

O-593-16

ORDER under the Companies Act 2006

In the matter of application

No. 1269 by Vax Limited and Techtronic Floor Care Technology Limited

For a change of company name of registration

No. SL026773

DECISION

The company name VAX CAPITAL LP has been registered since 17 May 2016 under number SL026773.

By an application filed on 18 August 2016, Vax Limited and Techtronic Floor Care Technology Limited 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 by recorded delivery to the primary respondent's registered office on 28 September 2016, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008, and subsequently returned by Royal Mail on 07 October 2016 marked "refused". It was re-sent by ordinary post. On 10 November 2016, the parties were advised that as no defence had been received to the application, 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 this matter, if they so wished. No request for a hearing was made.

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)."

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) VAX CAPITAL LP shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) VAX CAPITAL LP shall:

- (i) take such steps as are within its 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.

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.

Vax Limited and Techtronic Floor Care Technology Limited have been successful as the application has not been defended. Accordingly, I have considered whether it is appropriate to make an award of costs in their favour. The following question is asked at box 7 of the statutory application form (CNA1):

“Did you contact the company/limited liability partnership in relation to this matter prior to filing the application? If so, when did you do so and what did you say to the company/limited liability partnership?”

The applicants gave the following answer to this question:

“We contacted the company by letter on 10 August 2016. We informed the company of Techtronic Floor Care Technology Limited’s earlier trade mark registrations and Vax Limited’s long use of the mark VAX and requested that they change the name of the company. The letter sent by “signed for” post was returned to us on 15 August 2016 as the company refused to sign for the letter (as per note on the envelope dated 11 August 2016).”

Although the applicants’ letter informed the primary respondent of their earlier trade mark registrations and use of the mark VAX and requested that the respondent change its company name, there is no indication that they also informed the respondent of their intention to file the subject application with the Company Names Tribunal if the name was not voluntarily changed. That being so, Vax Limited and Techtronic Floor Care Technology Limited are not entitled to an award of costs.

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 16TH day of December 2016

A handwritten signature in black ink, appearing to be 'B Hedley', written in a cursive style.

Beverley Hedley
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.