

## **O-474-16**

### **ORDER under the Companies Act 2006**

**In the matter of application**

**No. 1235 by Faizal Janmohamed**

**For a change of company name of registration**

**No. 10234182**

### **DECISION**

The company name Cartoozo Limited has been registered since 15 June 2016 under number 10234182.

By an application received on 3 August 2016, Faizal Janmohamed applied for a change of name of this registration under the provisions of section 69(1) of the Companies Act 2006 (the Act).

A copy of this application was sent to the primary respondent's registered office on 30 August 2016, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008. The copy of the application was sent by Royal Mail special delivery. On the same date, Joseph Hosen was notified that the applicant requested that he be joined to the proceedings. Mr Hosen wrote to the tribunal on 15 September 2016 explaining that whilst there were business plans for the company, "... we have invested nothing into the company with the exception of the registration fees..." and submitted that the applicant should not pay the applicant's costs because, in his view, "we have done nothing to infringe the trade mark as we see it, and are fulfilling their requests without contest." He further states that "I have already requested to strike off the company ..." and he provides a copy a letter, dated 9 September 2016, from Companies House confirming this and indicating that a minimum of 2 months must elapse between the publication of the formal notice and the final dissolution of the company.

By a letter of 3 October 2016, the applicant notified the tribunal that despite the primary respondent's request to strike out the company, it still wished to continue with its application. It explained that, if the confusingly named company is shown as having been struck off, the current claimed trading difficulties resulting from the existence of the primary respondent will become more serious. It requested that the company name is changed before it is struck off.

The primary respondent's action in requesting that the company is struck off and Mr Hosen's statement that it will not contest the application to change the name is a positive statement that it does not intend to file a defence under rule 3(3). Rule 3(4) states

“The primary respondent, before the end of that period, shall file a counter-statement on the appropriate form, otherwise the adjudicator may treat it as not opposing the application and may make an order under section 73(1).”

Under the provisions of this rule, the adjudicator may exercise discretion so as to treat the respondent as opposing the application. In this case, the primary respondent has indicated it will not do so. Therefore, in accordance with section 73(1) of the Act I make the following order:

- (a) Cartoozo Limited shall change its name **within one month** of the date of this order to one that is not an offending name<sup>i</sup>;
- (b) Cartoozo Limited shall:
  - (i) take such steps as are within its power to make, or facilitate the making, of that change;
  - (ii) not to cause or permit any steps to be taken calculated to result in another company being registered with a name that is an offending name.

If no such change is made within one month of the date of this order, I will determine a new company name as per section 73(4) of the Act and will give notice of that change under section 73(5) of the Act.

Faizal Janmohamed, having been successful, would normally be entitled to a contribution towards his costs. However, in this case, the applicant has indicated in the application form that it contacted the primary respondent by letter of 18 July 2016, being only two weeks before its application was lodged. The primary respondent has exhibited a letter from Companies House, dated 9 September 2016. This demonstrates that it acted promptly to apply for it to be struck off. In these circumstances, taking account of the short period before first contacting the primary respondent and filling the application together with the primary respondent's prompt action to resolve the issue in an uncontested way, no award of costs is made.

Any notice of appeal against this decision to order a change of name must be given within one month of the date of this order. Appeal is to the High Court in England, Wales and Northern Ireland and to the Court of Session in Scotland.

The company adjudicator must be advised if an appeal is lodged, so that implementation of the order is suspended.

Dated this 5th day of October 2016

Mark Bryant  
Company Names Adjudicator

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<sup>i</sup>An “offending name” means a name that, by reason of its similarity to the name associated with the applicant in which he claims goodwill, would be likely to be the subject of a direction under section 67 (power of Secretary of State to direct change of name), or to give rise to a further application under section 69.