

O-283-16

ORDER under the Companies Act 2006

In the matter of application No. 1110

By Dixons of Westerhope Limited

for a change of company name of registration

No. 09028845

DECISION

The company name HOBBYWELD LTD has been registered since 7 May 2014.

By an application filed on 29 February 2016, Dixons of Westerhope 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 9 March 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. On the same date, the Tribunal wrote to Mr John David Pimblett to inform him that the applicant had requested that he be joined to the proceedings. The primary respondent and Mr Pimblett were allowed until 11 April 2016 to respond. No comments were received from Mr Pimblett in relation to this request.

On 14 April 2016, Turner Parkinson solicitors ("TP") wrote to the Tribunal indicating that they were "instructed by Mr Pimblett and Hobbyweld Limited." They stated: "We have had sight of the application..." and "We understand that no time period has yet been set down by the Adjudicator for the filing of a defence but we would be grateful if the Adjudicator's office could confirm the position to us."

On 19 April 2016, the Tribunal responded to TP indicating it could only provide limited information as TP were not the respondent's address for service. The Tribunal advised of the deadlines mentioned above and provided TP with a copy of the appropriate form to record itself as the respondent's address for service; the letter indicated that it had been copied to the primary respondent, Mr Pimblett and the applicant's representative.

On the same date, the Tribunal issued a letter in which it indicated that Mr Pimblett had been 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 Tribunal issued letters to the primary respondent and applicant in which they were advised that as no defence had been received to the application 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.

The primary respondent did not file a defence within the original 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) HOBBYWELD LTD shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) HOBBYWELD LTD and Mr John David Pimblett 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.*

Costs

Dixons of Westerhope Limited having been successful, is entitled to an award of costs. However, because in its application it sought off-scale costs, the matter of costs which, under Section 74 of the Act is not subject to appeal, will be dealt with separately.

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 13th day of June 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.