



**AIDS law  
project**

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26 April 2010

**The Registrar of Companies**

The Dti campus (Block F - Entfufukweni)  
77 Meintjies Street  
Sunnyside  
Pretoria

**Attention : Advocate Rory Voller**

By email: rvoller@cipro.gov.za and fax 012 394 9501

To the Registrar of Companies

**APPLICATION FOR NAME RESERVATION: REFERENCE 78485007**

We refer to our CM5 form lodged on 25 February 2010 and to your letter dated 11 March 2010, in which our application for a name reservation was rejected. That letter, which was retrieved by the company secretary of the AIDS Law Project ("ALP"), Nicky Swanepoel, on 16 April 2010 is attached herein for ease of reference.

The objectives of the ALP are to develop, implement and use laws and policies to protect and advance the rights of people living with HIV/AIDS. The ALP is in the process of transforming itself and will incorporate a broader range of activities. The main activities of the transformed organisation will include research, advocacy and legal action to change the socio-economic conditions that undermine human dignity and development, prevent poor people from reaching their full potential and lead to the spread of diseases that have a disproportionate impact on the vulnerable and marginalised. This work flows directly from the empowering provisions of section 27 of the Constitution of the Republic of South Africa, 1996 ("Constitution") that guarantee certain socio-economic rights.

Once the name is registered, the ALP intends changing its name to reflect its new broadened objectives, with the requisite change to its articles of association. Thus we requested the name, "SECTION 27 incorporating the AIDS Law Project" and related names.

For illustration purposes, we attach the letterhead and business card that we intend to use if and when the requested name is registered by the Registrar.

With this background in mind, we request that the Registrar reconsider the decision to reject the requested names.

Below, we provide further reasons why the decision should be reversed and deal with the reasons given by the Registrar for the rejection of the requested names in turn. We do not deal with the third or fourth alternative names in this letter but reserve our rights in this regard.

***A comparative name exists***

The four alternative names requested on our CM5 form were the following:

1. SECTION 27 INCORPORATING THE AIDS LAW PROJECT;
2. SECTION 27 A HUMAN RIGHTS ORGANISATION INCORPORATING THE AIDS LAW PROJECT;
3. SECTION 20-SEVEN INCORPORATING THE AIDS LAW PROJECT; and
4. SECTION TWENTY7 INCORPORATING THE AIDS LAW PROJECT.

It appears that the first alternative name was rejected by the Registrar for the reason that it is comparable to and conflicted with the following three existing entities:

1. FONDS VOOR ONTWIKKELINGSSAMENWERKING INCORPORATED IN UNDER SECTION 21A;
2. ELIZABETH GLASER PEDIATRIC AIDS FOUNDATION (ASS INC UNDER SECTION 21A) INCORPORATED IN USA; and
3. TOUCH OF CARE (ASSOCIATION INCORPORATED UNDER SECTION 21).

The criteria used by CIPRO to compare names include:

- comparisons for similar names;
- comparative names; and
- offensive names.

As we understand it, the purpose of conducting a names comparison is to ensure that neither the proposed name nor a comparative name already appears on the names register. This is to ensure that members of the public do not confuse one company for another and that one company does not exploit the goodwill of another company with the same or a

similar name. The words therefore have to be considered in the context of the full name rather than merely comparing words with other words. It would be unreasonable to compare words in isolation and without the context of the full name of the company because it would not achieve the purpose of determining whether one name is substantially similar to another or whether one name could be confused with another. It appears that in this case the Registrar has simply compared words but has not compared the names requested with existing company names.

The name FONDS VOOR ONTWIKKELINGSSAMENWERKING INCORPORATED IN UNDER SECTION 21A translates from Afrikaans as Fund for Development. There are no comparator words or meanings in the name of the company.

The name ELIZABETH GLASER PEDIATRIC AIDS FOUNDATION (ASS INC UNDER SECTION 21A) INCORPORATED IN USA is also entirely dissimilar to the first alternative requested names. The only possible comparator word in the name is AIDS, which is contained in many registered company names and indeed in our name, the AIDS Law Project.

The name TOUCH OF CARE (ASSOCIATION INCORPORATED UNDER SECTION 21) has no comparator words at all.

The company names that are identified as conflicting with the requested names bear no relation to the requested names. The decision to reject the first alternative name is therefore arbitrary and unreasonable and should be reversed.

***The name connotes governmental patronage, is damaging, misleading and undesirable***

It appears that the first and/or second alternative name was rejected for the following reason:

“Your proposed name connote governmental patronage. The wording employed [sic] to serve as a name cannot be allowed and are calculated to cause damage moreover misleading and undesirable.”

The use of a section of the Constitution does not in itself connote governmental patronage. Furthermore, the name does not make use of words prohibited in terms of the Business Names Act, 27 of 1960 (“Business Names Act”) such as “government”, “state”, “United Nations” or suggests that the company enjoys the patronage of any government or

governmental department. The names therefore cannot be rejected in terms of the criteria set out in the Business Names Act. To place the requested names in the correct context we note that the Constitution places obligations on the state to respect, protect, promote and fulfil the rights in the Bill of Rights. Section 27 of the Constitution places obligations on the state to provide access to certain socio-economic rights on a progressive basis, and our work will often include actions to compel the state to comply with its constitutional and other duties. In the context of the meaning of section 27 of the Constitution, the name could not possibly connote governmental patronage.

SECTION 27 is constructed to give a clear indication of what the organisation does and is not intended to mislead the public. If registered, a reasonable person would not likely come to the conclusion that SECTION 27 enjoys the patronage of the state nor would a reasonable person be misled to believe that it does something other than enforce section 27 of the Constitution. Indeed part of the work of the organisation will be to promote awareness of the rights and duties contained in Section 27 Constitution.

It is unclear why the Registrar is of the view that the name is calculated to cause damage or to whom such damage is directed. It is also unclear why the name is undesirable other than in light of the view that it connotes governmental patronage or is misleading, which is denied. We submit that the conclusion that the name is calculated to cause damage is unreasonable and without any basis, given the context in which the name is used.

The rejection of both SECTION 27 INCORPORATING THE AIDS LAW PROJECT and SECTION 27 A HUMAN RIGHTS ORGANISATOIN INCOPRATING THE AIDS LAW PROJECT is therefore arbitrary and unreasonable and should be reversed.

We would be grateful if the name reservation is finalised on an urgent basis and that our first alternative name is accepted so that we may commence our operations under our new name as soon as possible.

We look forward to your urgent response.

The rights of the AIDS Law Project are fully reserved.

Yours faithfully



*P.P.* **Mark Heywood**

Executive Director  
AIDS Law Project

Cc: Minister Rob Davies [rdavies@thedti.gov.za](mailto:rdavies@thedti.gov.za) and fax 012 394 0337

Cc: Director General Tshediso Matona [tmatona@thedti.gov.za](mailto:tmatona@thedti.gov.za) and fax 012 394 9501

Cc: Lerna Pretorius [lpretorius@cipro.gov.za](mailto:lpretorius@cipro.gov.za)

CM5



COMPANIES AND INTELLECTUAL  
PROPERTY REGISTRATION OFFICE  
a member of the cdti group

Date: 11/03/2010

Our Reference: 78485007

HORWATH LEVETON BONER  
E-mail: NICKY.SWANEOEL@HORWATH.CO.ZA  
Basket: HOLEBO

**RE: Application for Name Reservation**

We have received a CM5 from you dated 25/02/2010.  
The names proposed on the form were compared to our database and the results of the comparison are listed below:

- |   |  |                         |
|---|--|-------------------------|
| 1 | SECTION 27 INCORPORATING THE AIDS LAW PROJECT  | Comparative Name Exists |
|   | The following conflicts were identified:   |                         |
|   | FONDS VOOR ONTWIKKELINGSSAMENWERKING INCORPORATED IN UNDER SECTION 21A                     |                         |
|   | ELIZABETH GLASER PEDIATRIC AIDS FOUNDATION (ASS INC UNDER SECTION 21A) INCORPORATED IN USA |                         |
|   | TOUCH OF CARE (ASSOCIATION INCORPORATED UNDER SECTION 21)                                  |                         |
| 2 | SECTION 27 A HUMAN RIGHTS ORGANISATION INCORPORATING THE AIDS LAW PROJECT                  | Clear                   |
| 3 | SECTION 20-SEVEN INCORPORATING THE AIDS LAW PROJECT  | Not Tested              |
| 4 | SECTION TWENTY7 INCORPORATING THE AIDS LAW PROJECT   | Not Tested              |

**We regret to inform you that no name has been approved for your use for the following reason(s):**



Your proposed name connote governmental patronage. The wording employed to serve as a name cannot be allowed and are calculated to cause damage moreover misleading and undesirable.

A lodging fee of R50,00 is payable in respect of each lodgement of a form CM5, due to the implementation of the Corporate Laws Amendment Act, 39 of 2002 from the beginning of December 2003.

This will entail that agents will be debited for every CM5 that is lodged.

These measures, until the Close Corporations Act has been amended commensurately, do not apply to close corporations and the system that had been in place until now, merely continues.

**Note:**

If a proposed name is indicated as 'Clear' in the results of the name searches above and such name is not approved, it simply indicates that no comparative names were cited against such name but that the name was nevertheless disallowed for other reasons, falling within the ambit of the discretion of the Registrar.

This letter should accompany the registration documents of your company or close corporation.

If no name was approved and space in paragraph A of the reservation form is still available for further proposed names, the same reservation form may be re-submitted with new proposed names.

Alternatively, a new set of reservation forms, with new proposed names, may be annexed and submitted with the original reservation form.



COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE:

Registrar of Companies & Close Corporations

P.O. BOX 429, PRETORIA, 0001, Republic of South Africa. Docex 255, PRETORIA.

Call Centre Tel 086 184 3384, Website www.cipro.co.za, WAP www.cipro.co.za/mobile

CM5



COMPANIES AND INTELLECTUAL  
PROPERTY REGISTRATION OFFICE

a member of the dti group

If the reservation period of two months has been exceeded, the reservation procedure should be repeated by lodging a fresh reservation form.

Please note the Internet address of this Office mentioned below. The application results for names are noted on the Web Site of this Office and are available the moment applications are decided upon.

Searches on this Site will obviate telephonic or personal enquiries from this Office.

Yours truly

**Registrar of Companies**

SKA EMY



COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE:

Registrar of Companies & Close Corporations

P.O. BOX 420, PRETORIA, 0001, Republic of South Africa, Docex 250, FRETORIA.

Call Centre Tel 0800 184 3384, Website [www.cipro.co.za](http://www.cipro.co.za), WAP [www.cipro.co.za/mobile](http://www.cipro.co.za/mobile)

**+SECTION27** incorporating the  
AIDS Law Project  
catalysts for social justice

6th floor, Braamfontein Centre, 23 Jorissen Street, Braamfontein, South Africa. PO Box 32351, Braamfontein, 2017, South Africa. t +27 (0)11 356 4100 f +27 (0)11 339 4311 info@section27.org.za www.section27.org.za

Income Tax Exemption Reference Number: PBO 930272543. Non-profit Organisation Registration Number: 055-312-NPO

SECTION27, a section 21 company (2006/021652/09) and a registered law clinic, is formally associated with the School of Law at the University of the Witwatersrand, Johannesburg.  
Board of Directors: Ms V. Dubele (Chairperson), Justice J. Krige (Deputy Chairperson), Mr N. Nkomo (Treasurer), Prof. Q. Abdool-Rauf, Dr B. Brink, Prof. S. Fata (ex-officio), Mr M. Raymond (Executive Director), Prof M. Platane (ex-officio), Ms T. Steele

**+SECTION27** incorporating the  
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**Adila Hassim**  
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2017, South Africa.

**Section 27 of the Constitution:**

- (1) Everyone has the right to have access to –
  - (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.



\* \* \* Communication Result Report ( 26. Apr. 2010 10:25 ) \* \* \*

Fax Header)

Date/Time: 26. Apr. 2010 10:15

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
1444	Memory TX	0123949501	P. 9	OK	

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E. 2) Busy  
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**FACSIMILE**

If any pages are unclear please call the sender at the above telephone number

To: The Registrar of Companies  
 Attention: Advocate Rory Voller  
 Fax Number: 012 394 9501  
 Date: 26 April 2010  
 From: AIDS Law Project  
 E-Mail: Rugege@alp.org.za  
 Tel Number: 011 356 4100  
 Pages (including cover): 9

Messages:  
 Please see attached letter for your attention.

Note: This facsimile may contain confidential information which is legally privileged and which is intended only for the person(s) so listed on this sheet. If you are not the intended recipient of this sheet, you (or the employee or agent responsible for delivering it to the intended recipient), you are hereby notified that any dissemination, copying or use of this facsimile is prohibited. If you have received this facsimile in error, please notify the sender by doing the above telephone number and destroy the material that has been received or return it to the above address. Your co-operation and aid of this call will be highly appreciated.

Internet Tax Exemption Reference Number: ESO 99/02137  
 Hierarchy Of, p. 002/004 Page Number: 035-301-NPO