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Registration of trade names

In the past, companies were allowed to trade under as many “trading as” names as they wanted. These trading names did not have to be related to the registered name.

What is a trade name?

A trade name is any name used in the course of business that does not include the full legal name of all the owners of the business. In the case of a limited partnership and a close corporation it is any name that differs in any respect from the registered name.

As an example, a financial adviser asks Momentum Employee Benefits to do a quote for Jones Suppliers.

The registered name of this entity could be:

- Jones Suppliers CC (a close corporation)
- Jones Suppliers (Pty) Ltd (a private company)
- Jones Suppliers Ltd (a public company)
- Jones Williams trading as Jones Suppliers (a sole proprietor)
- Jones Williams and Dan Jones trading as Jones Suppliers (partnership)
- Jones Williams Investment Trust trading as Jones Suppliers (a trading trust).

The Consumer Protection Act

The Consumer Protection Act (CPA) states that if a business wants to use a name for trading, in any way or form, it will have to be registered. The reason is so that consumers know exactly who they are doing business with.

The CPA came into effect on 1 April 2011. Sections 79 and 80 of the CPA deal with the future use of trading names. The registration requirements will come into effect on a date to be determined by the Minister of Trade and Industry which must be within a year of the effective date.

The identity of a supplier must be known

Section 79 of the CPA provides that a business cannot trade using a name unless:

1. It is the person's full name -
 - as it appears in their identity document in the case of an individual; or
 - as registered in terms of a public regulation in the case of a juristic person; or
2. It is a business name registered with the Registrar of Companies in terms of Section 80 of the CPA or any other public regulation.

Registration of a trade name

Section 80 of the CPA sets out the registration procedure and Section 81 sets out the criteria for business names. The transfer of business names must also be registered.

The effect of not complying with these provisions means that the Consumer Commission can penalise the business by way of a fine or imprisonment if prosecuted.

There is also a provision in the schedule that allows for a transitional period. The transitional period applies if a business registered the name in terms of any public regulation before 31 March 2011 or if the business had been using the name for at least one year before the date that the Minister will determine for the implementation of the name registration.

While these provisions will tighten up on the abuse and misuse of trading names, consumers will still have to make sure what type of entity they are doing business with. Consumers might have an additional reference source to check the validity of such trading names as they should be registered with the Registrar of Companies.

Vinesh Naicker

Junior legal adviser

Momentum Employee Benefits

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