

O-176-17

ORDER under the Companies Act 2006

In the matter of application No. 1323

By Asurion, LLC

for a change of company name of registration

No. 10025083

DECISION

The company name ASURION LIMITED has been registered since 25 February 2016.

By an application filed on 2 December 2016, Asurion, LLC 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 19 December 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 28 December 2016, that letter was returned to the tribunal by the Royal Mail marked, inter alia, "addressee unknown" and "refused". The letter was re-issued by ordinary post on 16 January 2017; that letter was also returned to the tribunal by the Royal Mail marked, inter alia, "addressee unknown."

On 9 March 2017, 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 two 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) ASURION LIMITED shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;

(b) ASURION LIMITED 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.

Costs

Paragraph 10.4.1 of the tribunal's practice direction, reads as follows:

"If an application is undefended, an award of costs is likely to be made against the respondent, provided a request for costs has been made by the applicant and pre-action enquiries have been made, and provided the application succeeds. It should be noted, however, that the adjudicator will not normally award costs to the applicant if the respondent, whilst not defending the application, nevertheless satisfies the tribunal that it did not receive any notice, or did not receive adequate notice, that the application would be made. The adjudicator will, likewise, normally not award costs if the applicant indicates in box 7 of the application form (CNA1) that it did not contact the company prior to making the application." (my emphasis).

In box 7 of the form CNA1, the applicant stated:

"Yes. Letter on 2 December 2016 – requested that the name ASURION LIMITED be changed to a name not similar to Asurion, LLC."

Although the applicant asks for an award of costs to be made in its favour, as its application to this tribunal was made on 2 December 2016 i.e. the same date it wrote to the company, it is clear that the applicant did not contact the company prior to making the application. In those circumstances, the section of the practice direction I have underlined applies and, as a consequence, I make no award of costs.

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 11th day of April 2017

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.