

O-402-15

ORDER under the Companies Act 2006

In the matter of application

No. 816 by Maidenhead Aquatics Limited

For a change of company name of registration

No. SC477689

DECISION

The company name FISHKEEPER SCOTLAND LTD (“the respondent”) has been registered since 15 May 2014 under number SC477689.

By an application filed on 11 November 2014, Maidenhead Aquatics 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 this application was sent to the primary respondent’s registered office on 25 November 2014, 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. It was returned “addressee gone away”. A copy of the application was then sent by ordinary post. On the same date, the Tribunal wrote to Allan Stewart and David Mungall to inform them that the applicant had requested that they be joined to the proceedings. No comments were received from either person in relation to this request.

On 15 January 2015, Allan Stewart and David Mungall were joined as co-respondents. On 19 January 2015, all of the parties 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 this matter, if they so wished.

On 29 January 2015 an email was received from Allan Stewart and David Mungall stating that they did not receive the original documents so they required additional time to respond. On 25 February 2015 a copy of the application was re-sent and a further one month period was set for the respondent to reply. No response from any party was received.

Following a review of the proceedings, it became apparent that the letters sent to the co-respondents (Allan Stewart and David Mungall) were sent to the wrong address. They were subsequently reissued and all parties were invited to file any comments within 14 days. No response from any party was received.

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) FISHKEEPER SCOTLAND LTD shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) FISHKEEPER SCOTLAND LTD, ALLAN STEWART and DAVID MUNGALL 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.

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.*

Maidenhead Aquatics Limited, having been successful, is entitled to a contribution towards its costs. I order Fishkeeper Scotland Ltd, Allan Stewart and David Mungall, being jointly and severally liable, to pay £800 expenses on the following basis:

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|----------------------|------|
| 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.

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 25TH day of August 2015

Mark King
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.