Companies Act 2006

In the matter of application No 1117 by Lakehouse plc for a change to the company name of Lakehouse Construction Limited, company registration 09195804.

1. Company 09195804 ("the primary respondent") was incorporated on 30 August 2014 with the name LAKEHOUSE CONSTRUCTION LIMITED. This name has caused Lakehouse plc ("the applicant") to make an application to this Tribunal, on 7 March 2016, under section 69 of the Companies Act 2006 ("the Act").

2. Section 69 of the Act states:

> "(1) A person ("the applicant") may object to a company's registered name on the ground—
>
> > (a) that it is the same as a name associated with the applicant in which he has goodwill, or
> >
> > (b) that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant.
>
> (2) The objection must be made by application to a company names adjudicator (see section 70).
>
> (3) The company concerned shall be the primary respondent to the application.
>
> Any of its members or directors may be joined as respondents.
>
> (4) If the ground specified in subsection (1)(a) or (b) is established, it is for the respondents to show—

(a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or

(b) that the company—

(i) is operating under the name, or

(ii) is proposing to do so and has incurred substantial start-up costs in preparation, or

(iii) was formerly operating under the name and is now dormant; or

(c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business; or

(d) that the name was adopted in good faith; or

(e) that the interests of the applicant are not adversely affected to any significant extent.

If none of these is shown, the objection shall be upheld.

(5) If the facts mentioned in subsection 4(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name.

(6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.

(7) In this section “goodwill” includes reputation of any description.”

3. At the request of the applicant, one of the primary respondent’s directors, Daniel John Parrish and a 50% shareholder in the primary respondent, Mark George Holloway, were joined to the proceedings under the provisions of section 69(3) of the Act. Messrs. Parish and Holloway were given notice of this request and an opportunity to comment or to object. The Tribunal received no comments or objections from either and they were joined to the proceedings as co-respondents on 24 November 2016.

4. The applicant claims that the name associated with it is LAKEHOUSE. The applicant explains that it is the ultimate holding company in a group of companies trading “under or by reference to the name LAKEHOUSE”. It adds that due to the group structure of its business, the group as a whole refers to itself as “Lakehouse” and the name “LAKEHOUSE is associated with any and all companies within [its] group.” The name LAKEHOUSE is, states the applicant, “the key identifier of [its] company group and business” adding that “the suffixes of the individual companies within [its] group are generic and/or descriptive of the services performed by the particular company.”

5. In its application, the applicant provides information regarding its background and the nature of its business. We will return to this in more detail later. Suffice to say that in 1988, the applicant’s founder, Steve Rawlings, “began the operation of the applicant’s business from his house in Lakehouse Road” and in April 1991, Lakehouse Contracts Limited was incorporated. Since 1988, the LAKEHOUSE name has, it is stated, been used for the applicant’s business, “which operates in the field of construction, and the related provision of improvement and maintenance services.” It is stated that in 2014/2015, “the applicant’s revenue was £340.2 million and its profit before tax of £.3.2 million, it had net assets at 30 September 2015 of £85.5 million and it employed over 2,400 people in 35 offices in the UK.”

6. The applicant objects to the company name LAKEHOUSE CONSTRUCTION LIMITED because it is so similar to the name in which it has goodwill i.e. LAKEHOUSE that its use in the United Kingdom is likely to mislead by suggesting a

connection between the company and the applicant. This is a pleading under section 69(1)(b) of the Act. The applicant points to a range of factors, for example, its existing rights at the time the primary respondent was incorporated, the geographical proximity of the parties to these proceedings, the primary respondent's apparent lack of trade, the distinctive nature of the word upon which it relies and contact between the parties in which Mark Holloway:

> "13.3.8… volunteered that he would be willing to consider selling the name "Lakehouse Construction Limited" to the applicant. Although he declined, when asked to name a figure for which he would consider selling the name he claimed that it was an established company name and referred obliquely to the "value of the business".

And:

> "13.5 Given the circumstances, the company's name was clearly registered in bad faith and it seems that the respondents registered the company name in order to either obtain money from the applicant or prevent the applicant from registering the company name itself".

7. The applicant requests that the Tribunal make an order "requiring the [primary respondent] to change [its] name to one that does not feature the name LAKEHOUSE or any name similar to the LAKEHOUSE name…"

8. The primary respondent filed a notice of defence and a counterstatement (the declaration of which is signed by Mr Parrish) in which, insofar as it relevant, it either denies or puts the applicant to proof of its various claims. Mr Parrish explains that he and Mark Holloway are builders and had been in partnership for some four years before deciding to create a limited company i.e. the primary respondent. He states that the name was initially influenced by the fact that: (i) both he and Mr Holloway are keen carp fishermen and wanted to reflect this fact in the company name (which led to the adoption of the word "Lake" (ii) research revealed "various pictures of houses in Sweden on lakes" and (iii) their accountant, John Murphy, suggested they add the word "Construction" to reflect that both gentlemen are builders. Mr Parrish states:

> "an application was submitted to Companies House by Mr Murphy in the ordinary course of a company formation business…
>
> The name was adopted in good faith and without knowledge of the applicant's existence or business history.
>
> The name was accepted at Companies house and the company has since the date of incorporation being 30 August 2014 been operating under such name.
>
> It is not accepted that the interests of the applicant are adversely affected to any significant extent by the [primary respondent's] trading and whilst the company is technically for sale to the applicant on the standard terms of business the directors of the [primary respondent] wish to emphasise that…the question of sale was raised by the applicant's representative when contacting Mr Holloway via the telephone…"

9. Both parties are professionally represented. Both parties filed evidence. They were asked if they wished for a decision to be made following a hearing or from the papers. Neither side chose to be heard. Both parties filed written submissions in lieu of a hearing. We make this decision after having carefully read all the papers filed by both parties.

Evidence

The applicant's evidence-in-chief

10. The applicant's evidence-in-chief is given by its Company Secretary, Simon Howell. Mr Howell explains that he was appointed Group Company Secretary of Lakehouse Holdings Limited ("hereafter LHL") "and its principal subsidiary undertakings" in June 2014. At that time, LHL was the ultimate parent company of the Lakehouse Group of Companies. Following a capital reorganisation in March 2015, Lakehouse plc (the applicant) (of whom Mr Howell is also Company Secretary), became the ultimate holding company of the Lakehouse group and the

shares of the applicant were listed on the Main Market of the London Stock Exchange.

11. The applicant is the parent company of a group of companies which, states Mr Howell, trade by reference to the name LAKEHOUSE, with the group referring to itself "simply as LAKEHOUSE" and the name LAKEHOUSE is, he states, "associated all of the companies within the applicant's group" (sic). Exhibit SH1 consists of extracts obtained from the applicant's website www.lakehouse.co.uk on 29 February 2016. The pages provided contain, inter alia, the following:

> "We are growing but we are still one Lakehouse. Our values remain the same;"
>
> "At Lakehouse, we make an impact through deeper relationships;"
>
> "There is a "Lakehouse way" of doing things;"
>
> "The Lakehouse Customer Journey;"
>
> "Lakehouse named Havering Business of the Year 2015."

12. Mr Howell confirms that in 1988 the applicant was founded by Steve Rawlings who began the operation of the business from his house on Lake House Road, Wanstead E11. This was, he further confirms, the inspiration for the choice of the LAKEHOUSE name for his business. He states:

> "7. Initially, the applicant provided services relating to the refurbishment and fit-out of public houses, off-licences and offices and general property maintenance. From 1992 onwards, the applicant started to deliver small scale refurbishment, fit-out and maintenance services and in 1996, it secured its first social housing refurbishment project. Other construction activities undertaken by Lakehouse include house building, schools and other public buildings construction. Whilst remaining primarily active in the fields of construction and regeneration, from 2008 the applicant has also provided

regeneration and compliance services. All of these business activities have consistently been carried out by reference to the LAKEHOUSE name."

13. Mr Howell points out that the name LAKEHOUSE appears in the applicant's registered company name. He also states that it appears in the names of other companies within the group, for example, Lakehouse Compliance Services Limited, Lakehouse Contracts Limited, Lakehouse Design and Build Limited, Lakehouse Energy Services Limited, Lakehouse Holdings and Lakehouse Property Investments Limited. Although no evidence has been provided in this regard, we note that the respondents have not challenged this statement. Mr Howell explains that as the group has expanded over the years, pre-existing companies have been acquired and that whilst these companies have retained their trading names, they are required to refer to themselves as being "Part of the Lakehouse Group". Exhibit SH2 consists of eleven examples of the type of use to which Mr Howell refers, an example of which is shown below:

No information is provided as to when these companies were acquired or when the use in the format shown above began.

14. Exhibit SH3 consists of further pages obtained from the applicant's website www.lakehouse.co.uk on 29 February 2016. It indicates that at that date the applicant had 35 offices throughout the United Kingdom, including offices in England, Scotland and Wales.

15. Mr Howell states that the applicant uses the LAKEHOUSE name on its own branding and marketing materials. Exhibit SH4 consists of undated examples of the word LAKEHOUSE appearing on a letterhead, business card and compliment slip. The applicant also has its own magazine. Entitled "IMPACT magazine" which, states,

Mr Howell “is widely circulated to customers and suppliers within the construction industry”. Exhibit SH5 consists of a copy of the magazine which dates from winter 2014. The word “Lakehouse” appears on the front cover and throughout the magazine. Mr Howell states that “In May 2014”, the applicant registered the domain name lakehouse.co.uk via a company within the applicant’s group”. In fact, the “Whois” report provided as exhibit SH6 appears to indicate that the domain name was registered by Lakehouse Contracts Ltd on 21 May 2004. Exhibit SH7 consists of a copy of a printout obtained from www.ipo.gov.uk indicating that on 20 June 2014, Lakehouse Contracts Limited applied for registration of the words “LAKEHOUSE” and “Lakehouse” (as a series of two trade marks) for a range of services in class 37. The trade mark was accepted and subsequently entered in the register on 3 October 2014.

16. Mr Howell explains that the applicant also uses the LAKEHOUSE name on various social media platforms, including ISSUU, LinkedIn (2,847 followers), Twitter (using the handle @Lakehouseepic) and You Tube. Exhibit SH8 consists of printouts obtained from the social media platforms mentioned, only one of which (the page from Twitter) appears to contain a date i.e. 18 December 2015. All of the printouts contain references to, inter alia, “Lakehouse.”

17. Mr Howell states that the applicant is “often featured in press and is referred to as Lakehouse.” It has, he further states, “featured in articles and coverage in a number of popular and widely subscribed construction industry publications, including Construction News, Construction Manager and Building magazine.” Exhibit SH9 consist of examples of such reports (from a range of publications) for the period 11 June 2014 to 31 August 2014; the word “Lakehouse” appears in the vast majority of the examples provided.

18. Mr Howell explains that the applicant has won a number of awards. Exhibit SH10 consists of a list of thirty one awards won by the applicant between 2010 and 2015. Although the actual certificates (which, we infer, bore the name LAKEHOUSE or Lakehouse) are not provided, we note that in 2010 the applicant won three awards, five awards in 2011, six awards in 2012, seven awards in 2013, nine awards in 2014

and one award in 2015. We note that in 2011, the applicant won “HM The Queen’s Award for Enterprise” in the “Sustainable Development” category.

19. Mr Howell explains that the applicant first became aware of the primary respondent during the course of business restructuring in 2015, in which it intended to register the name Lakehouse Construction Limited to act as a holding company for the Group’s construction activities. He states that investigations were conducted but other than references to the primary respondent on the website of Companies House, no online presence, no online third party references and no contact details for the primary respondent in any telephone directories were found. Exhibit SH12 consists of the first page of results of a Google® search for the words “lakehouse construction” conducted on 29 February 2016 which, Mr Howell notes, only contains references to the applicant. He states:

> “20…I note from these details [i.e. those on the Companies House website] that the applicant’s head office is less than 10 miles away from the address registered for the first respondent at Companies House. The applicant’s sites are protected by branding hoarding…and our branded vehicles…are often seen on the roads in this area, so I would be surprised if the respondents had not visibly seen our presence in the area, even if they had not heard of us through the construction industry (which itself I find hard to believe).”

20. Exhibits SH13 and SH14 consist of what appears to be undated photographs of the hoardings and vehicles to which Mr Howell refers, both of which prominently display, inter alia, the word “Lakehouse”.

21. Exhibit SH15 consists of the letters before action sent by the applicant’s professional representatives, Eversheds, dated 23 October and 9 November 2015, which led to Mr Holloway contacting Eversheds and the discussions mentioned above.

The respondents' evidence-in-chief

22. This consists of a witness statement from one of the primary's respondent's directors, Daniel John Parrish. Mr Parrish repeats comments contained in the Notice of Defence i.e. (i) that he and Mr Holloway had been in business in the building construction industry for four years before being advised to create a limited company, (ii) the adoption of the word "LAKE" stemmed from the fact that both gentlemen are keen carp fishermen whilst the adoption of the word "HOUSE" stemmed from a desire on his part to "explore the possibility of creating an image for future paperwork/advertising for the company and in the course of research he came across various pictures of houses in Sweden on lakes" and (iii) that it was their accountant, John Murphy, who suggested adding the word CONSTRUCTION to reflect the nature of the business in which the company was to be engaged. Mr Parrish states:

> "7. Neither myself nor Mr Holloway knew of the existence of the applicant prior to receipt of communications received from the applicant's solicitor's in anticipation of these proceedings and the company name was therefore adopted in good faith and without specific knowledge of the applicant's existence or business history."

23. Mr Parrish explains that since incorporation (on 30 August 2014), the primary respondent has been operating under the name, with the majority of the work undertaken being conducted on behalf of contacts established by himself and Mr Holloway prior to the date of the primary respondent's incorporation. Mr Parrish describes exhibit DJP3 as:

> "8…a certificate prepared by Mr Murphy attempting to demonstrate the percentage of turnover with our largest customer Squibbs Group Limited for whom Mr Holloway has done work for over 20 years."

24. The certificate to which Mr Parrish refers is headed "Messrs Lakehouse Construction Limited – Company number 9195804, Declaration of Turnover". It is signed by Mr Murphy and Mr Parrish and dated 29 September 2016. It indicates that

in the year ending 31 March 2016 the primary respondent's "full turnover" was £208,796, with the "Squibb Element" and "% thereto" figures amounting to £137,510 and 65.8% respectively. In the quarter ending 30 June 2016, the "full turnover" amounted to £17,000 with the "Squibb Element" and "% thereto" figures amounting to £8000 and 47% respectively. The certificate indicates that "There is no turnover recorded from 1st July to 31st August 2016." Mr Parrish states:

> "9. I therefore do not believe that the [primary respondent] has, subsequent to incorporation, had any benefit from the adoption of the company name in detriment to the applicant."

25. In relation to the contact between the parties, Mr Parrish reiterates comments contained in the Notice of Defence to the effect that it was the applicant's representatives who contacted Mr Holloway regarding the sale of the company name. He states:

> "10…but such communication was via telephone and quite reasonably Mr Holloway suggested that it would be necessary to arrange a meeting if such a proposal was to be pursued. No further communications with regard to this point were received."

The applicant's evidence-in-reply

26. This consists of a further statement from Mr Howell which consists primarily of submissions which we have read and will, where appropriate, refer to later in this decision.

Decision

27. If the primary respondent defends the application, as here, the applicant must establish that it has goodwill or reputation in relation to a name that is the same, or sufficiently similar, to that of the company name suggesting a connection between the company and the applicant. If this burden is fulfilled, it is then necessary to consider if the primary respondent can rely upon defences under section 69(4) of the Act. The relevant date is the date of application which, in this case, is 7 March 2016.

The applicant must show that it had a goodwill or reputation at this date associated with the name LAKEHOUSE.

The applicant's goodwill

28. Section 69(7) of the Act defines goodwill as a "reputation of any description". Consequently, in the terms of the Act it is not limited to Lord Macnaghten's classic definition in *IRC v Muller & Co's Margerine Ltd* [1901] AC 217:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

29. We begin by reminding ourselves that the respondents are professionally represented and at no point in these proceedings i.e. in their Notice of Defence, evidence or submissions filed in lieu of a hearing, do they challenge any aspect of the applicant's evidence relating to its claim to goodwill. In fact, in their submissions filed in lieu of a hearing, the respondents state:

> "5…Mr Parrish and Mr Holloway are builders and <u>not like the applicant a group with an annual revenue of £340.2 million pounds</u>. Mr Parrish and Mr Holloway do not employ parties to undertake public relations exercises or consider branding…The lack of physical evidence by way of letter and emails to support Mr Parrish's claims made in the witness statement as to the choice of name may be slightly incomprehensible <u>to a business entity of the Applicant's size</u>…" (our emphasis)

And:

> "7…appears simply to be as a result of the inability to appreciate the <u>difference in scale between the business run by the applicant</u> and that of Mr Parrish and Mr Holloway." (our emphasis)

And:

> "11. The applicant has been in business since the 1990s…"

30. The respondents' comments reproduced above appear to us to indicate that not only do they accept that the applicant has been trading, but that the extent of that trade has been significant. Given the evidence filed by the applicant, that was, in our view, a sensible position for the respondents to adopt. In short, we are satisfied that by the date of its application, the applicant had goodwill in a business operating in, broadly speaking, the construction industry and that the primary name associated with that goodwill is Lakehouse.

Similarity of names

31. The other initial burden facing the applicant is that the company name is sufficiently similar to LAKEHOUSE to suggest a connection between the company and the applicant.

32. The presence of the word "LIMITED" in the primary respondent's name is to be ignored from the comparison as a company designation is required for a company incorporated in the UK (other than in certain excepted circumstances). The comparison is, therefore, between LAKEHOUSE and LAKEHOUSE CONSTRUCTION. As the respondents' evidence explains, CONSTRUCTION is a descriptor indicating the area of trade in which the primary respondent intended to operate.

33. As the word LAKEHOUSE is the only distinctive component of the primary respondent's name, we are satisfied that the primary respondent's name is sufficiently similar to the name under which the applicant has operated and generated goodwill i.e. LAKEHOUSE that its use in the UK would be likely to mislead by suggesting a connection between the primary respondent and the applicant. As the ground specified in subsection 69(1)(b) is established, the onus switches to the primary respondent to establish whether it can rely on any of the defences pleaded in the counterstatement.

Defences

34. The statutory defences under section 69(4) are set out at the beginning of this decision. The primary respondent is relying upon the following statutory defences:

Section 69(4)(b)(i): that the company is operating under the name

35. The relevant date for the assessment is the date of the applicant's application i.e. 7 March 2016. The operating defence does not, in our view, represent a high hurdle. It simply requires that the respondent has, before the relevant date, engaged in some form of external commercial activity which shows that the company is operating under the name. In their evidence, the respondents claim that the primary respondent has been trading under its name since its incorporation on 30 August 2014. In support of this claim, it provides as exhibit DPJ3, the "Declaration of Turnover" mentioned above. This appears to indicate that in the period ending 31 March 2016, the primary respondent's "Full Turnover" was £208,796, with turnover for the quarter ending 30 June 2016 amounting to £17,000. If further indicates that no turnover was recorded from 1 July to 31 August 2016.

36. In its submissions, the applicant comments upon this evidence in the following terms:

> "21. However, there is no corroborative evidence of any actual trade under the company name…As the declaration is based on the accounts for the first respondent then of course it will feature the Company name. This document is not, therefore, sufficient to evidence actual operation under and by reference to the Company name, nor is it accompanied by any other documents evidencing the first respondent's trade with Squibb Group Limited (or any other party) under the company name.
>
> 22…it would have been incredibly easy for the respondents to provide evidence – any evidence at all – of the first respondent actually operating under the company name. Despite this being in the respondents' power, no such evidence has been provided.

> 25. Further, there is also no evidence of any plans or attempts at building business goodwill under the company name prior to any launch of trade. There is no evidence of any endeavours to explore opportunities for the business."

37. In its submissions, the applicant argues that the following quotation (taken from the decision of Mr Daniel Alexander Q.C. as the Appointed Person in trade mark proceedings between *Awareness Limited and Plymouth City Council,* case BL O/230/13), provides useful guidance on how we should approach the matter. In that decision, Mr Alexander Q.C. stated:

> "22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

38. As in the trade mark proceedings, the burden in these proceedings falls on the primary respondent to make good its claim to an operating defence. That being the case, the above quotation is, as the applicant suggests, helpful. Had evidence been provided to establish that the turnover figures mentioned above were achieved by a business conducted under the name of the primary respondent, we would have had no hesitation concluding they were sufficient to constitute an operating defence. Such evidence in the form of, for example, invoices to customers and from suppliers, ought, as the applicant points out, to have been very easy for the respondents to

provide. In the absence of such evidence and as the majority of the respondents' business has, as Mr Parrish points out "been with business contacts established by Mr Holloway and myself prior to the date of incorporation", we are simply not in a position to conclude on the basis of the evidence provided that the turnover mentioned was achieved under the primary respondent's name as opposed to, for example, the name of the partnership of which Messrs. Parrish and Holloway were previously members (if, in fact, it had a name) or under the individual names of the gentlemen themselves. **The defence based upon section 69(4)(b)(i) fails and is dismissed accordingly.**

Section 69(4)(c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business

39. In its submissions, the applicant states:

> "28…As the first respondent is not an "off the shelf company and the respondent's own evidence demonstrates that the respondents specifically requested the company name, it appears that the respondents' reference to this defence is misconceived…"

40. Section 69(4)(c) of the Act relates to companies that were registered in the ordinary course of a company formation business being available for sale to the applicant on the standard terms of that business. As the applicant points out, in their evidence the respondents specifically refer to the circumstances which led to the incorporation of the primary respondent. This is not, however, the same as the registration of the company as part of a company formation business. We consider that, as submitted by the applicant, the defence relates to off-the-shelf companies which have been registered by company formation agents. As this is not the case here, the defence is, as the applicant suggests, misconceived. **The defence based upon section 69(4)(c) fails and is dismissed accordingly.**

Section 69(4)(e): that the interests of the applicant are not adversely affected to any significant extent

41. Proceeding on the basis that the primary respondent cannot avail itself of an operating defence (a view with which we have concurred), in its submissions, the applicant correctly states that it is necessary for us "to consider the likely impact on the interests of the applicant should the respondents start to use the company name in business" (paragraph 39 refers). The applicant further states:

> "41. The identical areas of trade that the applicant and the respondents operate in, together with the fact that the company name is highly similar to the LAKEHOUSE name in relation to which the applicant has established goodwill, mean that the impact on the applicant's business would be both real and significant.
>
> 42. For example, the use of the company name by the respondents is likely to create confusion and potential customers would be likely to believe that Lakehouse Construction Limited is part of the applicant's company group. This is exacerbated by the number of companies with different names featuring LAKEHOUSE within that group. The use of the company name by the respondents would be extremely likely to divert potential customers from the applicant to the first respondent. Not only would this create an immediate loss of business for the applicant but the applicant deservedly prides itself on its reputation and clearly has no oversight or control of the services provided by the respondents - inferior services provided by the respondents would result in harm to the applicant's reputation and further damage its business…"

42. In their submissions, the respondents state:

> "10. The scale of the company's business is also indicative of the fact that the interests of the applicant cannot have been adversely affected to any significant extent by Mr Parrish and Mr Holloway's choice of company name. The applicant and the company do not operate in identical areas of trade and any suggestion that the continued use of the company name by the company would impact on the applicant's business would appear to be unrealistic.

> 11. The applicant has been in business since the 1990's but despite creating a number of other companies within the applicant's group all incorporating the "Lakehouse" name and despite claiming to have been in construction services since originally setting up, has never sought to create a company incorporating the words "Lakehouse" and "Construction." This is indicative of the fact that use of the company name will not adversely affect to a significant extent the applicant's interest as it obviously was not previously deemed to be a significant enough name to merit adding to the already significant group under the applicant's name."

43. The onus is on the primary respondent to show why its company name does not adversely affect the applicant's interests to any significant extent. The onus is not on the applicant. The respondents' first argument relating to the scale of their business does not assist them. Even if the scale of any business conducted had been modest, the use of a name that is sufficiently similar to that of the applicant in an identical area of trade (of which more below) may, as the applicant suggests, divert trade away from it. In addition, if the quality of any services provided by the respondents was poor, it may, as the applicant suggests, damage its reputation. Given the number of awards the evidence shows the applicant has won, this is not simply a hypothetical possibility. Both of the above may adversely affect the applicant's interests to a significant extent. Although the respondents state that the parties "do not operate in identical areas of trade", when one compares the field of business in which the applicant operates i.e. construction, with the classification of the nature of the primary respondent's business which appears on the Companies House database i.e. "41201 - Construction of commercial buildings", the competing parties' fields of business are, if not identical, highly similar.

44. The respondents' final argument is that because at the date the primary respondent was incorporated the applicant had not yet elected to register a company name incorporating the words "Lakehouse" and "Construction", the name was obviously not important to it. In their evidence, the applicant explains (and the respondents accept) that it has a number of companies registered which incorporate the word "Lakehouse" and it further explains why it wants to register the name i.e. to act as a holding company for the group's construction activities. As the registration of

the primary respondent is acting as a barrier to the applicant's future corporate restructure, we again find that its interests are adversely affected to a significant extent. **In view of the above, the defence based upon section 69(4)(e) of the Act fails and is dismissed accordingly.**

Section 69(4)(d) – that the name was adopted in good faith

45. The final defence relied upon by the respondents is based upon adoption in good faith. The relevant date for assessing good faith is the date of incorporation of the primary respondent, 30 August 2014. The burden of proving that the company name was registered in good faith falls upon the primary respondent. The onus is not on the applicant to prove bad faith. This means that it is the primary respondent's evidence which is crucial in establishing how the company name came to be registered. The circumstances leading to the choice of the primary respondent's name are described above. The explanation is contained in Mr Parrish's witness statement which he has signed and which is accompanied by a statement of truth. In his witness statement, Mr Parrish stated:

> "7. Neither myself nor Mr Holloway knew of the existence of the applicant prior to receipt of communications received from the applicant's solicitor's in anticipation of these proceedings and the company name was therefore adopted in good faith and without specific knowledge of the applicant's existence or business history."

46. Mr Howell's second witness statement contains, inter alia, the following comments in relation to the respondents' evidence:

> "10. Whilst I hesitate to cast doubt on evidence verified by a statement of truth, this assertion [i.e. that the respondents were unaware of the applicant's existence] seems to me to be unlikely.... I simply cannot believe that the respondents would not have heard of the applicant (particularly since as inferred from [Mr Parrish's witness statement, Mr Holloway] has been in the construction business for over "20 years") and even if they had not, as a matter of pure business sense I would expect the respondents to have carried

out basic internet searches to see whether any company already operates under the same name."

And:

"12…clearly undermine the defence that has been suggested by [Mr Parrish] which effectively argues that the reason that the two companies have virtually the same name, is one of chance and coincidence. I cannot believe that…the respondents had no knowledge of the applicant's existence."

And:

"13…Similarly the idea that in the course of research, the two personal respondents then "came across pictures of houses in Sweden" (which are completely unrelated to the concept of carp fishing) and decided to conjoin the two words "Lake" and "House" also seems to me to be rather convenient."

And finally:

"14.3…the only reasonable conclusion to be drawn is that the respondents deliberately picked the LAKEHOUSE name in order to benefit from the association with the applicant and the contested name was therefore chosen in bad faith."

47. In its submissions, the applicant states:

"31. As in relation to the question of operation under the company name, there is a complete lack of corroboratory evidence to support what Mr Parrish says in his witness statement. Business plans, preparation for setting up the business, and emails and evidence of discarded name choices might all evidence what Mr Parrish states was the inspiration for the company name choice, but there are none shown in evidence.

32. Mr Parrish states…that he and Mr Holloway are keen carp fishermen and that this is why they wanted a name containing the word “lake”, but no evidence is given that this is in fact a hobby or interest of these gentlemen.

33. Mr Parrish states that he wanted an image for paperwork and advertising for the company and, based on research, had in mind an image of a house by a lake. Again, however, there is no evidence of any such research and there are no sketches or preparatory drawings, print-outs or emails containing and sharing images, or mocked up stationery submitted in support of this contention.

34. Mr Parrish further states that he and Mr Holloway approached their accountant, Mr John Murphy, “who suggested to us that as we were builders the word “construction” was added to the company name.” Yet again, no evidence has been submitted of any email correspondence, letters or meetings with Mr Murphy regarding the name of the first respondent, nor has any evidence been provided from Mr Murphy to support this story.

36. Despite the fact that the onus is on the respondents to prove good faith, and it is not for the applicant to prove bad faith, it must be observed that the applicant and the first respondent operate in the same field of business and the same geographic location. The applicant has been trading for over 25 years under the LAKEHOUSE name, is a very successful business and is extremely prolific within the industry. It is to be expected that the controlling minds of the first respondent knew of the applicant at the relevant date. These circumstances, combined with the lack of any supporting evidence of good faith, in fact indicate that the company name was in fact chosen for reasons of bad faith.”

48. In their submissions, the respondents state:

“5. Mr Parrish in witness statement…has truthfully explained the background behind the choice of name but the applicant cites a lack of evidence for grounds of dismissal of the defence. Mr Parrish and Mr Holloway are

builders…No business plans were prepared between Mr Parrish and Mr Holloway in respect of the creation of the Company and its name and Mr Parrish and Mr Holloway simply did not enter into formal communications between themselves in this respect but rather undertook verbal exchanges on a daily basis in the work environment. The lack of physical evidence by way of letter and e-mails to support Mr Parrish's claim made in the witness statement as to the choice of name…is not at all surprising in view of Mr Parrish's and Mr Holloway's circumstances at the time of choosing the company name.

6. The background behind the choice of name is similarly impossible to prove conclusively but this fact does not necessarily mean that the contents of Mr Parrish's witness statement are not true. Mr Parrish and Mr Holloway did not see that the choice of a company name for a business entity created to govern their future working relationships meant a need for third party involvement let alone the cost of the same.

8. The applicant also appears to demonstrate an ability to grasp the fact that Mr Parrish and Mr Holloway could not have failed to been aware of the applicant's own existence. This is however a subjective test and Mr Parrish and Mr Holloway have confirmed that they simply were not aware of the applicant's existence…"

49. In *1) Adnan Shaaban Abou-Rahmah (2) Khalid Al-Fulaij & Sons General Trading & Contracting Co v (1) Al-Haji Abdul Kadir Abacha (2) Qumar Bello (3) Aboubakar Mohammed Maiga (4) City Express Bank of Lagos (5) Profile Chemical Limited* [2006] EWCA Civ 1492, Rix LJ commented upon the concept of good faith:

"48 The content of this requirement of good faith, or what Lord Goff in *Lipkin Gorman* had expressed by reference to it being "inequitable" for the defendant to be made to repay, was considered further in *Niru Battery*. There the defendant bank relied on change of position where its manager had authorised payment out in questionable circumstances, where he had good reason to believe that the inwards payment had been made under a mistake. The trial judge had (a) acquitted the manager of dishonesty in the *Twinsectra*

or *Barlow Clowes* sense on a claim of knowing assistance in breach of trust, but (b) concluded that the defence of change of position had failed. On appeal the defendant bank said that, in the absence of dishonesty, its change of position defence should have succeeded. After a consideration of numerous authorities, this court disagreed and adopted the trial judge's broader test, cited above. Clarke LJ quoted with approval (at paras 164/5) the following passages in Moore-Bick J's judgment:

> "I do not think that it is desirable to attempt to define the limits of good faith; it is a broad concept, the definition of which, in so far as it is capable of definition at all, will have to be worked out through the cases. In my view it is capable of embracing a failure to act in a commercially acceptable way and sharp practice of a kind that falls short of outright dishonesty as well as dishonesty itself."

50. In *(1) Barlow Clowes International Ltd. (in liquidation) (2) Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* [2005] UKPC 37, the Privy Council considered the ambiguity in the *Twinsectra Ltd v Yardley* [2002] 2 AC 164 judgment. The former case clarified that there was a combined test for considering the behaviour of a party: what the party knew at the time of a transaction and how that party's action would be viewed by applying normally acceptable standards of honest conduct.

51. As the applicant points out, the respondents have provided no physical evidence in support of the choice of company name. The explanation for this lack of evidence is contained in the respondents' submissions i.e. that Messrs. Parrish and Holloway "simply did not enter into formal communications between themselves in this respect, but rather undertook verbal exchanges on a daily basis in the work environment". Messrs. Parrish and Holloway are builders who had been in partnership for more than four years. Even considered in that context, it is, perhaps, surprising that there is a lack of <u>any</u> physical evidence regarding the selection of the primary respondent's name. Whilst we are prepared to accept (absent evidence in support), that Messrs. Parrish and Holloway are keen carp fishermen and that as the company was

intending to operate in the construction industry the suggestion by Mr Murphy that the word CONSTRUCTION should be added to the name was perfectly reasonable, we have, however, much more difficulty accepting the explanation provided for the choice of the LAKEHOUSE component of the primary respondent's name.

52. In this regard, we begin by reminding ourselves of the applicant's comments relating to, inter alia, its long trading history, size, status within the construction industry (evidenced by, inter alia, the numerous awards it has won), geographical proximity to the primary respondent, branded hoardings and vehicles and the identical/highly similar fields of trade in which the parties' appear to be interested. The explanation for the choice of the primary respondent's name was, of course, contained in a witness statement signed by Mr Parrish and was accompanied by a statement of truth. Irrespective of the co-respondents' interest in fishing and the significance of the word "LAKE" in this regard, the explanation provided for the coining of the name as a whole appears to us to be far-fetched. Added to that, the fact that Messrs. Parrish and Holloway had been in partnership in the construction industry for over four years and, it appears, Mr Holloway for a period of over twenty years, it seems to us highly unlikely (particularly given the size of the applicant, its long trading history and the geographical proximity of the parties) that the applicant's name would not have come to either of their attention. Taking this into account, together with the challenge that has been made by the applicant to the respondents' evidence (to which despite being professionally represented the respondents elected not to file any evidence in response), we are not satisfied that, on the balance of probabilities, the name of the primary respondent was adopted in good faith and **the defence based upon section 69(4)(d) fails accordingly**.

53. For the sake of completeness, we should make it clear that in reaching the above conclusions we have not been influenced by submissions contained in paragraphs 19 and 20 of Mr Howell's second witness statement, relating to various contacts which took place between the applicant's professional representatives and Mr Holloway prior to the filing of the application to this Tribunal.

Outcome

54. **As we have dismissed the defences, the application succeeds.**

55. Therefore, in accordance with section 73(1) of the Act, we make the following order:

(a) LAKEHOUSE CONSTRUCTION LIMITED shall change its name **within one month** of the date of this order to one that is not an offending name;

(b) LAKEHOUSE CONSTRUCTION LIMITED, Daniel John Parrish and Mark George Holloway each 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.

56. 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.

57. In any event, if no such change is made within one month of the date of this order, we 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.

58. All respondents, including Mr Parrish and Mr Holloway, have a legal duty under Section 73(1)(b)(ii) of the Act 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

59. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale of costs published in the Practice Direction, on the following basis:

Fee for application:	£400
Preparing a statement and considering the respondents' statement:	£400
Preparing evidence and considering and commenting on the respondents' evidence:	£800
Fees for filing evidence:	£300
Written submissions:	£300
Total:	**£2200**

60. We order LAKEHOUSE CONSTRUCTION LIMITED, Daniel John Parrish and Mark George Holloway being jointly and severally liable, to pay Lakehouse plc the sum of **£2200** within fourteen days of the expiry of the appeal period, or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful. Under section 74(1) of the Act, an appeal can only be made in relation to the decision to uphold the application; there is no right of appeal in relation to costs.

61. 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.

62. The company adjudicator must be advised if an appeal is lodged, so that implementation of the order is suspended.

Dated this 14th day of July 2017

Christopher Bowen	Judi Pike	Oliver Morris
Company Names Adjudicator	Company Names Adjudicator	Company Names Adjudicator

[i] An “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.