

Companies Act 2006

In the matter of application No 775

by Arun Skips Ltd

For a change of company name registration

No. 09051361

BACKGROUND

1. The company name Arun Skip Hire Ltd has been registered since 9 December 2010 under number 07464915.

2. By an application filed on 8 September 2014, Arun Skips Ltd (“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). The applicant stated in its application:

“I object [sic] this name as it is trading in the same area as my company, and the name is the same, so a lot of customers are getting confused from this, as already happened:

For example:

Paying the wrong company

The opponent picking up wrong skips

So money is being lost, skips are being taken, all due to the name of the company being the same.”

3. On 18 September 2014, the Company Names Adjudicator wrote to the applicant in the following terms:

“In your application you state in paragraph 13 that the company name “is trading in the same area as my company, and the name is the same, so a lot of customers are getting confused from this...”.

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. You may find it helpful to read the factsheet on our website.

As you have referred to the fact that the respondent is trading using the name and that the name is causing confusion, this would imply 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.

If you consider that my preliminary view is erroneous you can request a hearing in relation to this matter. If you want a hearing in relation to this matter you will need to submit form CNA4, with the fee of £100, on or by **3 October 2014.**”

4. No response to this letter has been received by the Company Names Tribunal.

DECISION

5. Section 69 of the Companies Act states:

“(1) A person (“the applicant”) may object to a company’s registered name on the ground—

(a) that it is the same as a name associated with the applicant in which he has goodwill, or

(b) that is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant.

(2)

(3)

(4) If the ground specified in subsection 1(a) or (b) is established, it is for the respondents to show—

(a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or

(b) that the company—

(i) is operating under the name, or

(ii) is proposing to do so and has incurred substantial start-up costs in preparation, or

(iii) was formerly operating under the name and is now dormant; or

(c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business; or

(d) that the name was adopted in good faith; or

(e) that the interests of the applicant are not adversely affected to any significant extent.

If none of those is shown, the objection shall be upheld.

(5) 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.

(6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.

(7)

6. The statements in paragraph 13 of the application form indicate that the company was operating under the name at the time of the application, which is a defence to the application under section 69(4)(b)(i) of the Act. Under the provisions of section 69(5), however, even if it is shown that the company is operating under the name, this defence may be insufficient to defeat the application if the applicant shows 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.

7. The applicant has provided no indication either in its application or in any response to the adjudicator's letter of 18 September 2014 that it has grounds under section 69(5) to thwart the company's defence under section 69(4)(b)(i). The applicant has made no request to be heard in relation to the preliminary view to strike out the application.

8. Rule 5(2) of the Company Names Adjudicator Rules provides:

"The adjudicator may strike out the application or any defence in whole or in part if it is vexatious, has no reasonable prospect of success or is otherwise misconceived."

The presence of the word 'may' indicates that the adjudicator has a discretion in this matter. The applicant has provided no indication that section 69(5) may come into play in these proceedings. It has given no indication that it disagrees with the adjudicator's preliminary view of 18 September 2014; that is, that the application has

no reasonable prospect of success and is misconceived. In this case I can see no reason to allow the application to continue and, therefore, decline to do so.

9. I hereby strike out the application made on 8 September 2014 by Arun Skip Hire Ltd for a change of company name registration number 09051361 because the application has no reasonable prospect of success and is misconceived.

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

Dated this 18th day of November 2014

Judi Pike
Company Names Adjudicator