

LOW  
PRIORITY

M-L-R

14/5

IN THE COURT OF APPEAL OF NEW ZEALAND C.A. 154/92

IN THE MATTER of the Companies Act  
1955

AND

668

IN THE MATTER of the determination of the  
Registrar of Companies

BETWEEN SIKA (NZ) LIMITED

Appellant

A N D SIKA TECHNOLOGY LIMITED

First Respondent

AND REGISTRAR OF COMPANIES

Second Respondent

Coram: Cooke P.  
Richardson J.  
McKay J.

Hearing: 7 May 1993

Counsel: S.P. Bryers and Jacqueline R. Ellis for Appellant  
Helen Wild for First Respondent  
A.W. Johnson and Katrina Wong for Second Respondent

Judgment: 7 May 1993

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JUDGMENT OF THE COURT DELIVERED BY COOKE P.

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This is an appeal from a judgment of Tompkins J. delivered on 25 March 1992 on an appeal under s.9B of the Companies Act 1955. The Judge was

concerned with a decision of the Registrar of Companies given on 7 March 1991 refusing to direct the second respondent, Sika Technology Limited, to change its name.

The essential question on such appeals is whether the name in question is undesirable, the relevant provision being s.31(1)(a) of the Companies Act 1955, as substituted in 1983, which contains a prohibition, subject to the section and except with the approval of the Governor-General by Order in Council, against the registration of a company by a name which in the opinion of the Registrar is undesirable.

In his judgment Tompkins J. reviewed the facts extensively and, we accept, accurately. He stated the relevant principles with equal accuracy, referring among the authorities to the decision of this Court in *Vicom New Zealand Ltd v. Vicomm Systems Ltd* [1987] 2 N.Z.L.R. 600. In that case this Court, approving a passage in the judgment of McGregor J. in *South Pacific Airlines of New Zealand Ltd v. Registrar of Companies* [1964] N.Z.L.R. 1, 5, said that a serious risk of confusion to the public or a section of the public is well recognised as a head of undesirability when the registration of a company name is in issue.

The argument for the appellant has sought to establish that the Judge placed undue weight on the consideration that in this case the two companies concerned are not in competition, so that the appellant is unable to claim and has not claimed any loss of business from the activities of the respondent which could be said to be due to the similarity of the company names.

Reading the judgment as a whole, however, we are satisfied that the Judge did not place undue weight on that factor; it was merely one of a

considerable range of factors taken into account by him. Counsel have reviewed in their arguments the more important passages in the evidence, as did the Judge himself. We are satisfied as a result that, the question being one of fact and degree, he took into account all material factors and applied correct principles. In such a case it is manifestly difficult for an appellant to persuade this Court to disturb the conclusion reached in the Court below. In this instance the appellant has not persuaded us that it would be appropriate to do so. We consider that, as a matter of fact and degree, the Judge applying the correct principles as he did was entitled to reach the conclusion that he did and that there is no justification for interfering on further appeal. Accordingly the appeal must be dismissed.

The first respondent is entitled to an order for costs on the ordinary principle that costs follow the event. The Registrar of Companies also applies for costs in this Court. There was reason for the Registrar to think, from the points on appeal, that an issue of principle might arise on which this Court might find it appropriate to hear submissions from the Registrar, which can be helpful from time to time. In these circumstances we think it appropriate to make an order in favour of the Registrar also.

Accordingly the first respondent will have costs in the sum of \$3500, together with the reasonable travelling expenses of one counsel, and the Registrar will have costs in the sum of \$2500, again with reasonable travelling expenses of one counsel, the expenses in each case to be settled by the Registrar of this Court.

*R. B. Cooke P*

Solicitors:

Martelli McKegg Wells & Cormack, Auckland, for Appellant

Simpson Grierson Butler White, Auckland, for First Respondent

I.A. Ramsay, Commercial Affairs Division, Justice Department, Auckland, for Second Respondent