

## O-324-16

### Companies Act 2006

**In the matter of application No 951 by Capita Plc for a change to the company name of TRUSTCAPITA LTD, company registration 06825968.**

1. Company 06825968 (“the primary respondent”) was incorporated on 20 February 2009. The registered name upon incorporation was GUERRILLA INVESTMENTS LIMITED. The name of the company was changed on 25 February 2014 to TRUSTCAPITA LTD. It is this name which has caused Capita Plc (“the applicant”) to make an application to this tribunal, on 6 May 2015, under section 69 of the Companies Act 2006 (“the Act”).

2. Section 69 of the 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 it 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) The objection must be made by application to a company names adjudicator (see section 70).

(3) The company concerned shall be the primary respondent to the application.

Any of its members or directors may be joined as respondents.

(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 these 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) In this section “goodwill” includes reputation of any description.”

3. At the request of the applicant, the primary respondent’s sole director, Frank Imran Daiyan, was joined to the proceedings under the provisions of section 69(3) of the Act. Mr Daiyan was given notice of this request and an opportunity to comment or to object. The Tribunal received no comments or objections from Mr Daiyan.

4. The applicant claims that the name associated with it is CAPITA. It is the parent group for 116 entities which use the name CAPITA as part of their company name. It claims that it has a vast reputation and goodwill in this name which has been used extensively in relation to business process outsourcing and professional services across a range of sectors, including central and local government, insurance, financial services, transport, education, health, ICT, HR and property. The applicant is the UK’s leading outsourcing company, employing over 68,000 people. In 2014, turnover amounted to £4.3 billion, with a pre-tax profit of £576 million. Over 98% of turnover is generated by companies and operations which use the CAPITA name. The applicant is listed on the London Stock Exchange and is a FTSE 100 company.

5. The applicant objects to the company name TRUSTCAPITA LTD because it claims that it is sufficiently similar to CAPITA that its use in the UK would be likely to mislead by suggesting a connection between the company and the applicant. This is a pleading under section 69(1)(b) of the Act. The applicant requests the Tribunal to make an order under section 73 of the Act for the name to be changed to a name which does not offend<sup>1</sup>.

6. The applicant also states in its application that:

“Mr Daiyan has expressed to the Applicant that the Company has spent a significant amount of money on setting-up and establishing the business of the Company. However it is clear from the Company’s latest set of accounts

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<sup>1</sup> Section 73(2) of the Act provides that 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.

that the Company has a small amount of assets and is not making large amounts of money with which to do so. As such the fact that Mr Daiyan asserts this is an attempt to obtain money from the Applicant.”

This appears to be a reference to section 69(5) of the Act.

7. The primary respondent filed a notice of defence and a counterstatement, which were completed by ‘Imran Daiyan’. The primary respondent asks for proof in relation to the statement shown in paragraph 6 of this decision. It is denied that the name was adopted as an attempt to obtain money from the applicant. Proof is requested that “...the applicant is a well known household name in the eyes of the public and consumers...”.

8. The primary respondent/Mr Daiyan also states:

“The name was adopted in good faith.

Once I became aware of the applicants [sic] objection to the name, I tried to reassure the applicant by offering to make clear on our website that we are in no way associated with them.

I did not hear back from the applicant for one year, in which time I continued to build goodwill in the business.

The company started out as guerrilla investments, the name was a reflection of the sometimes unpredictable nature of the small business landscape and how one must make the best use of the resources to hand. The business activity was to help small to medium sized enterprises (SME’s) through direct investment and strategic advice. After a number of years I had suffered substantial losses and been let down by people I had trusted. I reassessed [sic] my business model and decided to rebrand, placing an emphasis on corporate finance services for SME’s, I wanted a name that I felt was central to a successful enterprise, that name eventually came to be Trustcapita, (trust-per-head) which illustrated the importance of trust.”

9. The applicant is professionally represented. The respondents are not represented. Both parties filed evidence. They were asked if they wished for a decision to be made following a hearing or from the papers. Neither side chose to be heard and both filed written submissions in lieu of a hearing. We make this decision after having carefully read all the papers filed by both parties.

## **Evidence**

10. The applicant's evidence in chief is given by Francesca Todd, who is the applicant's Group Company Secretary. Ms Todd confirms the information given about the applicant in its application (form CNA1). Points from her evidence include:

- Half of the applicant's business comes from the private sector and half from the public sector.
- 2014 turnover was £4.3 billion; pre-tax profits were £576 million<sup>2</sup>.
- Over 90% of the applicant's turnover is generated by its companies and operations which use CAPITA in their names<sup>3</sup>.
- The applicant provides professional outsourcing across a broad spectrum of private industry and public services sectors.
- The applicant has built expertise in common operational processes, including customer services (e.g. managing call centres), back office processes, HR, ICT, property consultancy, finance and treasury services.
- The applicant is an established market leader in the provision of specialist financial services, and also services in the life and pensions market. The financial services division generates over 7% of the applicant's turnover<sup>4</sup>.

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<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 8.

- The applicant provides share registration services to more than 45% of listed companies in the UK and Ireland, 22 of which are FTSE 100 companies. Brochures advertising these services are regularly included with the Institute of Chartered Secretaries and Administrators' monthly professional magazine.
- Exhibit 6 comprises a list of some 38 industry/professional body awards made to the applicant since 2011.
- Press coverage of the applicant and its businesses takes place on a daily basis, such as in national and regional newspapers. Three press articles are shown in Exhibit 7. One relates to Ireland, so is not relevant to these proceedings. The other two (Insider Media and Mortgage Financing Gazette) report that, in 2015, hundreds of staff at the Plymouth-HQ Western Mortgage Services and its parent, the Co-operative Bank, transferred to the applicant, described as "a listed outsourcing giant".

11. Ms Todd states:

"Capita also provides a large amount of services relating to trusts and trustee services through companies named "Capita Trust". This forms a large part of our financial services offering and is provided not only to corporate clients, but also to individuals and government organisations."

Exhibit 9 contains the list of these companies. We note that it contains the following, with company registration numbers:

Capita Trust Company Limited  
Capita Trust Corporate Limited  
Capita Trust Corporate Services Limited  
Capita Trust Nominees No. 1 Limited  
Capita Trust Company (Jersey) Limited

12. Prints from the website of Capita Asset Services describe the applicant's trust services. There is a copyright date on the pages of 2014. The applicant began providing trust services in 1929 and the Capita Trust companies have been trading since 2001.

13. Ms Todd describes the applicant's dealings with the primary respondent (personified by Mr Daiyan). Ms Todd wrote to the primary respondent on 11 April 2014 to request amendment to the name to avoid public confusion. Receiving no response, Ms Todd sent a follow-up letter on 29 April 2014. Mr Daiyan responded on 1 May 2014 stating that the request was unreasonable and that substantial costs had been incurred in the set-up and trading of the primary respondent. Ms Todd exhibits a copy of her letter before action (the 11 April 2014 letter) and the reminder letter (the 29 April 2014) as Exhibit 11, but does not include a copy of Mr Daiyan's response of 1 May 2014.

14. Ms Todd states that she wanted to find out more about the company and the reasons for its choice of name, so she commissioned the services of an IP investigations company, Eccora Ltd. A copy of the report is shown as Exhibit 12. The investigator did not find evidence of a pattern of bad faith company name registrations, nor did searches of the press (general and trade) turn up any articles relating to Mr Daiyan. We will give further details about the report in our summary of the applicant's evidence in reply, which has been given by the investigator.

15. Ms Todd states the primary respondent filed dormant accounts for the accounting year 1 July 2013 to 30 June 2014, which covers the period during which the name was changed to the present name. A copy of the dormant accounts, obtained from Companies House, is shown at Exhibit 13. A copy of the accounts for the previous year (i.e. before the name change, Exhibit 14) shows that the company's cash at the bank increased from £60 to £115, and its debtors increased from £0 to £20.

16. Ms Todd states that Mr Daiyan told the investigator that he would sell the company name to a third party for £100,000. This, together with the state of the

accounts, led to the filing of the application which is the subject of these proceedings.

17. The primary respondent's evidence is given in the form of a witness statement, dated 13 October 2015, by Imran Daiyan. There are no exhibits. Mr Daiyan states that he is the company director and sole shareholder. He is the co-respondent in these proceedings.

18. Mr Daiyan states:

“The name was changed to reflect the nature of the business environment in which it operates, i.e. trust being a central tenet of our services. Trust is an important principal in every walk of life, capita, a Latin phrase meaning “by heads” i.e. each person, thus, the name Trustcapita was adopted as it had a personal meaning to me and my business experience.

I felt the name was appropriate considering the nature of my business activities and at no point before or during the name change, did the applicant play any part in my thought process, neither, did I anticipate or even imagine the applicant would embark on such a course as it has done.”

19. Mr Daiyan states that, in his response to the letter from the applicant dated 29 April 2014, he tried to allay the applicant's fears, and offered to make it clear on his website that the primary respondent was not related to the applicant. He states that he received a second such letter almost a year later (dated 23 March 2015). In the intervening period, the applicant's investigators had been hired and had filed their report. Mr Daiyan refers to this as an attempt by the applicant to “dig up some dirt”.

20. Mr Daiyan states that he was contacted by a company claiming to be acting on behalf of a Chinese conglomerate who had wanted to enter the UK market and had a similar sounding name to Trustcapita (in Mandarin Chinese). Mr Daiyan states:



“...I had no idea this was in any way related to capita and had no reason to suspect capita had any involvement, I muted a figure of 100k for the domain name.”

21. Mr Daiyan denies that he became evasive when the applicant was mentioned and challenges the applicant to provide a recording of the telephone conversation to back up the evasiveness claim (which is made in the investigator’s report).

22. In relation to his valuation of the company name at £100,000, Mr Daiyan states this:

“The state of the companies accounts have no relation to the value of the name and in particular the domain name, as this is where the true value lies and why the figure of 100k was attached to it, there are over 3 trillion domain names registered worldwide and it is not easy to get the name you want.

If a company has a similar sounding name in mandarin and wants the translation in English they may be willing to pay for it, this cannot be held against me and was a purely commercial play and completely unrelated to the applicant at the time, or so it was thought.”

23. In relation to start-up costs, Mr Daiyan states:

“The applicant claims that in light of my accounts that I could have not have possibly spent substantial sums in the set up and trading of the company, one must define substantial in the context of one’s circumstances, i.e. for a billion pound turnover company £10k may not be substantial, but for me it is a substantial figure.

I note, the applicants investigators failed to mention this figure in their report, as I distinctly remember telling them how much the set up costs were, I never heard back from the mysterious agents for the Chinese buyers after this conversation.

Many of the costs that are related to the set up of the business have been made personally and therefore are not reflective in the company accounts.

During the period the applicant first made clear their objection to my use of the name, April 2014 and subsequent silence up until March 2015, I have continued to explore opportunities for my business and again this has led to the expenditure of considerable resources, including the most important resource of all, time, resulting in a figure to date, far greater than the initial setup costs.

Accounts are not a true reflection of ones efforts but of how successful those efforts have been.

Since changing the name and indeed before, I have continuously strived to find a niche for myself in my chosen industry, the fact my accounts do not show substantial turnover does in no way prove that I have not been active, or that I have resorted to underhand practices to make financial gains.”

24. Mr Daiyan takes issue with the applicant’s evidence of its reputation. In short, he submits that the applicant has failed to prove that it is a well-known household name, such as a supermarket brand. It is unnecessary to go into the detail of his submissions since (i) the applicant has not claimed itself to be a household name in the sense meant by Mr Daiyan; and (ii) it is for us to decide whether the applicant has the requisite goodwill, which includes reputation of any description<sup>5</sup>, based upon the applicant’s evidence.

25. The applicant’s evidence in reply comes from Gavin Hyde-Blake, who is a director at Eccora Limited, the firm which undertook the investigation referred to by Ms Todd and Mr Daiyan. Mr Hyde-Blake gives evidence about the investigation in the form of a witness statement dated 29 December 2015.

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<sup>5</sup> Section 69(7) of the Act.

26. The applicant instructed Mr Hyde-Black to investigate the reasons for the choice of name; whether and to what extent Mr Daiyan was aware of the applicant; whether the company had been set up in good faith; and the extent to which “substantial costs” had been incurred in the setting-up of the primary respondent, which Mr Daiyan claimed in his letter to the applicant dated 1 May 2014. Although neither Ms Todd nor Mr Daiyan have exhibited this letter, Mr Hyde-Blake shows it at Exhibit GHB2:

## TrustCapita

*Trust Per Head*

Capita  
17-19 Rochester Row,  
2<sup>nd</sup> floor,  
London SW1P 1LA

01.05.2014

Re: Unauthorised use of Capita

Dear Sirs,

Further to your letter dated 29 April 2014 my response is as follows;

I reject your claim that the name TrustCapita is in breach of your trade mark registrations or any associated intellectual properties you may own or have exclusive rights of use thereof.

Your demand for us to cease using our name TrustCapita is unreasonable and based upon the premise that, we have incorporated “the word” Capita within our company name “opportunistically” and our use of the name amounts to “actionable passing ~ off”, our adoption of the name was done in good faith and was never intended to try and pass ourselves off or mislead anyone.

I have incurred substantial costs associated with the set-up and trading of Trustcapita and as you can see from TrustCapita’s website there was meaning behind the adoption of the name TrustCapita, i.e. Per Capita, meaning “average per person” I decided to put trust ahead of capita to relay the meaning of “trust per person”, which is the message I was trying to relay.

I further understand you provide services to large corporations and not consumers, TrustCapita provides services to SME’s; we do not see how misleading the public would benefit TrustCapita.

As a gesture of goodwill, I would consider making clear on our website that we are in no way associated with Capita.

I hope you will re-assess your stance and advise accordingly.

Yours sincerely

Frank Daiyan

Director



TrustCapita

27. Mr Hyde-Blake states that Mr Daiyan was contacted directly and discreetly in June 2014, under a cover company facility (i.e. posing as a company). Mr Hyde-Blake states:

“7. At the outset of our conversation Mr Daiyan seemed slightly suspicious about our questions regarding the TrustCapita name. When we asked if there was any connection to Capita Plc he became evasive and asked the reasons for our call and why we had mentioned Capita, given that the Applicant had contacted him previously; as such we did not pursue this line of conversation further. We asked if he would be prepared to sell the name; he stated that he had spent a considerable sum on renaming the company and in starting to build up the new brand name. When pressed for a figure he informed us that he was unable to put a figure on it, only saying that it was a “substantial amount”. Such figure was given solely for the company name; later in the conversation we briefly touched on adding the domain name to any potential sale. Mr Daiyan stated that he would consider selling the company name to a third party and suggested a figure of £100,000 in order to do so.”

28. Mr Hyde-Blake states that, following this, he prepared the report and sent it to the applicant and their solicitors. He exhibits a copy of the report at Exhibit GHB3, which is the same as the report exhibited by Ms Todd. Mr Hyde-Blake states that he was then instructed by the applicant to make further contact with Mr Daiyan to find out additional details about the company and the amount spent on its change of name. Mr Hyde-Blake states that during his second conversation (9 June 2014), Mr Daiyan said that he had spent less than £5,000 in set-up costs for the name change and “he also admitted that he had not spent a “significant amount” as stated during the first phone call.” Mr Hyde-Blake states that Mr Daiyan also raised his request for purchase of the name to over £100,000.

## **Decision**

29. If the primary respondent defends the application, as here, the applicant must establish that it has goodwill or reputation in relation to a name that is the same, or sufficiently similar, to that of the company name suggesting a connection between

the company and the applicant. If this burden is fulfilled, it is then necessary to consider if the respondent can rely upon defences under section 69(4) of the Act. The relevant date is the date of application which, in this case, is 6 May 2015. The applicant must show that it had a goodwill or reputation at this date associated with the name CAPITA.

### **The applicant's goodwill**

30. Section 69(7) of the Act defines goodwill as a "reputation of any description". Consequently, in the terms of the Act it is not limited to Lord Macnaghten's classic definition in *IRC v Muller & Co's Margerine Ltd* [1901] AC 217:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

31. We have no doubt that the applicant's evidence proves that it not only has goodwill but also a substantial reputation in business and financial services. It does not need to prove that it is a household name in the sense of a consumer-facing brand. As a business to business operation, with a turnover of £4.3 billion in 2014, the applicant easily meets the initial burden of proving goodwill/reputation in the UK at the relevant date.

### **Similarity of names**

32. The other initial burden facing the applicant is that the company name is sufficiently similar to CAPITA to suggest a connection between the company and the applicant.

33. The presence of the word "LTD" in the primary respondent's name is to be ignored from the comparison as a company designation is required for a company incorporated in the UK (other than in certain excepted circumstances). The

comparison is, therefore, between CAPITA and TRUSTCAPITA. Although TRUSTCAPITA is presented as a single word, it is clear that it is the conjunction of the common word TRUST and the word CAPITA. It would be regarded as two words, TRUST CAPITA. In relation to financial services, TRUST has a specific meaning. Aside from this, TRUST CAPITA as a business name is an exhortation to ‘trust’ in CAPITA. CAPITA, a Latin word meaning ‘by heads’ (as in ‘per capita’), is the common and dominant element in both names. Whether TRUST will be seen as meaningful for financial services, and therefore of less importance than CAPITA, or whether it will be perceived as an exhortation to trust in CAPITA (as a commercial entity), the primary respondent’s name is sufficiently similar to CAPITA that its use in the UK would be likely to mislead by suggesting a connection between the primary respondent and the applicant. As the ground specified in subsection 69(1)(b) is established, the onus switches to the primary respondent to establish whether it can rely on any of the defences pleaded in the counterstatement.

## **Defences**

34. The applicant submits that the primary respondent has only specifically pleaded one defence, good faith. We agree with the applicant’s further submissions that the remainder of the counterstatement may constitute a defence based upon the primary respondent having incurred substantial start-up costs in preparation for operating under the name. This a theme in Mr Daiyan’s evidence, so we will also consider this defence.

### *Section 69(4)(b)(ii) – the “substantial start-up costs” defence*

35. The defence applies if the company is:

“..proposing to do so [operate under the name] and has incurred substantial start-up costs in preparation...”.

36. Start-up costs relate to the challenged name, not to the company under its previous name. Mr Daiyan has given reasons why he chose the primary respondent’s name. In his letter to the applicant of 1 May 2014 he says that

'substantial' costs had been incurred in the set-up and trading of the primary respondent. Yet, in his witness statement he does not refer to trading and the only cost that he refers to is his thinking time. This is nebulous in the extreme. There is no corroborative evidence about either the costs incurred in renaming the company or plans and attempts at building business goodwill under the new name. Mr Daiyan refers to a website in his letter to the applicant, but there is no documentary evidence from him showing that the website looks like or how much it cost him to set up. Mr Daiyan refers, in his witness statement, to a figure of £10,000. According to Mr Hyde-Blake, Mr Daiyan told him he had spent less than £5,000. There is no explanation as to how either figure has been reached. If the costs are personal, as stated, rather than costs which can be reflected in the accounts, there must be some documentary record or evidence which can be shown to substantiate Mr Daiyan's assertion. Mr Daiyan states that he has been exploring opportunities for his business. There must be some evidence of his endeavours for figures of this amount to have been spent. We are not willing to accept such an assertion with no evidence as to how either (less than) £5,000 or, indeed, £10,000 has been spent. This defence fails.

*Section 69(4)(d) – good faith*

37. As pointed out by the applicant, the burden of proving that the company name was registered in good faith falls upon the primary respondent. The onus is not on the applicant to prove bad faith. This means that it is the primary respondent's evidence which is crucial in establishing how the company name came to be registered. Although Mr Daiyan relies upon the investigator's report insofar as it said that there did not appear to be a pattern of bad faith, it is for the primary respondent/Mr Daiyan actively and positively to prove good faith.

38. As Mr Daiyan is the controlling mind of the primary respondent (and is the co-respondent), the issue of good faith turns upon his motivation and knowledge when the company name that is being challenged was registered, i.e. on 25 February

2014. Actions after this date may be indicative of his motivation and knowledge, but they cannot change the nature of the act<sup>6</sup>.

39. In *1) Adnan Shaaban Abou-Rahmah (2) Khalid Al-Fulaij & Sons General Trading & Contracting Co v (1) Al-Haji Abdul Kadir Abacha (2) Qumar Bello (3) Aboubakar Mohammed Maiga (4) City Express Bank of Lagos (5) Profile Chemical Limited* [2006] EWCA Civ 1492, Rix LJ commented upon the concept of good faith:

“48 The content of this requirement of good faith, or what Lord Goff in *Lipkin Gorman* had expressed by reference to it being "inequitable" for the defendant to be made to repay, was considered further in *Niru Battery*. There the defendant bank relied on change of position where its manager had authorised payment out in questionable circumstances, where he had good reason to believe that the inwards payment had been made under a mistake. The trial judge had (a) acquitted the manager of dishonesty in the *Twinsectra* or *Barlow Clowes* sense on a claim of knowing assistance in breach of trust, but (b) concluded that the defence of change of position had failed. On appeal the defendant bank said that, in the absence of dishonesty, its change of position defence should have succeeded. After a consideration of numerous authorities, this court disagreed and adopted the trial judge's broader test, cited above. Clarke LJ quoted with approval (at paras 164/5) the following passages in Moore-Bick J's judgment:

"I do not think that it is desirable to attempt to define the limits of good faith; it is a broad concept, the definition of which, in so far as it is capable of definition at all, will have to be worked out through the cases. In my view it is capable of embracing a failure to act in a commercially acceptable way and sharp practice of a kind that falls short of outright dishonesty as well as dishonesty itself."

40. In *(1) Barlow Clowes International Ltd. (in liquidation) (2) Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter*

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<sup>6</sup> *MB Inspection Ltd v Hi-Rope Ltd* [2010] RPC 18, paragraph 56.



*Stephen William Henwood and (3) Andrew George Sebastian* [2005] UKPC 37, the Privy Council considered the ambiguity in the *Twinsectra Ltd v Yardley* [2002] 2 AC 164 judgment. The former case clarified that there was a combined test for considering the behaviour of a party: what the party knew at the time of a transaction and how that party's action would be viewed by applying normally acceptable standards of honest conduct.

41. We have already commented upon the complete lack of corroboratory evidence to support what Mr Daiyan says in his witness statement. Business plans, emails and evidence of discarded name choices might all help to support what he states was the inspiration for his company name choice, but there are none shown in evidence. Mr Daiyan states that he has continuously striven to find a niche for himself in his chosen industry, which the counterstatement describes as investment and strategic advice for SMEs. This is the same field of business as the applicant operates in and it is to be expected, given the size of the applicant's turnover, that Mr Daiyan knew of the applicant at the relevant date. It is less than credible that Mr Daiyan puts a value of £100,000 (or more) on the company name when there is no evidence of any trading (and therefore saleable goodwill) or substantial set-up costs.

42. Ms Todd submits:

“24. The combination of the director's claim that substantial amounts of money have been spent, the fact that the company's accounts show that very little money has come in and out of the company, and the director's request for £100,000 for a transfer of the company name, can only lead me to conclude that the registration of the name 'TrustCapita' is purely opportunistic.”

Section 69(5) is tied to the applicant, whereas Mr Daiyan's offer was made to a third party. However, the applicant does not need to rely upon section 69(5) because we have found that the defence under section 69(4)(b)(ii) (substantial start-up costs) has failed.

43. The tone of Mr Daiyan's evidence is that he is offended by the accusations made by the applicant. However, indignation cannot compensate for lack of factual, probative, substance in his evidence. Good faith has to be proved, not simply claimed. We are not satisfied that the primary respondent/Mr Daiyan has established that the company name was adopted in good faith. The good faith defence fails.

## **Outcome**

**44. As we have dismissed the defences, the application succeeds.**

45. Therefore, in accordance with section 73(1) of the Act, we make the following order:

- (a) TRUSTCAPITA LTD 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) TRUSTCAPITA LTD and Imran Daiyan each shall:
  - (i) take such steps as are within their 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.

46. 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.

47. In any event, if no such change is made within one month of the date of this order, we 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.

48. All respondents, including Mr Daiyan, 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**

49. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale of costs published in the Practice Direction, on the following basis:

Fee for application:	£400
Statement of case and considering counterstatement	£400
Preparing evidence and considering the respondent's evidence	£1000
Fees for filing evidence (2 sets):	£300
Written submissions	£500
<b>Total:</b>	<b>£2600</b>

50. We order TRUSTCAPITA LTD and Imran Daiyan, being jointly and severally liable, to pay Capita the sum of **£2600** within fourteen days of the expiry of the appeal period, or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful. Under section 74(1) of the Act, an appeal can only be made in relation to the decision to dismiss the application; there is no right of appeal in relation to costs.

51. 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.

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

Dated this 12th day of July 2016

Judi Pike

Oliver Morris

Allan James

Company Names

Company Names

Company Names

Adjudicator

Adjudicator

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.