated with, any other person or entity. It is accepted that the applicant refers to sub-para (i) of s 11(2)(c), but this is not stated in the CTR 142 as required by the regulations.

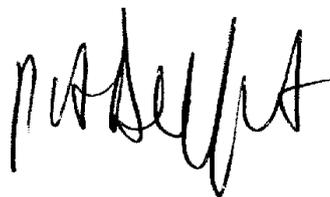
EVALUATION

- [9] Section 11(2)(b) of the Companies Act cannot apply, as it clearly refers to predated registrations or filings.
- [10] If it is accepted that Crossfit is a well-known trade mark as defined in s 35 of the Trade Marks Act and averred by the applicant, the question would be if the first respondent’s name would be confusingly similar to that mark (name).

- [11] “Confusingly similar” requires that the names are as alike in a manner that will confuse the reasonable person, being the “ordinary reasonable careful man, ie not the very careful man nor the very careless man” (*Link Estates (Pty) Ltd v Rink Estates (Pty) Ltd* 1979 (2) SA 276 (E); *Peregrine Group (Pty) Ltd v Peregrine Holdings Ltd* 2001 (3) SA 1268 (SCA); *Azisa (Pty) Ltd v Azisa Media CC and Another* [2002] 2 All SA 488 (C); *Adidas AG & another v Pepkor Retail Limited* (187/12) [2013] ZASCA 3 (28 February 2013).
- [12] It is not clear that the ordinary reasonable careful person will be confused. “Crossfit” is also used generically and all the uses are in respect of fitness products or services. The ordinary reasonable careful person will not be confused, like in the *Peregrine* and *Azisa* cases above merely because one word is the same.
- [13] “Falsely imply or suggest” in s 11(2)(c)(i) requires, in my opinion, at least fault in the form of intent. This was not proved.
- [14] The second part of s 11(2)(c)(i), ie to “reasonably mislead” is the same test as in “confusingly similar”, but in this instance the requirement is not in respect of the name itself, but in the effect of the confusion. On the same basis as above the reasonable careful person will not be misled by the name to think the first respondent is associated with the business of the applicant.

ORDER

- [15] The application is refused.



MEMBER OF THE COMPANIES TRIBUNAL