

ORDER under the Companies Act 2006

In the matter of application

No. 1420 by ORACLE AMERICA, INC

For a change of company name of registration

No. 10350367

DECISION

The company name SUN MICROSYSTEMS LIMITED has been registered since 30 August 2016 under number 10350367.

By an application filed on 25 April 2017, ORACLE AMERICA, 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 5 May 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. On the same date, the Tribunal wrote to Mr Colin Jack Mackenzie (the respondent's Director) to inform him that the applicant had requested that he be joined to the proceedings. No reply was received. On 20 June 2017, 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. A period of 14 days was granted to request a hearing in relation to this matter, if they so wished. No request for a hearing was made.

On 17 July 2017, Mr Colin Jack Mackenzie was joined as co-respondent and granted a period of 14 days to request a hearing in relation to this matter. No request for a hearing was made.

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) SUN MICROSYSTEMS LIMITED shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) SUN MICROSYSTEMS LIMITED and Mr Colin Jack Mackenzie shall:
 - (i) take such steps as are within their power to make, or facilitate the making, of that change;
 - (ii) not to 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 these orders, 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.*

ORACLE AMERICA, INC having been successful, are entitled to a contribution towards their costs. I order SUN MICROSYSTEMS LIMITED and Mr Colin Jack Mackenzie, being jointly and severally liable, to pay ORACLE AMERICA, 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 10th day of August 2017

AI Skilton
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.