

O-176-15

ORDER under the Companies Act 2006

In the matter of application

No. 863 by NBTY Europe Limited

For a change of company name of registration

No. 09166414

DECISION

The company name JULIAN GRAVES LTD has been registered since 7 August 2014 under number 09166414.

By an application filed on 16 January 2015, NBTY Europe 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 3 February 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. It was returned marked "return to sender". A copy of the application was then sent by ordinary post. On 3 February 2015, the Tribunal wrote to Mr Ken Sweeney and Mr Simon Barnes to inform them that the applicant had requested that they be joined to the proceedings. No comments were received from either Mr Sweeney or Mr Barnes in relation to this request. On 16 March 2015, they were joined as co-respondents and 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. 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) JULIAN GRAVES LTD shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) JULIAN GRAVES LTD, Mr Ken Sweeney and Mr Simon Barnes 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 these orders, 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.*

NBTY Europe Limited, having been successful, is entitled to a contribution towards its costs. I order JULIAN GRAVES LTD, Mr Ken Sweeney and Mr Simon Barnes, being jointly and severally liable, to pay NBTY Europe Limited 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 28th May 2015

Al Skilton
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.