

## **O-373-15**

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

**In the matter of application No. 931**

**By International Business Machines Corporation**

**for a change of company name of registration**

**No. 09321768**

### **DECISION**

The company name IBM CONSTRUCTION LTD (the respondent) has been registered since 21 November 2014.

By an application filed on 2 April 2015, International Business Machines Corporation (the applicant) applied for a change of name of this registration under the provisions of section 69(1) of the Companies Act 2006 (the Act).

In an e-mail dated 19 March 2015, the respondent wrote to the applicant's representative. In a letter dated 17 April 2015, I wrote to the applicant's representative on the basis of the information contained in that e-mail. I stated:

"I am in receipt of your application of 2 April 2015.

In the respondent's e-mail of 19 March 2015 sent in response to your letter of 16 March 2015, Mr Balan states:

"My clients know me by that name. I do not want to lose my clients and my workers. I cannot change the name of the company. My company name plays an important role in my business."

Under section 69(4)(b)(i) of the Companies Act 2006 (the Act), a company has a defence to an application under section 69 if it is operating (trading) under the name. Section 69(5) of the Act states:

"If the facts mentioned in subsection (4)(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name."

There is nothing to suggest in your application that the main purpose of the respondent in registering the name was "to obtain money (or other consideration) from the applicant or prevent him from registering the name."

Applications to the Company Names Adjudicator are neither an alternative nor an equivalent to an action for passing-off.

## O-373-15

In view of Mr Balan's comments mentioned above, it appears that the respondent company is using its name. Therefore, your application has no reasonable prospect of success and is misconceived, unless you can show that section 69(5) of the Act applies. Consequently, under rule 5(2) of the Company Names Adjudicator Rules 2008 I am minded to strike out the application."

The applicant was allowed until 1 May 2015 to request a hearing if it wished to contest the above decision. A hearing was requested and a joint hearing took place before a different adjudicator on 28 May 2015. At that hearing, the applicant was represented by Ms Tracey Robertson of IBM UK Ltd, and the respondent by one of its directors, Mr Ilie Balan. Having heard the competing submissions, the adjudicator wrote to the parties on the following basis:

"4. At the hearing Ms Robertson stated that her own research found no evidence of use of IBM construction Ltd (Mr Balan's company) either through Companies House, internet research or social media.

5. Mr Balan indicated that he is using the name and that he would be filing a defence and evidence which would show that to be the case.

6. In view of the parties' submissions and circumstances of the case I find that the most appropriate course of action is to allow these proceedings to continue. Mr Balan has until **29 June 2015** by which to file a defence on a form CNA2 with a fee of £150."

A copy of the application was sent to the primary respondent's registered office on 29 May 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 Balan and Mr Florin Samuel Piu to inform them that the applicant had requested that they be joined to the proceedings. No comments were received from Messrs. Balan and Piu in relation to this request. On 6 July 2015, Messrs. Balan and Piu were joined as co-respondents. On the same date, 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 were granted a period of 14 days to request a hearing in relation to all these matters, if they so wished. No request for a hearing was received from any of the parties.

The primary respondent did not file a defence within the one 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)."

## O-373-15

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) IBM CONSTRUCTION LTD shall change its name **within one month** of the date of this order to one that is not an offending name<sup>1</sup>;
- (b) IBM CONSTRUCTION LTD and Messrs. Ilie Balan and Florin Samuel Piu 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.*

International Business Machines Corporation having been successful is entitled to a contribution towards its costs. I order IBM CONSTRUCTION LTD and Messrs. Ilie Balan and Florin Samuel Piu being jointly and severally liable, to pay International Business Machines Corporation costs on the following basis:

Fee for application:	£400
Statement of case:	£400
Total:	£800

This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

## O-373-15

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 August 2015

Christopher Bowen  
Company Names Adjudicator

---

<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.