

O-205-16

ORDER under the Companies Act 2006

In the matter of application No. 1042

By Prudential IP Services Ltd

for a change of company name of registration

No. 09608012

DECISION

The company name PRUDENTIAL INVESTMENTS LTD has been registered since 26 May 2015.

By an application filed on 2 November 2015, Prudential IP Services Ltd 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 to the primary respondent's registered office on 20 November 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 Emmanuel Rotimi Aladesuru to inform him that the applicant had requested that he be joined to the proceedings. Both letters were returned to the Tribunal by the Royal Mail marked "refused"; these letters were subsequently reissued by normal post.

On 15 December 2015, Mr Aladesuru contacted the Tribunal by telephone. On 16 December, he filed a blank form CNA2, Notice of defence. Having been contacted by the Tribunal in this regard, he filed completed copies of the form CNA2 on 17 and 21 December.

Rule 2(2) of The Company Name Adjudicator Rules 2008 ("the rules") reads as follows:

"(2) Where a form is required to be used by these Rules that form shall be accompanied by the fee, if any, specified in the Schedule in respect of that matter."

In addition, the form CNA2 contains the following instruction:

"Official fee of £150 is due with this form."

None of the forms CNA2 filed by Mr Aladesuru were accompanied by the fee. In the body of the form CNA2, Mr Aladesuru stated:

"Since the Prudential Investments Ltd was registered we have not been able to earn a penny on the company, the Prudential IP Ltd (the applicant) have sabotaged our efforts to set up bank accounts for the

business, it is because of all these reasons, the Prudential Investments Ltd have not got the money to pay the Company Names Tribunal charges.”

No comments were received from Mr Aladesuru in relation to the applicant’s request to join him to the proceedings.

On 13 January 2016, the Tribunal acknowledged the receipt of the form CNA2. In that letter it stated:

“The form CNA2 has an official fee of £150, which must be paid in order for the tribunal to consider the form as being properly filed. However, the form filed by the respondent did not include any instruction for the payment of the fee.”

Rule 7(1) of the rules reads as follows:

“The adjudicator may extend (or further extend) any period which has been specified under any provision of these Rules even if the period has expired.”

Having noted the primary respondent’s desire to defend its company name registration, the adjudicator utilised the provisions of rule 7(1) to allow it an opportunity to pay the necessary fee and for Mr Aladesuru to comment upon the request to join him to the proceedings.

On 27 January, Mr Aladesuru filed a further copy of the form CNA2 but, once again, no fee. He stated:

“The money issues should not be barrier for the Prudential Investments Ltd from getting justice.”

Mr Aladesuru did not comment upon the request to join him to the proceedings.

I note in passing that on 15 February, the letter sent by the Tribunal to Mr Aladesuru on 13 January was returned to the Tribunal by the Royal Mail marked “not called for.”

On 4 March, the Tribunal wrote to the parties indicating (i) that as the fee had not been filed by the primary respondent within either of the periods allowed, the adjudicator may treat the application as not being opposed, and (ii) Mr Aladesuru had been joined to the proceedings as a co-respondent and would be jointly and severally liable with the primary respondent for costs. The parties were allowed a period of 14 days in which to request a hearing in relation to these matters. Although no request for a hearing was received, in an e-mail dated 18 March, Mr Aladesuru stated:

“Prudential Investments Ltd has a separate life from its owners, therefore I cannot be held responsible for any payments, and besides,

we have not commit any offence, I have said it in my communication to The Company Names Tribunal several times.

.....

I do not have the money to pay because I do not have incomes coming in from the Prudential Investments Ltd.”

When considered together, the rules indicate that in order for a primary respondent to resist an application to change its company name, it is necessary for it to file “...a counter-statement on the appropriate form” (rule 3(4)) and for that form to be “accompanied by the fee” (rule 2(2)). Although Mr Aladesuru has filed a number of copies of the form CNA2, at no time has the fee been paid. Without the fee, the form is not considered properly filed. As a consequence, any comments that have been made by Mr Aladesuru in the form CNA2 in relation to the merits of the application are not relevant.

As to the applicant’s successful request to join Mr Aladesuru to the proceedings, I note his comments above regarding the “separate life” the primary respondent enjoys and that he “cannot be held responsible for any payments.” That is, however, a misunderstanding of the position. The purpose for asking that a person or persons be joined to proceedings, is to allow a successful applicant to recover costs in circumstances in which it might not otherwise be able to do so. In deciding whether to join a person to proceedings is appropriate, the guidance provided in paragraph 3.1.4 of the Tribunal’s Practice Direction is relevant. That paragraph reads:

“In relation to costs the adjudicator will give careful consideration to the facts of the case as to whether a co-respondent(s) should be jointly and severally liable for costs, especially where no defence has been filed (under rules 3(2), (3), (4) and (5) only the primary respondent can file a defence). The adjudicator will take into account, for example, whether it is established that the co-respondent is the controlling mind of the respondent company.”

Not only does Mr Aladesuru appear on the records of Companies House as the sole Director of the primary respondent, in his correspondence with the Tribunal, he describes himself as “The Chief Executive of Prudential Investments Ltd”. Bearing this in mind, together with the guidance in the Practice Direction and in the absence of Mr Aladesuru requesting a hearing to explain why he should not be joined to the proceedings, I am satisfied that the decision to join him to the proceedings was appropriate.

The primary respondent did not file a defence accompanied by the fee within the original one month period specified by the adjudicator under rule 3(3) nor has any defence and fee been filed up to the date of the issuing of this decision. 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 filed a defence accompanied by the fee, it is treated as not opposing the application. Therefore, in accordance with section 73(1) of the Act I make the following order:

- (a) PRUDENTIAL INVESTMENTS LTD shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) PRUDENTIAL INVESTMENTS LTD and Mr Emmanuel Rotimi Aladesuru 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.*

Prudential IP Services Ltd having been successful is entitled to a contribution towards its costs. I order PRUDENTIAL INVESTMENTS LTD and Mr Emmanuel Rotimi Aladesuru being jointly and severally liable, to pay to Prudential IP Services Ltd 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.

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 22nd day of April 2016

Christopher Bowen
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.