

O-051-16

ORDER under the Companies Act 2006

In the matter of application No. 1024

By Lituanica UK Ltd

for a change of company name of registration

No. 09591375

DECISION

The company name LITUANICA SHOPS LIMITED has been registered since 14 May 2015.

By an application filed on 2 October 2015, Lituanica UK Ltd 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 the application was sent to the primary respondent's registered office on 21 October 2015, 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, the tribunal wrote to Mr Leonardas Aleknavicius to inform him that the applicant had requested that he be joined to the proceedings. No comments were received from Mr Aleknavicius in relation to this request. On 1 December 2015, Mr Aleknavicius was joined as a co-respondent; he was granted a period of 14 days to request a hearing in relation to this matter. No request for a hearing was received. On 5 January 2016, the primary respondent and applicant were advised that no defence had been received to the application and so the adjudicator may treat the application as not being opposed. The parties was granted a period of 14 days to request a hearing in relation to this matter; no request for a hearing was received.

The primary respondent did not file a defence within the two month period specified by the adjudicator 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 I can see no reason to exercise such discretion and, therefore, decline to do so.

As the primary respondent has not responded to the allegations made, it is treated as not opposing the application. Therefore, in accordance with section 73(1) of the Act I make the following order:

(a) LITUANICA SHOPS LIMITED shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;

(b) LITUANICA SHOPS LIMITED and Mr Leonardas Aleknavicius shall:

(i) take such steps as are within their power to make, or facilitate the making, of that change;

(ii) not cause or permit any steps to be taken calculated to result in another company being registered with a name that is an offending name.

In accordance with s.73(3) of the Act, this order may be enforced in the same way as an order of the High Court or, in Scotland, the Court of Session

In any event, 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.

All respondents, including individual co-respondents, have a legal duty under Section 73(1)(b)(ii) of the Companies Act 2006 not to cause or permit any steps to be taken calculated to result in another company being registered with an offending name; this includes the current company. *Non-compliance may result in an action being brought for contempt of court and may result in a custodial sentence.*

Costs

Paragraph 10 of the Tribunal's Practice Direction (a copy of which can be found at: <https://www.gov.uk/guidance/company-names-tribunal-practice-direction>), contains guidance on the issue of costs. Paragraph 10.4.1 reads as follows:

"10.4.1 If an application is undefended, an award of costs is likely to be made against the respondent, provided pre-action enquiries have been made and provided the application succeeds. It should be noted, however, that the adjudicator will not normally award costs to the applicant if the respondent, whilst not defending the application, nevertheless satisfies the tribunal that it did not receive any notice, or did not receive adequate notice, that the application would be made. **The adjudicator will, likewise, normally not award costs if the applicant indicates in box 7 of the application form (CNA1) that it did not contact the company prior to making the application.**"
(my emphasis).

As the applicant indicated in box 7 of its form CNA1 that it did not contact the company prior to making its application to the tribunal, I make no award of costs in line with the above guidance.

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 28th day of January 2016

Christopher Bowen
Company Names Adjudicator

ⁱAn “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.