

O-491-17

ORDER under the Companies Act 2006

In the matter of application No. 1461

By Petroliam Nasional Berhad (Petronas)

for a change of company name of registration

No. 09570110

DECISION

The above company was originally registered on 30 April 2015 as MEGA BUSINESS ONLINE LTD. On 10 August 2015, the name was changed to PETRONAS SERVICES LTD.

By an application filed on 8 June 2017, Petroliam Nasional Berhad (Petronas), 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 26 June 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 26 June 2017, the tribunal wrote to Mr Krzysztof Rosiak to inform him that the applicant had requested that he be joined to the proceedings. No comments were received from Mr Rosiak in relation to this request.

On 3 August 2017, Mr Rosiak 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.

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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) PETRONAS SERVICES LTD shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) PETRONAS SERVICES LTD and Mr Krzysztof Rosiak 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

Box 7 of the Form CNA1 reads as follows:

“Did you contact the company/limited liability partnership in relation to this matter prior to filing the application? If so, when did you do so and what did you say to the company/limited liability partnership?”

In response to those questions, the applicant’s professional representatives explained they had “contacted the said Company and their director in relation to this matter in a cease and desist letter on or around 28 September 2016”. They went on to explain that the Company was allowed 21 days to voluntarily change its name and to advise them accordingly.

At box 17 of the Form CNA1, the applicant indicated it was claiming costs.

In an official letter dated 31 August 2017, the tribunal stated:

“..the case would normally be passed to the adjudicator to issue a decision.

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However before doing so, it is noted that the applicant is requesting an award of costs. Although the applicant has indicated that it wrote to the respondents in September 2016, as that letter was marked without prejudice it was returned to the applicant by the tribunal on 3 August 2017.”

The applicant was allowed a period of 14 days:

“to clarify in writing if its letter mentioned above contained an indication to the effect that the respondents’ non-compliance with its request to voluntarily change the company name may result in an application to this tribunal and a request for costs.”

Any response from the applicant was to be copied to the respondents who would then be allowed a further 14 days in which to comment. The applicant’s professional representative responded to that invitation in a letter (copied to the respondents) dated 8 September 2017. It stated:

“I advise that the Applicant via its Malaysian attorneys did specifically raise in paragraph 9 of the letter of 28 September 2016 the threat of the possibility of making an application to the Company Names Tribunal in the event that the Respondent did not change its name by the deadline set in the letter. The letter was also addressed to the respondent’s sole director. No reply was ever received to that letter. Accordingly, we request that the Adjudicator proceed to make a decision in favour of the applicant and that it make an award of costs to the maximum permissible under the scale in favour of the applicant.”

The primary and co-respondent elected not to comment on the above.

The applicant’s professional representative does not specifically indicate that when it made the threat of bringing proceedings before this tribunal it also indicated it would be requesting its costs in this regard. I am, however, satisfied that it is far more likely than not that such a letter before action issued by a professional representative would have included an indication to this effect. That being the case, I order PETRONAS SERVICES LTD and Mr Krzysztof Rosiak being jointly and severally liable, to pay to Petroliam Nasional Berhad (Petronas) 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.

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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 October 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.