

IN THE COMPANIES TRIBUNAL OF THE REUBLIC OF SOUTH AFRICA

("The Tribunal")

CASE NO. CT01010ADJ2022

In the matter between:

Intel Corporation

Applicant

AND

Intel Connect (Pty) Ltd

First Respondent

Registration No. 2016/246446/07

Companies and Intellectual Property Commission

Second Respondent

DECISION

- [1]** The applicant is Intel Corporation, a Delaware corporation of 2200 Mission College Boulevard, Santa Clara, California, 95052-8119, United States of America.
- [2]** The first respondent is Intel Connect (Pty) Ltd, a private company incorporated in terms of company laws of the Republic of South Africa, having its registered address at Hibberdene 4220, Mtwalume, KwaZulu Natal.
- [3]** The second respondent is the Commissioner of the Companies and Intellectual Property Commission, appointed in terms of section 189 of the Act, cited in his capacity as the person responsible for the function of the Companies and Intellectual

Property Commission (CIPC), established in terms of section 185 of the Act and with its offices situated at 77 Meintjies Street, the DTI Campus, Block F, Sunnyside, Pretoria.

- [4]** This is an application for a default order, in terms of S.160 of the Companies Act ('the Act'), read with Regulation 153, for a determination that the first respondent's name; INTEL CONNECT, does not satisfy the requirements of Section 11 of the Act and that the first respondent be directed to choose a new name, as provided for in Section 160(3)(b) of the Act, and granting alternative relief in the event that the first respondent fails to comply with the order to choose a new name.
- [5]** The applicant requests that the Tribunal grant the following relief:
- (i) that the first respondent's name does not comply with SECTIONS 11(20(b) and 11(2)(c)(i) of the Act;
 - (ii) that the first respondent is directed to choose a name which does not consist of, or incorporate, the mark INTEL, or any other mark which is confusingly similar and/or deceptively similar to the applicant's INTEL trade mark;
 - (iii) that the second respondent, in terms of Section 160(3)(b)(ii) read with section 14(2) of the Act, be directed to change the name of the first respondent to its registration number, in the event that the first respondent does not comply with (ii) above within 60 days from date of the order: and
 - (iv) an order as to costs in favour of the applicant should the first respondent oppose the relief sought.

[6] The application for relief, in the form CTR142 with the accompanying affidavit deposited to by Christopher Edward George, the applicant's Director of Trademarks and Brands legal group, duly authorized, was filed with the Tribunal on 22 April 2022. Nisha Singh, an attorney at Adams and Adams,, deposed to an affidavit in support of the application for default judgement. On 19 April 2022, the applicant's attorneys served a copy of the application for relief , together with supporting affidavits, electronically on the first respondent, to which delivery receipts were received from the email addresses associated with the first respondent. The Sheriff Durban Coastal served a copy of the above documents on the first respondent at Unit/Room No.2723, City Life Building, 477 Smith Street/Anton Lembede Street, Durban Central, KwaZulu-Natal, being the directors' residential address. The attorney advised that she arranged for service on the first respondents' director's residential address because the first respondents' registered address, Hibberdene 4220, Mtwalume, KwaZulu-Natal is inaccurate as it refers to an area and not a specific address. The applicant's attorneys used the directors' residential address obtained through a tracing report. I deem the service sufficient considering that the service was also effected electronically upon the first respondent, to which the second respondent acknowledged receipt of the application documents¹. The first respondent had until 17 May to respond to the application and failed to do so. According to MS Anika Lydia Baqwa, a candidate attorney at Adams and Adams, Mr Sikhonde, a director of the first respondent, confirmed receipt of the application for relief and that he indicated he would ne be opposing same. The application documents were also

¹ Annexure NIS 3

served upon the second respondent on the 20 April 2022 on its email address Corporatelegalservices@cipc.co.za and receipt of the application was acknowledged by the second respondent's Corporate Legal on the same day.

- [7] The first respondent did not file an answering affidavit within twenty (20) business days (the twenty business days lapsed on 02 May 2022), following which, on 14 July 2022, the applicant applied for a default order in terms of regulation 153.
- [8] The applicant is the proprietor of statutory and common law rights in its well-known INTEL trade mark. It is the proprietor of various registrations in various classes across various goods and services under the INTEL trade mark, with effect from 1990. The applicant was founded on 18 July 1968 by semiconductor pioneers Robert Noyce and Gordon Moore. The applicant was founded to build semiconductor memory products and launched the world's first microprocessor in 1971. The applicant first registered its first trade mark INTEL in class 9 in the United States under registration no. 938,772 on 25 July 1972, and today, the applicant supplies the computing and communication industries with microprocessors, boards, systems and software building blocks, which are the "ingredients" of computers, servers, networking and communications products. In addition to its primary field of interest, the applicant has used its INTEL trade mark in relation to a wide range of goods and services including products and services used in the fields of health, automotive, communication, digital home, digital signal processors, embedded processors, education, financial services, internet services (ISP), military, network, optical, science and security. The applicant employs over 100 000 people worldwide and has over 240 offices in 58 countries, including South Africa. The applicant has registered

INTEL South Africa Corporation with registration number 1995/007853/10. The applicant has submitted supporting affidavits on the extensive use of the INTEL trade mark in South Africa.

- [9] The applicant submitted that the dominant feature of the first respondent's company name, INTEL CONNECT, is the mark INTEL, and that the word CONNECT, does not distinguish the first respondent's company name from the applicant's INTEL trade mark, and therefore that the company name INTEL CONNECT is confusingly similar to the applicant's registered trade mark and thus offends the provisions of Section 11(2)(b) of the Act. The applicant submitted that the first respondent's company name, registered in 2016, is also confusingly similar to the applicant's local company name; INTEL South Africa Corporation which was registered in 1995 and that again the memorable and dominant feature in the two names is INTEL, also offending on Section 11(2)(b) of the Act, in that the first respondent's company name is confusingly similar to the applicant's South African company name; INTEL SOUTH AFRICA CORPORATION. The applicant's argued that use of the first respondent's name will result in confusion and deception in the market due to its similarity with the applicant's INTEL trade mark, so they are likely to believe that the services offered by the first respondent are those of the applicant or that the first respondent is affiliated or associated with the applicant, which is not the case.

APPLICABLE LAW

- [10] Section 160(1) of the Act provides:

“ 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)."

[11] Section 160 (2)(b) further provides that "*an application in terms of subsection 1 above, may be made on good cause shown at any time after the date of reservation or registration of the name that is the subject of the application, in any other case*".

[12] 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-*

(cc) cancel the reservation of a name, or the registration of a defensive 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.”

[13] The Tribunal is therefore tasked with considering this application and satisfying itself that it complies with the requirements of s. 11 (2), particularly Section 11(2)(b)(iii) and (c)(i) of the Act.

“The name of a company must-

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

(iii) in the case of a name similar to a trade mark or mark referred to in paragraph (a)(iii), the company is the registered owner of the business name, trade mark, or mark, or is authorized by the registered owner to use it;

(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.

EVALUATION

Good Cause

[14] To address the issue whether "good cause" has been shown that the Tribunal can consider and decide upon the merits of this case, I make reference to the Highly Nutritious decision² wherein Twala J. stated: "*Section 160(2)(b) allows any person and at any time to bring an application on good cause shown. This does not refer only to the delay in bringing the application but to show good cause as to why the application must be entertained. the section requires the Applicant to furnish a reasonable explanation as to why the application should be entertained by the Tribunal. It does not require an explanation only as to the delay in bringing the application but refer to the merits of the application as well. It is section 160(1) that prescribes, for a particular category of persons, to launch an application within a period of three (3) months after they became aware of the registration of the name*".

The applicant submitted that the existence of the company name first came to the applicant's attention in 2017 when it was reported to the applicant by its attorneys, Adams and Adams. On 21 April, on the applicant's instructions, Adams and Adams sent a letter of demand and suitable undertaking to the first respondent calling it to make an application to change its name to one not including the trade mark INTEL or any confusingly similar mark. Subsequent follow ups with the directors of the first respondent were made from May 2017 to 19 September 2018. According to the applicant, the first respondent's enterprise status subsequently changed to "AR

² Highly Nutritious Food Company (Pty) Ltd v Companies Tribunal and Others, High Court, Gauteng Local Division, Case No. 91718/2016

Deregistration” on 04 September, due to its failure to file its annual returns. The attorneys for the applicant closely monitored the process to ensure that the first respondent would be finally deregistered, but the applicant was then informed by its attorneys on 18b November 2020, that the first respondent’s enterprise status had changed to “In Business”. On such discovery, the applicant’s attorneys resumed their follow ups with the directors of the first respondent from 18 November 2020 to 07 April 2021. On 02 March 2021, the attorneys were able to connect with a Mr. Sikhonde, one of the directors of the first respondent, who advised that he was no longer affiliated with the first respondent, and further provided contact details of the remaining directors. Mr Sikhonde provided the applicant’s attorneys with the email addresses of the remaining directors. The various communication attempts were not successful, and on 02 September, the Sheriff of Durban Coastal attempted to serve the letter of demand on the registered address of the first respondent, however, the directors were unknown to the tenant at the address. As a consequence of these various failed attempts, the applicant instructed Adams and Adams to attend to this application, having exhausted all reasonable options in attempting to resolve the matter amicably with the first respondent. Good cause has been established, in the above sequence of attempts to connect with the first respondent, why the application was brought to the Tribunal at the time that it was, and further, the applicant has proven its legitimate interest in protecting its international INTEL trade mark and global brand, against potential financial and reputational damage with the continued existence of the first respondent’s name.

Procedural Compliance

[15] I am, however, hamstrung by the incorrect procedure that was followed by the applicant in serving the application documents upon the first and second respondents, in issuing an order on the merits of this matter. I have ascertained, from the stamped Form CTR142, that the application was registered and issued a case number by the Tribunal's recording officer on 22 April 2022. However, the applicant had already served the application for relief and the supporting affidavits upon the first and second respondents on the 19th and 20th April respectively.

Regulation 142 provides that:

- (1) *a person may apply to the Tribunal for an order in respect of any matter contemplated by the Act, or these Regulations, by contemplating 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. The applicant would have been required to serve the application documents upon the first and second respondents within 5 days after filing it and not before. The applicant therefore served unissued documents upon the respondents on the 19th and 20th April, before filing the application for relief. Regulation 143 further states:*

(1) *Within 20 business days after being served with a complaint referral, or an application, that has been filed with the Tribunal, a respondent who wishes to oppose the complaint or application must-*

- (a) serve a copy of an Answer on the initiating party; and
- (b) file the Answer with proof of service.

Again, this section emphasizes the fact that a respondent must be served with an application that has been filed with the Tribunal, which did not happen in this case.

The applicant must attend to rectify this process, and on the basis of non-compliance with Regulations 142 and 143, the relief sought by the applicant cannot be granted by the Tribunal.

ORDER

The application is refused.

B. Zulu

Member: Companies Tribunal

02 August 2022