

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO:

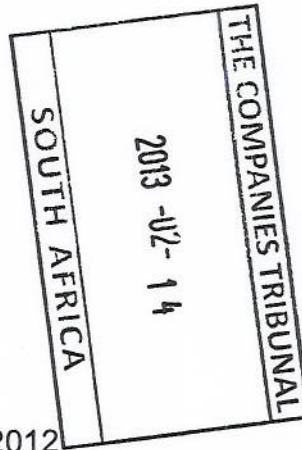
CTR005/03/2012

In the matter between:

Ram Transport (South Africa) (Pty) Ltd

and

Ramae Trading and Projects CC



Applicant

Respondent

Coram: Delpont P.A.

Decision handed down on 4 December 2012

DECISION

INTRODUCTION

[1] The applicant brings an application in terms of ss 11 (2) and 160 of the Companies Act 71 of 2008 (the "Act") for an order that the respondent change its name to a name that does not incorporate or which is deceptively or confusingly similar to the RAM trade mark of the applicant.

ISSUES

[2] The question is whether the respondent's name is deceptively or confusingly similar to that of the applicant.

BACKGROUND

[3] The applicant is incorporated as a company under the name Ram Transport (South Africa) (Pty) Ltd.

- [4] The respondent is a close corporation registered in terms of the Close Corporations Act 69 of 1984 under the name Ramae Trading and Projects CC.

APPLICABLE LAW

- [5] The regulations in terms of the Companies Act (GNR 351 of 265 April 2011) (“Regulations”) provide, as far as it is relevant for the present finding, as follows:

“13. Disputes concerning company names.—*See s. 160 and Regulation 147*—A person may apply in Form CTR 142 to the Tribunal in terms of section 160 if the person has received—

- (a) a Notice of a Potentially Contested Name, in Form CoR 9.6 or a Notice of a Potentially Offensive Name, in Form CoR 9.7, or has an interest in the name of a company as contemplated in section 160 (1);
- (b) a Notice Refusing to Reserve or Register a Name, in Form CoR 9.5;
- (c) a Notice Refusing a Name Transfer, in Form CoR 11.2 in terms of regulation 10, 11 or 12; or
- (d) any notice in Form CoR 12.1, delivered in terms of regulation 12.”

- [6] The reference to regulation 147 is clearly wrong and should be a reference to regulation 142 which reads:

“142. Applications to the Tribunal in respect of matters other than complaints.—(1) A person may apply to the Tribunal for an order in respect of any matter contemplated by the Act, or these regulations, by completing and filing with the Tribunal’s recording officer—

- (a) an Application in Form CTR 142; and
- (b) a supporting affidavit setting out the facts on which the application is based.

(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.

(3) An application in terms of this regulation must—

(a) indicate the basis of the application, stating the section of the Act or these regulations in terms of which the Application is made; and

(b) depending on the context—

(i) set out the Commission’s decision that is being appealed or reviewed;

(ii) set out the decision of the Tribunal that the applicant seeks to have varied or rescinded;

(iii) set out the regulation in respect of which the applicant seeks condonation; or

(c) indicate the order sought; and

(d) state the name and address of each person in respect of whom an order is sought.”

FINDING

[7] Service of the application on the respondent is a material and substantive requirement in terms of regulation 142. There is, however, no proof or evidence that the application was served on the respondent.

ORDER

[8] The application is refused.

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MEMBER OF THE COMPANIES TRIBUNAL