



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CTCT01351ADJ2023

In the matter between:

GEORGE MFULA

APPLICANT

and

**COMMISSIONER OF THE COMPANIES
AND INTELLECTUAL PROPERTY COMMISSION**

RESPONDENT

Presiding Member of the Companies Tribunal: Joshua Kadish

Date of Decision: 10 July 2023

DECISION (Reasons and an Order)

INTRODUCTION

1. The Applicant is **GEORGE MFULA**, an adult male and the chairperson of the Assemblies of Christ Church located in Eldorado Park, Johannesburg.
2. The Respondent is the **COMMISSIONER OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)** appointed in terms of s189 of the Companies Act 71 of 2008 ("the Act").

3. This is an application for the review and setting aside of an administrative decision taken by the Respondent, in terms of which it refused to reserve the proposed name applied for by the Applicant. The Applicant further prays for the Respondent to reserve the name “Assemblies of Christ Church” as applied for by the Applicant.

BACKGROUND

4. The Applicant is desirous of registering a corporation on behalf of the Assemblies of Christ Church. On 18 March 2023 the Applicant applied to the Respondent for the reservation of the name ‘Assemblies of Christ Church’.
5. On 20 March 2023 the Respondent notified the Applicant (COR 9.5 Notice Refusing Name Reservation Reference 9382364235) (“the Refusal Notice”) of its decision not to reserve the name. The reason for refusal stipulated in the Refusal Notice is that a “confusingly similar name exists”. The Respondent also cited the names “Assemblies of Christ Church Coloured Group” and “Assemblies of Christ Church Mantiini” as the conflicting names in its register. The aforementioned Notice also specifically refers to section 11(2)(b) of the Act as the deeming provision for the refusal.
6. The Applicant filed an application to this Tribunal for the abovementioned relief in the form of a Form CTR 142 together with a supporting affidavit deposed to by the Applicant as the chairperson of the Assemblies of Christ Church. This Tribunal issued the date stamped Form CTR 142 to the Applicant on 17 April 2023.
7. Service of this application (Form CTR 142 and founding affidavit) upon the Respondent was effected via email on 17 April 2023, using email address Corporatelegalservices@cipc.co.za.
8. The Respondent acknowledged receipt of the application on 18 April 2023 and did not file an Answer, following which, the Applicant applied for a default order in terms of Regulation 153 of the Companies Regulations (“the Regulations”) by filing a Form CTR 145 with this Tribunal.

THE APPLICANT'S SUBMISSIONS

9. The Applicant has submitted this application for the review and set aside of the refusal by the Respondent to reserve the name 'Assemblies of Christ Church' as per the Refusal Notice. The applicant seeks an order by this Tribunal directing the Respondent to reserve the name 'Assemblies of Christ Church'.

10. The Applicant argues that by issuing the Refusal Notice, the Respondent has afforded itself the luxury of an additional onerous standard of 'confusingly similar name exists' in refusing to register/reserve company names, when in actual fact, it can only refuse to register/reserve a company name if *inter alia* it is the same as an existing registered name.

11. The Applicant refers to section 12(2) of the Act in its submission that the Respondent must reserve any proposed name reservation save for instances where the Applicant is prohibited strictly in terms of section 11(2)(a) of the Act or where such name has already been reserved by the Respondent. The Applicant contends that the grounds for refusal cited in the Refusal Notice were based on section 11(2)(b) of the Act which when read with section 12 of the Act, do not prescribe for a refusal of the Respondent.

APPLICABLE LAW

12. **Section 11** of the Act provides as follows:

"11. Criteria for names of companies. —

(1)

(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;

...

(b) not be confusingly similar to a name, trademark, mark, word or expression contemplated in paragraph (a) unless—

(i) in the case of names referred to in paragraph (a) (i), each company bearing any 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;”

13. **Section 12(2)** of the Act provides: The Commission must reserve each name as applied for in the name of the applicant, unless-

(a) the applicant is prohibited, in terms of section 11(2)(a), from using the name applied for; or

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

14. **Section 12(3)** of the Act provides that if there are reasonable grounds for considering that the name may be inconsistent with the requirements of section 11(2)(b) or (c) of the Act:

“the Commission, by written notice, 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;”.

15. **Section 195 (7)** of the Act provides that a decision by this Tribunal with respect to a decision of, or a notice or order issued by, the Respondent is binding on the Respondent, subject to any review by, or appeal to, a Court.

16. **Companies Regulation 153** of 2011 provides for default orders:

“(1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.”

EVALUATION

17. I am satisfied that the Applicant has made out a case for the main application to be considered on a default basis and proceed to deal with the merits of the case.
18. The Respondent regards the Applicant's proposed name to conflict with section 11(2)(b) of the Act in that it is "confusingly similar" to those on its database.
19. "Similar" in section 11(2)(b) would be "having a marked resemblance or likeness" and that the offending name should immediately bring to mind the well-known trade mark or other name.¹ The test for "confusingly similar" is, as in the case of passing-off: "...a reasonable likelihood that ordinary members of the public, or a substantial section thereof, may be confused or deceived into believing that the goods or merchandise of the former are the goods or merchandise of the latter or are connected therewith.
20. Whether there is such a reasonable likelihood of confusion or deception is a question of fact to be determined in light of the particular circumstances of the case."²
21. The Constitutional Court said that the '[t]he question to be asked is whether, looking at the facts as a whole, and analysing them in their specific context, an independent observer who is sensitive to both the free speech of the Constitution and the property protection objectives of trademark law, would say that the harm done by the parody to the property interests of the trademark owner outweighs the free speech interests involved. The balancing of interests must be based on the evidence on record, supplemented by such knowledge of how the world works as every judge may be presumed to have.'³ '[T]he ultimate test is whether, on a

¹ Bata Ltd v Face Fashions CC 2001 (1) SA 844 (SCA)

² Adidas AG & another v Pepkor Retail Limited (187/12) [2013] ZASCA 3 (28 February 2013) para 28; Capital Estate and General Agencies (Pty) Ltd and Others v Holiday Inns Inc. and Others 1977 (2) SA 916 (A) at 929

³ Laugh It Off Promotions Cc V Sab International (Finance) Bv T/A Sabmark International (Freedom of Expression Institute as Amicus Curiae) 2006 (1) Sa 144 (Cc) Para 82.

comparison of the two marks, it can properly be said that there is a reasonable likelihood of confusion if both marks are to be used together in a normal and fair manner, in the ordinary course of business.’⁴

22. The Act empowers the Respondent in section 12(2) to deny the name reservation only if the name is prohibited in terms of section 11 (2) (a) of the Act or where the proposed name is already reserved. In *casu*, this is not the case.

23. If the Respondent is of the view that the proposed name contradicts section 11 (2)(b) of the Act, that is, it may be confusingly similar, or it contradicts section 11(2) (c) of the Act, that is, the proposed name may falsely imply or suggest a non-existent association, amongst others, the Respondent may direct the Applicant to notify the affected parties. Instead of doing so, the Respondent rejected the name reservation.

24. Accordingly, I concur with my colleagues in *Ernst Brand v Companies And Intellectual Property Commission CT00414ADJ2020* and *James William Van Vught v Companies And Intellectual Property Commission CT01112ADJ2022*, that the Respondent acted contrary to what the Act dictates.

FINDINGS

25. It is on the basis of the preceding that I find that the refusal of the Respondent to reserve the name ‘Assemblies of Christ Church’, as applied for by the Applicant, was not in compliance with the law, specifically sections 12(2) and (3) of the Act.

26. The Applicant’s application is granted as set out below.

⁴ *Cowbell AG v ICS Holdings 2001 (3) SA 941 (SCA)*.

ORDER

27. I hereby make the following order:

- a) the administrative decision taken by the Respondent (contained in COR 9.5 Notice Refusing Name Reservation Reference 9382364235) to refuse the Applicant's application to reserve the name 'Assemblies of Christ Church' is hereby reviewed and set aside;
- b) the Application to reserve the name 'Assemblies of Christ Church' is referred back to the Respondent for consideration; and
- c) the registrar of this Tribunal is requested to bring this order and reasons therefor to the attention of the Respondent.

JOSHUA KADISH

COMPANIES TRIBUNAL: MEMBER