

## **O-178-16**

### **ORDER under the Companies Act 2006**

**In the matter of application No. 950**

**By Maybourne Hotels Limited**

**for a change of company name of registration**

**No. 08489534**

### **DECISION**

Company number 08489534 was incorporated on 15 April 2013 under the name EURO CAR LEASING LIMITED. On 11 March 2015, it changed its name to MAYBOURNE LONDON LIMITED.

By an application filed on 5 May 2015, Maybourne Hotels 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 the application was sent to the primary respondent's registered office on 22 May 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 Sarju Khetshi Popat to inform him that the applicant had requested that he be joined to the proceedings. No comments were received from Mr Popat in relation to this request. On 3 August 2015, Mr Popat was joined as a co-respondent; he was granted a period of 14 days to request a hearing in relation to this matter. No request for a hearing was received. On the same date, the primary respondent and applicant 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; no request for a hearing was received.

On 2 September, the Tribunal noted that the status of the company had changed to "Active – Proposal to strike-off". The Tribunal continued to monitor the position and on 15 October, it wrote to the parties indicating that as the company was currently the subject of a request to strike-off, the application was potentially without object. The Tribunal indicated it was minded to suspend the application to await the outcome of the request. The parties were allowed 14 days to comment upon this approach. The applicant responded in a letter dated 21 October, in which it indicated its agreement to the approach the Tribunal had suggested; although the primary respondent did not respond in writing, the official record indicates that Mr Popat contacted the Tribunal by telephone on 28 October to discuss the matter.

Following that telephone conversation, the Tribunal noted that the company's status had changed from "Proposal to strike-off" to "active". On 17 November 2015, the Tribunal wrote to the parties indicating that if the primary respondent wished to defend its company name, it should, within 14 days, file

a Form CNA2 together with a witness statement explaining why “there was no response to the correctly addressed and, apparently received, correspondence from the Tribunal”. The letter contained the following paragraph:

“Please note that should no correspondence be received from the respondent on or before 1 December 2015, it will be viewed as an indication that the respondent does not wish to defend its company name and a default decision would then be issued.”

On 25 November, Mr Popat contacted the Tribunal by telephone indicating that the primary respondent had changed its name to MAYBORNE LONDON LIMITED and enquired if the requirement to file the Form CNA2 and witness statement mentioned above could be dispensed with.

In a letter dated 26 November, the Tribunal wrote to the parties. In that letter it: (i) suspended the period for the primary respondent to file a Form CNA2 and witness statement and (ii) allowed the applicant until 10 December to comment upon the change of name. On 1 December 2015, the applicant responded, indicating that the change of name was “not acceptable to the applicant” indicating that in its view, the amended name “is contrary to sections 69(1)(a) and (b) of the Companies Act 2006”. In a letter dated 15 December, the primary respondent and Mr Popat were afforded an opportunity to respond to the applicant’s comments; neither the primary respondent nor Mr Popat responded to that invitation. In a letter to the parties dated 13 January 2016, the Tribunal advised the parties that the suspension of the proceedings was lifted and the primary respondent had a final period expiring on 27 January 2016 to file the Form CNA2 and witness statement mentioned above, failing which, “the Tribunal will treat the application as unopposed and will proceed accordingly.” On 8 February 2016, the Tribunal wrote to the parties noting that as no Form CNA2 or witness statement had been filed within the time allowed, the adjudicator may treat the application as unopposed; the parties were allowed a 14 day period for a hearing to be requested; no request for a hearing was received.

The primary respondent did not file a defence within the original one month period specified by the adjudicator under rule 3(3) nor has any defence 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 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) MAYBORNE LONDON LIMITED 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) MAYBORNE LONDON LIMITED and Mr Sarju Khetshi Popat 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.*

Maybourne Hotels Limited having been successful is entitled to a contribution towards its costs. I order MAYBORNE LONDON LIMITED and Mr Sarju Khetshi Popat being jointly and severally liable, to pay to Maybourne Hotels 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 this 8<sup>TH</sup> day of April 2016

Christopher Bowen  
Company Names 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.