

1986 November 8

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ENTECHNO DEVELOPMENTS LIMITED,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE ATTORNEY-GENERAL,

*Respondents.*

*(Case No. 65/85).*

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*Companies—Name of new company similar to that of an existing company—Power of Registrar to direct its change—The similarity must be striking or overbearing—The Companies Law, Cap. 113, section 19(2)—Judicial control of the exercise of the discretion of the Registrar—Principles applicable—Issue before this Court confined to review of the exercise of the discretion solely dependent on the likeness between the two names—Descriptive word in a name of a company—Its repetition in the name of a new company is not, as a rule, offensive.*

On hearing of the registration of the name of the interested parties, that is ENDECO DEVELOPMENTS CO. LTD., the applicants, namely ENTECHNO DEVELOPMENTS LTD. petitioned the Registrar to direct the change of the aforesaid name of the interested parties, pursuant to the power vested in him by s. 19(2) of the Companies Law, Cap. 113.

The Registrar turned down the applicants' petition. Hence the present recourse. The grievances of the applicants are not confined to the likeness of the name of the interested parties to their own. They complain that the

interested parties make such use of their name by the adoption of initials and other insignia as to pass off their business as the business of the applicants. Both companies are in the construction business. A passing off action brought by the applicants against the interested parties is pending before a District Court. Most of applicants' arguments in this case were directly relevant to the passing off action. 5

*Held, dismissing the recourse:* (1) The issue before this Court is confined to review of the exercise of the discretionary powers given to the respondent Registrar by s. 19(2) of Cap. 113, solely dependent on the likeness between the two names. The section confers discretion on the Registrar to direct the change of the name of a newcomer if such a name is "too like that of an existing company". The word "too" suggests that for the Registrar to interfere the similarity must be striking or overbearing. The object of these proceedings is to elicit whether it was reasonably open to the Registrar to allow the two names to coexist on the Register upon comparison of their visual or acoustic similarities. 10 15 20

(2) Repetition of a descriptive word in the name of a company is not offensive, unless on account of long user and other peculiar circumstances the word has acquired a secondary meaning associated with the first company. In this case the applicants could not monopolize the word "developments". The word "ENDECO" presents sound-wise similarities with the word "ENTECHNO", but neither word can be extricated or isolated for the purposes of s. 19(2) from the name of the companies as a whole. The addition of the word "CO" to the name of the interested parties lessened the likeness between the two. The likeness is not such as to make inevitable for the Registrar to grant the applicants' petition. The sub judice decision was reasonably open to the Registrar. 25 30 35

*Recourse dismissed.  
No order as to costs.*

Cases referred to:

*British Vacuum Cleaner Co. Ltd. v. New Vacuum Cleaner Co. Ltd.* [1907] 2 Ch. 312;

*Aerators Ltd. v. Tollit* [1902] 2 Ch. 319;

5 *Cellular Clothing Co. v. Maxton and Murray* [1899] A. C. 326;

*Reddaway v. Banham* [1896] A. C. 199;

*Society of Motor Manufacturers and Traders v. Motor Manufacturers and C. Insurance Co.* [1925] Ch. 675.

10 **Recourse.**

Recourse against the refusal of the Registrar of Companies to direct the change of the name of the interested party.

*L. Georghiadou (Mrs.)*, for the applicants.

15 *St. Ioannides (Mrs.)*, for the respondents.

*P. Petrides*, for the interested party.

*Cur. adv. vult.*

20 PIKIS J. read the following judgment. This is an application for the judicial review of the decision of the Registrar of Companies refusing a request of the applicants to direct a change of the name of the interested parties, that is "EN-  
 25 DECO DEVELOPMENT CO LTD.". On learning of the registration of the name of the interested parties they petitioned the Registrar to direct the change of their name, in exercise of the powers vested in him by subsection 2 of s. 19 of the Companies Law—Cap. 113 (letter dated 12.11.1984). The Registrar rejected the request intimating  
 30 in reply to their letter that he did not consider the name of the interested parties to be undesirable (see letter of Registrar dated 26.11.1984). The recourse is directed against the validity of this decision.

It appears the grievances of the applicants are not confined to the likeness of the name of the interested parties

to their own. They complain that interested parties make such use of their name by the adoption of initials and other insignia as to pass off their business and services as those of the applicants. Both companies are in the construction business building apartments for sale. Notwithstanding the pendency of a passing-off action before the District Court, and acknowledgment by the applicants that the issues in the two proceedings are different, most of the arguments raised before me were of direct relevance to the passing-off action and the injury allegedly suffered by applicants. Affidavits were produced before me tending to suggest that the way the interested parties portray their business is apt to confuse it with that of the applicants. Mr. Dinos Mylordis, a contractor ironsmith, testified that on one occasion he mistook an advertisement of the interested parties as emanating from the applicants. One of the directors of the company, namely Costas Mitsides, also swore an affidavit, alleging that the identity between the businesses of the two companies, and the similarity in their names, are apt to create confusion to the detriment of the applicants who have been in the business of building construction long before the arrival of the interested parties, that is, from 1976—the year in which the company was registered. It must be made clear at the outset, we are not concerned in these proceedings with the manner the interested parties portray or advertise their business or services and the infringement, if any, of property rights of the applicants deriving from the ensigns, symbols and emblems used in their trade. The issue before us is confined to review of the exercise of the discretionary powers given to the Registrar by s. 19(2) of the Companies Law, solely dependent on the likeness between the two names. The law confers discretion on the Registrar to direct a change of the name of a newcomer to the Register of Companies if his name is “too like that of an existing company”. Mere similarity between the two names, or likeness, is not sufficient. The use of the word “too” suggests that for the Registrar to interfere, the similarity must be striking or overbearing. But we repeat the inquiry is confined to examination of the likeness between the two names. Not the use made by companies concerned of their names. Conceivably, the inquiry extends to acoustic as well as visual likeness. English

cases on the choice of names by companies are of indirect relevance for the litigation is bound up with the use made of the name of the companies in their trading activities and the infringement of property rights acquired from user of the name of a company. Whereas, in proceedings for judicial review of a decision of the Registrar under s. 19(2), proceedings are merely designed to elicit whether it was reasonably open to the Registrar to allow the two names to coexist on the Register upon comparison of their visual and acoustic similarities. Nevertheless, English caselaw throws some light on the implications from the choice of different categories of words and the undesirability of allowing anyone to monopolize descriptive words. Even for purposes of protection of property, repetition of a descriptive word in the name of a company will not be considered offensive unless it is proved that on account of long user and other peculiar circumstances the word has acquired a secondary meaning associated with the first company; a rare occurrence as English decisions indicate.<sup>1</sup> By no account could the applicants monopolize the word "Developments"—a descriptive word equally apt to describe the work of many companies.

The word "ENDECO" presents soundwise similarities to the word "ENTECHNO" but neither word can be extricated or isolated for the purposes of s. 19(2) from the name of the companies as a whole. The likeness between the two names is not such as would have made it inevitable for the Registrar to direct a change of the name of the interested parties. The addition of the word "Co." to the name of the interested parties lessened the likeness between the two. The law makes the Registrar the arbiter of likeness. Judicial review is confined to eliciting whether his decision was arbitrary, not open to him in reason and good sense. I cannot so conclude though in the interest of fairness I may put it on record that had I been charged to decide the matter, my decision might go the other way.

<sup>1</sup> See, *British Vacuum Cleaner Co. Ltd. v. New Vacuum Cleaner Co. Ltd* [1907] 2 Ch. 312; *Aerators, Ltd. v. Tollitt* [1902] 2 Ch. 319, 324; *Cellular Clothing Co. v. Maxton and Murray* [1899] A.C. 326; *Reddaway v. Banham* [1896] A.C. 199, 208; *Society of Motor Manufacturers and Traders v. Motor Manufacturers' & C., Insurance Co.* [1925] Ch. 675.

In the result the recourse is dismissed and the decision is, pursuant to the provisions of Article 144.4 (a), confirmed. Let there be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*

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