

O-470-16

ORDER under the Companies Act 2006

In the matter of application

No. 1203 by Heineken Brouwerijen B.V.

For a change of company name of registration

No. 10234440

DECISION

The company name Heineken Beer Ltd has been registered since 16 June 2016 under number 10234440.

By an application filed on 30 June 2016, Heineken Brouwerijen B.V. 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 11 July 2016, 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 "RTS". The Post Office's "Track and Trace" service records that the letter was signed for. A copy of the application was then sent by ordinary post. On 24 August 2016, 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) Heineken Beer Ltd shall change its name **within one month** of the date of this order to one that is not an offending name¹;
- (b) Heineken Beer Ltd shall:
 - (i) take such steps as are within its 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.

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.

The respondent has 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.*

Heineken Brouwerijen B.V., having been successful, is entitled to a contribution towards its costs. I take account that this is one of three cases (Numbered 1201, 1202 and 1203) brought by the applicant and the content of the statement of cases are essentially the same and my order reduces the normal amount (of £400) for this by half. I order Heineken Beer Ltd to pay costs on the following basis:

Fee for application:	£400
Statement of case:	£200
Total:	£600

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 5th day of October 2016

Mark Bryant
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.