

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

“The Tribunal”

Case Number: CT002May2017

In the matter between:

Nicholas Lee Lebotschy

Applicant

AND

Companies & Intellectual Property Commission

Respondent

(CIPC)

DECISION

INTRODUCTION & BACKGROUND:

- [1]** This is an application in terms of S.160 of the Companies Act 71 of 2008, read together with regulation 13 of the Companies Regulations of 2011. The applicant, Nicholas Lee Lebotschy, is seeking an order that the Tribunal set aside the decision of the Respondent’s refusal to reserve its proposed name:

Mzansi Coatings (Pty) Ltd.

[2] The Applicant filed an application on 31 March 2017, on form COR9.1 to the CIPC, the respondent, for the reservation of one of the following names:

1. MZANSI COATINGS
2. MZANSI HOLDINGS
3. MZANSI GROUP
4. MZANSI PAINTS

[3] The respondent replied on the 5 April on form COR9.5, advising the applicant of the outcome of its application for the name reservation, having compared the proposed names to the existing database. The respondent had found the following with regard to each proposed names:

1. MZANSI COATINGS- conflicts identified with MZANSI GRANITE AND GRAMMAZINETH WALL COATING;
2. MZANSI HOLDINGS – conflicts identified with MZANSI HOLDINGS and SIMUNYE MZANSI HOLDINGS;
3. MZANSI GROUP – conflicts identified with AYIZE MZASNI GROUP, SHINE MZANSI GROUP and MZANSI GROUP HOLDINGS;
4. MZANSI PAINTS – conflicts identified with MZANSI PAINTERS.

[4] The respondent further advised that it did not approve any of the proposed names “due to the fact that it is confusingly similar name/s already registered within the meaning of our name register in particular in terms of Sec 11(2)(b) of the Companies Act.”

[5] The Applicant subsequently filed an affidavit in terms of S. 160 of the Companies Act, read with S.13 of the Companies Regulations, with the Companies Tribunal on 03 May 2017. In his affidavit, the applicant submitted that the name MZANSI COATINGS is not in direct conflict with the business activities or with the name MZANSI GRANITE AND GRAMMAZINETH WALL COATING. The applicant requests the tribunal to review and approve the proposed name MZANSI COATINGS.

Application of the Law

[6] This is an application in terms of S.160 read with S.11 (2) of the Companies Act, read also with regulations 13(b) and 142. The applicant seeks relief in terms of S. 160 (1) of the Act, which provides for specific remedies available in instances where the tribunal has determined that an application complies with the requirements of S.11. It states:

“ 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 (s11).”

[7] The Applicant has complied with the requirements of S.160(2)(a) and has filed form CTR142 within the stipulated three months after the notice in form COR9.5 was delivered to the Applicant.

[8] Section 160(3) provides for the powers of the tribunal where subsections (1) and (2) have been satisfied. It provides as follows:

“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 (s.11); and

(b) May make an administrative order directing-

(i) The Commission to-

(aa) reserve a contested name for the applicant

(bb) register a name or amended name that had been contested

(cc) cancel the reservation of a name

(ii) a company to choose a new name, and file a notice of 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.”

[9] The tribunal is therefore tasked with considering this application and satisfying itself that it complies with the requirements of s. 11 (2) which provides:

“The name of a company must-

(a)Not be the same as-

(iii) A registered trademark belonging to a person other than the company, or a mark in respect of which an application has been filed in the Republic for registration as a trade mark or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act no. 194 of 1993), unless the registered owner of that mark has consented in writing to the use of the mark as the name of the company.”

(b)Not be confusingly similar to a name, trade mark, word or expression contemplated in paragraph (a) unless-

(i)In the case of names referred to in paragraph (a)(i), each company bearing such similar name is a member of the same group of companies;

(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.”

Furthermore, S. 12 provides for the reservation of company names by the Respondent as follows:

(1) A person may reserve one or more names to be used at a later time, either for a newly incorporated company, or as an amendment to the name of an existing company, by filing an application together with the prescribed fee.

(2) The Commission must reserve each name as applied for in the name of the applicant, unless-

(a) The Applicant is prohibited in terms of S. 11(2)(a), from using the name as applied for; or

(b) The name as applied for is already reserved in terms of this section.

EVALUATION

[10] In terms of S.12(2), it is peremptory that the CIPC reserve each name as applied for, unless the applicant is prohibited in terms of S.11(2)(a) from using the name applied for. If the name contemplated falls under S.11 (2) (b), which is the case in this application, as advised by the CIPC in terms of COR9.5, then the Act requires that the CIPC reserves the name. However, if there are reasonable grounds for considering that the name may be inconsistent with the requirements of S.11(2)(b), the CIPC may require the applicant to serve a copy of the application and name reservation on any particular person or class of persons, named in the notice, on the grounds that the person or persons may have an interest in the use of the name that has been reserved for the applicant and that person can apply to the Companies Tribunal in terms of S.160 to determine if the reserved name satisfies the requirements of the Companies Act.

FINDINGS

[11] The CIPC must reserve the name MZANSI COATINGS, and further require the applicant to serve a copy of the application and name reservation to MZANSI GRANITE AND GRAMMAZINETH WALL COATING as identified in COR9.5. Should they have an interest in the use of the name MZANSI COATINGS, they can then apply to the Companies Tribunal in

terms of S.160 to determine if the name MZANSI COATINGS satisfies the requirements of the Companies Act.

ORDER:

For reasons stated above, the order prayed for by the Applicant is granted and the CIPC is ordered to reserve the name MZANSI COATINGS accordingly. The CIPC must further issue a Notice of Potential Contested Name on form COR9.6 for the applicant to serve such notice on MZANSI GRANITE AND GRAMMAZINETH WALL COATING.

B. Zulu
Member: Companies Tribunal
27 November 2017