



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
(“The Tribunal”) **CASE NO: CT009May2019**

In the matter of:

ASCOR INDEPENDENT WEALTH MANAGERS CC
(1998/064094/23)

THE APPLICANT

And

ASCOR HOLDINGS
(2016/514969/07)

THE RESPONDENT

Coram K. Tootla

Decision delivered on 2 July 2019

DECISION

INTRODUCTION:

[1] The Applicant is **ASCOR INDEPENDENT WEALTH MANAGERS CC**, , a juristic Sperson incorporated in terms of the Close Corporations Act of 1984, and carries on business at Ascor House, Block B, Apex Corporate Park, Quintin Brand Street, Persequor, Persequor Radio Park, 0020, brings an application in terms of Section 160 of the Companies Act 71 of 2008 (“Act” / “Companies Act”. No mention is made of regulations 143 and 153 of the Act.

- [2] However, the Applicant requests a default order on form CTR 154 and on CTR 142 states that the CIPC disallow the registration of the Respondent's name in view of the fact that the Applicant has a Trademark registered in 2005 with the name Ascor, suggesting thereby that the Respondent be ordered to change its name because it does not comply with the Companies Act.
- [3] The Respondent is Ascor Holdings (Pty) Ltd, a company duly incorporated in terms of the Companies Act, with its registered address being J 850 Mncaba Road, Kwamashu, Durban. 4360.

ISSUES:

- [4] The Applicant is the registered proprietor of the trade mark "Ascor" in Class 36 in terms of the Trade Marks Act No. 194 of 1993.
- [5] The Applicant became aware on an unknown date that the Respondent's company is registered with a name that contains the word "Ascor" when it performed a search on CIPC.
- [6] The Applicant filed an objection to the use of the words "Ascor" in the name of the Respondent with the Companies Tribunal on 16 May 2019, on form CTR 142 as prescribed by regulation 142 (1) (a), together with a supporting affidavit as required by regulation 142 (1) (b), by *inter alia*, W.J. Fourie, a director of the Applicant, who was duly authorized.
- [7] A copy of the application must be served on the Respondent at its registered address within 5 days of filing it with the Companies Tribunal as required by regulation 142 (2).

[8] The applicant contacted the Respondent on LinkedIn and sent a letter via Aramex to the director, B. Dlamini. However, the Applicant failed to serve a copy of the application on the Respondent either via the Sheriff in terms of the High Court Rules or via the means provided for in Regulations 7 to the Companies Act., as set out in Annexure 3, Table CR 3. If the Respondent cannot be found, the Applicant may apply for substituted service.

APPLICABLE LAW:

[9] Regulation 142 provides how the application must be prepared and how it must be complied with.

[10] The relief sought is in terms of section 160, which provides as follows:

“160. 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 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—

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

(a) 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.

(4) Within 20 business days after receiving a notice or a decision issued by the Companies Tribunal in terms of this section, an incorporator of a company, a company, a person who received a notice in terms of section 12 (3) or 14 (3), an applicant under subsection (1) or and any other person with an interest in the name or proposed name that is the subject of the application, as the case may be, may apply to a court to review the notice or decision.”

[11] The relief is sought in terms of section 11 of the Companies Act. Regulation 142 (3) (a) requires that the application must “...indicate the basis of the application, stating the section of the Act...”

[12] Section 11 (2) of the Act, as far as it is relevant, provides: “(2)

The name of a company must—

(a) not be the same as—

(i) the name of another company, domesticated company, registered external company, close corporation or co-operative;

(ii) a name registered for the use of a person, other than the company itself or a person controlling the company, as a defensive name in terms of section 12 (9), as a business name in terms of the Business Names Act, 1960 (Act No. 27 of 1960), unless the registered user of that defensive name or business name has executed the necessary documents to transfer the registration in favour of the company;

(iii) a registered trade mark 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; or

(iv) a mark, word or expression the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), except to the extent permitted by or in terms of that Act;

(b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless...”

EVALUATION:

[13] The Applicant's application is defective in various respects as it has not mentioned which Section it relies on and which subsection the Respondent has not complied with, in that the name of the Respondent is same, similar or confusingly similar in terms of Section 11 (2) and why.

[14] In addition, the Applicant has not shown good cause in its application. Finally, the applicant has not deemed it fit to serve the Respondent in terms of the required rule/regulations.

ORDER:

[15] In the circumstances, the application for a default order in terms of regulation 153 is refused.

Khatija Tootla

Member of Companies Tribunal

2 July 2019