

O-097-16

ORDER under the Companies Act 2006

In the matter of application No. 1059

By Caterpillar, Inc.

for a change of company name of registration

No. 09112075

DECISION

The company name BLACK CAT OIL & GAS LTD has been registered since 2 July 2014.

By an application filed on 26 November 2015, Caterpillar, Inc. 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 9 December 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 11 January 2016, a facsimile was received from Mr David Stewart, indicating that he represented the sole director of the primary respondent, Mr Ian Cross. Mr Stewart stated:

"I am pleased to report that the parties seem to be close to an amicable solution."

Mr Stewart went on to explain that to protect the primary respondent's position, he had attached: "A copy of form CNA5." He went on to state:

"We would ask you please, in the circumstances (settlement hopefully being a day a day or two away it seems) not to actually issue the form at present, thus incurring the £150 fee. We are inviting Hogan Lovells to agree this approach by means of a copy of this fax, and attachment to them."

Despite the above, no form or fee of any kind has ever been received by the tribunal from either Mr Stewart or the primary respondent.

On 18 January 2016, the tribunal wrote to the parties. The tribunal (i) invited the primary respondent/Mr Stewart to file a form CNA7 to appoint Mr Stewart as its representative (failing which the tribunal indicated it would continue to correspond with the primary respondent) and (ii) advised the primary respondent that no form or fee had been received. The tribunal also asked the applicant for an update on the state of the negotiations. On 22 January 2016, the applicant responded to the tribunal. It stated:

“At the time of Mr Stewart’s fax to you, we were in settlement discussions with the company. However, the negotiations have reached an impasse, and we would like to continue with our client’s complaint. As such, a suspension is no longer appropriate.”

On 25 January 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. Although no request for a hearing was made, in an e-mail dated 25 January 2016, Mr Cross stated:

“My lawyer, Mr David Stewart, will be back in the UK on Wednesday/Thursday and will be able to pick up things directly with you. He is cc’d on this.

For background, we have put a fresh and final settlement proposal to Caterpillar. If not accepted, we will file a full defence in seven days.”

No defence was filed by the primary respondent within the seven day period mentioned by Mr Cross in his e-mail of 25 January 2016 nor has any defence been filed up to the date of this decision.

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) BLACK CAT OIL & GAS LTD shall change its name **within one month** of the date of this order to one that is not an offending name¹;
- (b) BLACK CAT OIL & GAS LTD shall:
 - (i) take such steps as are within its 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.

Caterpillar, Inc. having been successful is entitled to a contribution towards its costs. I order BLACK CAT OIL & GAS LTD to pay Caterpillar, Inc. 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 25th day of February 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.