

SOUTH AFRICA / JUDGMENT

Lemmer v Companies and Intellectual Property Commission (CT007Feb2015) [2015] ZACT 62 (1 July 2015)

[2015] ZACT 62

COURT

Competition Tribunal

BEFORE

Lizelle Haskins

CASE / FILE NUMBER

CT 007FEB2015

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IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA (PRETORIA)

Case No.: CT 007FEB2015

In the matter between:

JOHANNES CASPARUS LEMME

Applicant

and

COMPANIES AND INTELLECTUAL PROPERTY

COMMISSION

Respondent

DECISION

INTRODUCTION

- [1] This is an application requesting a default order against the Respondent in terms of section 11(2), section 12 and section 160 of the Companies Act 71 of 2008 (the "Companies Act") read with Regulation 153 of the Companies Act (GNR 351 of 265 April 2011) (the "Companies Regulations").
- [2] The Applicant requests that the Respondent be ordered to reserve and register Council for Sexual Health Professionals (CSHP) as the Applicants company name.

PARTIES

- [3] The Applicant is Johannes Casparus Lemmer, a member of Sexology SA's Professional Council for Sexual Health Practitioners, with

registration No. 2005/121355/23 and having its place of principal business situated at Suite 60, Private Bag x1 Menlo Park, 0102.

- [4] The Respondent is the Companies and Intellectual Property Commission, a member of the Department of Trade and Industry group.

PROCEDURE

- [5] Before an application for a default order can be brought by an Applicant, the Applicant must comply with Regulation 142 and Regulation 143 of the Companies Regulations.
- [6] In accordance with Regulation 142 of the Companies Regulations, the Applicant is obliged to serve a copy of the application and the affidavit on the Respondent within 5 business days after filing it with the Tribunal.
- [7] In addition, the Applicant must bring an application for a default order in terms of Regulation 153(1) of the Companies Regulations. In terms of Regulation 153(1), if the Respondent has not filed a response within the prescribed period, the Applicant may apply to have the order, as applied for, issued against the Respondent by the Tribunal.
- [8] Finally, Regulation 153(2)(b) of the Companies Regulations also states that the Tribunal may make an appropriate order, if it is satisfied that the notice or application was adequately served.

EVALUATION

- [9] The Applicant has provided the Tribunal with CTR 142 and CTR 145 together with affidavits and an email sent to the Respondent and Tribunal dated 2 February 2015.
- [10] From the documents provided by the Applicant, there are a number of problems, the most pertinent are the following:

[10.1] The affidavits submitted in support of the main application, the application to request the Tribunal to order the Respondent to reserve and register the proposed company name and the default application does not provide any information or basis for which an order in favour of the Applicant can be granted; and

[10.2] The main application and application for default has not been properly served on the Respondent as required in terms of the above regulations.

- [10] In the circumstances, I am not satisfied that there has been compliance with the Companies Regulations by the Applicant.

ORDER

I proceed to make an order in the following terms:

- a) The Applicant is directed to provide more information and to set out reasons why he is entitled to the relief claim and further to ensure that he complies with the above regulations in respect of proper service on the Respondent.

ADV LIZELLE HASKINS

MEMBER OF THE COMPANIES TRIBUNAL

DATED: 1 July 2015

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