

ORDER under the Companies Act 2006

In the matter of application No. 1329

By Virgin Enterprises Limited

for a change of company name of registration

No. 10262445

DECISION

The company name VIRGIN CONSTRUCTION LTD has been registered since 5 July 2016.

By an application filed on 9 December 2016, Virgin Enterprises 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 this application was sent to the primary respondent's registered office on 9 January 2017, 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. Also on 9 January 2017, the tribunal wrote to Mr John Palmer to inform him that the applicant had requested that he be joined to the proceedings. No comments were received from Mr Palmer in relation to this request.

On 13 April 2017, Mr Palmer 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.

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:

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- (a) VIRGIN CONSTRUCTION LTD shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) VIRGIN CONSTRUCTION LTD and Mr John Palmer 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 section 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

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."

In a letter to the parties dated 2 August 2017, the tribunal stated:

"As no request for a hearing has been received the case will now be passed to the adjudicator to issue a decision.

Please be aware that as the applicant has neither requested a costs award in the Form CNA1, nor mentioned costs in any of the pre-action

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correspondence it sent to the respondent, the adjudicator will not be making an award of costs". (my emphasis)

The parties were allowed a period of 14 days to respond to the above; no response was received.

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 September 2017

C Bowen

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.