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INTELLECTUAL PROPERTY

South Africa: reliance on trade marks in company name objections

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By Janine Hollesen and Donvay Wegierski, Directors

A further reason to register trade marks is that they can be relied upon in company name objections.

The Companies Act of 2008 provides for the procedure in which a party can object to the registration of a company name which offends against the provisions of section 11 and the company can be directed to amend its name.

A company name objection can be filed inter alia, if the name –

- is the same as the name of another company;
- is the same as a registered trade mark belonging to a person other than the company, or a mark in respect of which an application has been filed for registration as a trade mark or a well-known trade mark; or
- confusingly similar to a name, trade mark, mark, word or expression.

The objection takes the form of an affidavit filed by the objector in which the basis of the objection is set out in some detail.

As an objector can rely upon trade mark applications and registrations in these objections, it is a further reason to secure trade mark protection.

Werksmans was successful in a recent company name objection on behalf of Capitec Bank against the registration of CAPITEC LIFE by a third party. The objection was based on the name of the company but reliance was also heavily placed on the registered trade marks in Capitec's name.

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Janine Hollesen

Head of Intellectual Property

View Profile



Donvay Wegierski

Director

View Profile