



LIST OF PROBLEMATIC WORDS IN NAMES OF COMPANIES AND CLOSE CORPORATIONS

This is a list of words which may appear in proposed names, but which require special mention as they could, in certain circumstances, result in unsuccessful applications for names. Obviously this list could not possibly be comprehensive.

The Registrar, however, has the exclusive discretion in matters relating to the approval or not of names (sections 41 and 42 of the Companies Act and section 19 of the Close Corporations Act) and may even, in his discretion, deviate from his own directives or principles.

This list also contains brief comments and advice to enable an applicant to employ the words below with success in applications for reservations of names, unless such words are totally prohibited.

INTRODUCTION

Many words in proposed names result in unsuccessful applications due to the fact that these words (or expressions) are deemed to be misleading. This is an important general principle which applies to many of the words detailed below. The Registrar, as far as possible, does not allow such names as business people or members of the public could be induced to enter into business with companies with misleading names to their detriment. In this case that Registrar can be said to act in the public interest not to allow these names, except under the circumstances detailed below, ('Company' referred to below includes close corporation).

1. INTERNATIONAL

This word can under certain circumstances be regarded as misleading as it could indicate to others that this company has vast resources and is an international player, while in fact it is a small business with little capital. The Registrar will allow this name only if it can be indicated that the main object or principle business of this entity will be undertaken internationally--this information is to be entered in paragraph D of the reservation form.

2. NATIONAL

See 1 above.

3. GEOGRAPHICAL NAMES

Generally, geographical names not associated with the actual place of business of the company, could be deemed to be misleading. However, this principle has become somewhat diluted as the Registrar does not believe that the normal person, for instance, dining at "The New York

Restaurant” in Witbank, would have been misled by the name in any way. The Registrar will exercise his own discretion in cases of this nature.

4. **SURNAMES**

Only surnames of the members of a corporation, the directors or major shareholders of a company will be allowed in a name. Former surnames will also not be allowed. Surnames will also not be allowed to serve as full names of companies, unless under extraordinary circumstances which fall within the discretion of the Registrar. Surnames will however, be allowed as full names of companies if preceded by initials or full first names.

5. **WORDS SUGGESTIVE OF GOVERNMENTAL PATRONAGE OR CONNECTION AT ANY LEVEL OF GOVERNMENT AND THE DEFENCE OR SECURITY FORCES.**

This is a total prohibition unless obviously it is a company with governmental ties. (See also section 4 of the Business Names Act. 1960, which has similar provisions).

6. **TRADE MARKS**

Words or phrases which form trade marks will not be permitted unless the applicant is the proprietor of such mark. Very special care should be applied by applicants in this regard. The Registrar has no duty to undertake research to establish whether a word/words in a proposed name contain part or all of a certain trade marks.

7. **WORDS SUGGESTIVE OF BLASPHEMY OR INDECENCY OR WHICH WOULD CAUSE ANNOYANCE OR OFFENCE TO ANY PERSON OR CLASS OF PERSONS.**

No such words will be allowed.

8. **WORDS OR ABBREVIATIONS RELATING TO THE LIABILITY OF COMPANIES OR OF COMPANIES REGISTERED IN FOREIGN COUNTRIES.**

Such characters are confusing and will not be permitted (e g “Unlimited”, “Plc” etc.).

9. **CHARACTERS DENOTING A CALENDAR YEAR, UNLESS IT IS THE YEAR OF REGISTRATION OF THE COMPANY.**

Reason 7 a company could be misleading the public by pretending it is a well established company, in existence for, say, 50 years, while it has only been incorporated for a few months. Alternatively, should calendar years be indicated which are in the future, it could create doubt as to

the actual year of registration and the registration number of the company itself

10. **WORDS IN VARIOUS LANGUAGES**

As much as we are blessed with the diversity of our population, including 11 official languages, it also could lead to problems as far as proposed names for companies are concerned. Persons with a specialised knowledge of all these languages are probably very rare and would not spend their time in the employ of the Registrar. For this reason applicants are requested to translate names or words which in their opinion would present the Registrar with a problem, even although they are contained in one of our official languages, in paragraph C of the application forms. This most obviously is not compulsory, but would assist both the Registrar and the applicant in the speedy finalisation of the application. Remember, the Registrar still has to establish whether a word or words are not prohibited or ought not be permitted -- see paragraph 7 above and the general principle in the preamble. Additionally, the Registrar has to compare the proposed name, as far as possible, with similar names in the other official languages.

11. **SHORTENED FORMS OF NAMES**

A shortened form will only be approved if it contains essential elements of the full name of the company.

12. **ENTERPRISES**

This much-loved word will not be permitted in unqualified format in a name for the following practical reasons

This word encompasses all activities. Should this word be employed to describe the kind of activity of the company to be, for instance "CBE Enterprises", the Registrar would never, by consulting names on his names register, be aware of what the actual business of the company is. This could result in duplication of names. For instance: assume that the actual main object of this company is the manufacturing of shoes. At a later stage, another person applies for the name "CBE Shoes". The Registrar could well approve the second name as well, unaware of the fact that he has practically duplicated names. This word will however, be permitted if it is preceded by a word or words which relate to the main object of the company--e.g. "CBE Shoe Enterprises". Synonyms of this word, such as "Ventures" and particularly the non-descriptive word "services" should be similarly treated.

13. **HOLDING OR HOLDINGS**

This is also a very popular word. However, the concept 'holding company' is defined in section 1 of the Companies Act, It is a special

type of company and this word will only be allowed in a name if the main object of the company indicates that it will in fact be a holding company. However, the Registrar has conceded to allow this word in a name even although the company is not actually a holding company, if this word is preceded by a word relating to the main object of the company in the same fashion as in paragraph 12, above. In this way, an investment company could call itself, say, 'LLI Investment Holdings', with a main object of that of an investment company.

14. **TRUST**

Trusts are actually registered with the Master of the High Court and to employ this word to describe the activities of a company in its name is technically not correct and will not be permitted. Again, this word will be allowed if preceded by words relating to the main object of the company -- e.g. 'ABZ Property Trust', in the same way as in paragraphs 12 and 13 above.

15. **INCORPORATED OR INC**

This word and its abbreviated form has a totally different meaning in South Africa than in, for instance, the USA and for this reason it is often not employed correctly in proposed names. In this country it means that, briefly stated, the directors of a company are jointly and severally, together with their company, liable for its debts (see sections 49 and 53 of the Companies Act). These are specialised types of companies incorporated for professional people such as attorneys or chartered accountants. If this is not the case, a name will not be approved.

16. **UNLIMITED**

Under the repealed 1926 Companies Act, certain companies were registered ending in this word instead of "(Pty) Ltd", etc.. Reference to these companies is still made in section 4 of the current Act. This word will not be permitted as the last word in a name for the simple reason that there are still many of these registered companies operating in South Africa and the Registrar, for practical reasons, is not able to test such names for availability. There is no prohibition against this word if it does not form the last word in a name,

17. **GROUP**

This word will not be allowed unless it describes a company in the context of its part in a group of companies. If this is not so, the name could be said to be misleading. Should information be conveyed to the Registrar to indicate that a company will form part of a group, the Registrar could request further particulars and he has done so in the past.

18. **CHARTERED ACCOUNTANT/S**

This is a prohibited expression, unless it is used in relation to an incorporated company in respect of chartered accountants.

19. **COOPERATIVE, CO-OPERATIVE OR CO-OP**

These are words utilised to describe co-operatives registered by the Registrar of Co-operatives and are not allowed to be used to describe companies.

20. **RED CROSS**

This word will not be allowed unless with the consent of the official body.

21. **BUREAU**

This word, unless used in the context of a writing desk, will not be permitted. The reason is that it imparts the impression of a governmental department or some or other state-controlled body -- see paragraph 5 above. However, the Reserve Bank has indicated to the Registrar that commercial banks in South Africa do not have the monopoly to international currency exchanges anymore. For this reason the expression "Bureau de Change" will be permitted in a name, providing that the main object indicates this activity. The Registrar will also require consent from the Reserve Bank.

22. **EXCHANGE**

Should this word be utilised to indicate some or other body similar to the Johannesburg Stock Exchange, even if the indication is that it is an "exchange" in respect of any other commodity, the name will be disallowed on the basis that it is misleading.

23. **STANDARD**

This is a prohibited word, unless consent is provided by the Minister of Trade and Industry.

24. **BANK**

In terms of the Banks Act, consent is required from the Reserve Bank for the use of this word, unless it forms part of a geographical name such as "Witbank". Such consent is also required if the intended main object indicates banking activities, even although "bank" does not appear in the suggested name. The Registrar has no discretion in the matter.

25. **INSURANCE/ASSURANCE**

The Registrar will approve names containing these words, subject to consent from the Financial Services Board. Consent is also required from the FSB for use of the words “Friendly Society”, “Mutual Aid” “Pension Fund Scheme”, “Provident Fund Scheme”, “Unit Portfolio”, “Unit Certificates”, “Unit Securities”, “Unit Trusts”, “Mutual Funds” or any derivative of these names.

26. **MEDICAL SCHEME, MEDICAL AID, MEDICAL AID SCHEME**

Similarly to par 25 above, names containing the abovementioned words are also approved, subject to the approval of the Registrar of Medical Schemes.

27. **PHARMACISTS**

In terms of the Pharmacy Act, only the initials or first names and the surnames of pharmacists may appear in their corporation or company names.

28. **MEDICAL PROFESSIONS**

The current directives of the Medical and Dental Professional Board to the Registrar rules that only the initials or first names and surnames of medical practitioners will be permitted, with the addition of the actual type of profession as an optional extra. These directives are currently undergoing drastical review but until this process has been finalised, these directives stand. Please note: These are not directives of the Registrar and complaints, enquiries and the like about these directives should be directed to the Medical and Dental Professional Board in Pretoria.

29. **INTERNET NAMES**

Currently, Internet addresses are not permitted. The Registrar is currently making enquiries virtually worldwide in order to ascertain what the attitude of Registrars of Companies in other countries is in this regard. This paragraph will be updated as soon as there are developments.

30. **ATTORNEYS**

In terms of the Attorneys Act, only the name or names of attorneys may appear in company names -- the word “attorneys” may not appear in such a name.

31. **SINGLE WORDS AS FULL NAMES FOR COMPANIES**

The general rule is that single generic words (dictionary words) will not be permitted to serve as full names for companies. The reason is that upon the reservation and eventual registration of a company name, the Registrar protects such a name on behalf of the proprietor of the name, He can in fact order other persons to change their names or to desist from using such names if these names are, in the discretion of the Registrar, confusingly similar to the names on his register (section 45 of the Companies Act, section 20 of the Close Corporations Act and section 5 of the Business Names Act). But this entails that a name should be made up in such a way so as to be capable of being protected by the Registrar. The Registrar cannot, for instance, order anybody to refrain from using a word such as “Apple” — it would not make any sense. But he can certainly order somebody to terminate the use of names such as “Apple Records” or “Apple Computers”. The Registrar therefore does not allow names which he cannot protect. (This principle differs radically from that which is applied by the Registrar of Trade Marks who in fact does allow single generic words as trade marks, However, the Registrar of Trade Marks has the luxury of 42 classes of goods and services within which he can accord the limited monopoly of a single word. This is not the case with the Registrar of Companies). The addition of simple characters such as numbers or letters (“123 Apple”) will not cure this problem.

32. **COMMON EXPRESSIONS**

For the same reasons mentioned in paragraph 31 above, the Registrar will not allow common expressions such as “A walk in the park” as names for companies.

33. **“MADE-UP” NAMES**

The principle set out in paragraph 31 does not apply to so-called made-up names, Many company names are made up of unique names not to be found in a dictionary and normally the creator of such word or name will enjoy a form of protection in respect of that word or name, Applicants should, however, realise that this is not a general rule and that the “protection” may vary from case to case depending on the originality of the creation, There are many examples of such names and the Registrar will allow a single made up word as the full name of a company.

34. **PUNCTUATION**

This is a fairly difficult subject to set out comprehensively as certain punctuation characters are allowed in names while others are not, Common characters such as brackets, hyphens and apostrophes are allowed in names while less common characters such as “@”, “#” and “%” are not permitted. The ampersand (“&”) though, may be used

although this character would be reflected as “and” on the records of the Registrar. The problem is that the search engine on the computer system employed by the Registrar in respect of data tests for names does not recognise certain of these characters and this could lead to duplication of names, the main reason being that these characters represent computer programming instruments and do not have any phonetic sound of their own, Example: “Apple Computers”, which can effectively be duplicated by a name such as “Apple/Computers”.

35. **SPELLING**

Some applicants for names are under the impression that names or words already registered can effectively be duplicated by applying for such names with different or peculiar spelling. Example: a name such as “Brainware Information Technology” may be on record and a new application is lodged for “Brainwear Information Technology”. The search engine on the computer system of the Registrar referred to in paragraph 34 above, has a fairly sophisticated system which can detect phonetic similarities in names and ordinarily such names will not be approved. However, this system simply cannot detect all such similarities and it may happen that an applicant actually receives approval of such a similar name, But in the end this applicant could quite likely face the consequences of receiving an order to change its name in terms of the legislation set out in paragraph 31 above, In this respect applicants should be wary of the attitude that they “got away” with a name from the Registrar. The eventual consequences, when they do come about, are usually most detrimental to such applicants.

36. **COMPANY**

This word and the plural thereof will only be allowed in respect of the name of a company and not in the name of a close corporation.

37. **RELIGIOUS NAMES**

Religious words, concepts or expressions are as a rule not permitted in the names of ordinary business companies. Such words are of course allowed in names of companies registered with religious purposes, such as non- profit organisations incorporated in terms of section 21 of the Companies Act, In fact, ordinary companies containing such words in their names may even be regarded as offensive to sections of the population in terms of the principle set out in paragraph 7, above, Very often the argument is advanced that religious business people are eager to live out their religious principles in their business and that for this reason they also want the name of the business to have religious connotations to illustrate these principles. The Registrar is wary of the fact that business, as so many things in life, is unpredictable. Many good companies have gone into liquidation due to reasons totally beyond the control of its directors and shareholders. The Registrar is furthermore wary of the fact that many religious people or organisations

will take offence to insolvency publications in respect of companies with religious names and for this reason the Registrar would rather avoid such problems.

38. **NAMES UNRELATED TO STATED MAIN OBJECT**

A proposed name is always compared by the Registrar with the main object set out in paragraph D of the reservation form, If the proposed name contains a description of a specific type of business activity, and this conflicts with what is set out in paragraph D of the form, the name will not be allowed on the grounds that it will be misleading. This is an important factor and numerous applications for names fail as a result of this problem.

39. **JOB AND BUSINESS DESCRIPTIONS**

Very often names are submitted for approval consisting solely of job descriptions. Example: "Medical and Dental Supplies", "Ornamental Glass Manufacturers" and so on. Again, the Registrar has a problem with such names by reason of the fact that he cannot protect these names -- see the principles set out in paragraph 31 above. In fact, this principle was established as long ago as in 1907 in the benchmark **British case of British Vacuum Cleaner Company Limited v. New Vacuum Cleaner Co Limited**, in which Parker J stated:

"I do not consider myself that if a company chooses to incorporate into its own name words descriptive of the article in which it deals, it can fairly claim a monopoly of the use of those words in trade names. It seems to me that it runs that risk of having the article similarly described in the trade names of rival traders."

40. **EXTERNAL COMPANIES**

Companies in foreign countries aiming to register as external companies in this country in tents of section 322 of the Companies Act, do not apply for approval of their names from the Registrar. They simply retain the names they already have in their countries of origin.

41. **ASSOCIATION**

This word will only be permitted in the name of an association incorporated under section 21. It has acquired a secondary meaning in terms of the provision of section of 49(3) of the Companies Act

42. **ORIGINALITY**

This aspect is never a problem -- it is the absence of originality in the formulation of names which is very often the problem. Names lodged with the Registrar for approval are simply enormous in number -- up to 52,000 names are received monthly. It is in fact fairly disappointing how

many applicants lodge names virtually totally devoid of any originality. These are also the applicants experiencing problems in actually obtaining approval for names as they are joined by numerous other applicants applying for the same tedious names, Just a little originality and flair-- "makes the medicine go down-in the most delightful way." ("Mary Poppins").

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