

O-114-17

ORDER under the Companies Act 2006

In the matter of application

No. 1292 by Hidromek-Hidrolik ve Mekanik Makina Imalat Sanayi ve Ticaret A. Ş (t/a Hidromek)

For a change of company name of registration

No. 10014125

DECISION

The company name HIDROMEK UK LTD has been registered since 18 February 2016 under number 10014125.

By an application filed on 21 October 2016, Hidromek-Hidrolik ve Mekanik Makina Imalat Sanayi ve Ticaret A. Ş (t/a Hidromek) 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 the application was sent by recorded delivery to the primary respondent's registered office on 08 November 2016, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008. On the same date, the Tribunal wrote to Ms Gemma Mattison to inform her that the applicant had requested that she be joined to the proceedings. The letter to Ms Mattison was returned by Royal Mail marked "Return to Sender" and re-sent by ordinary post. No response was received from the primary respondent or Ms Mattison. On 15 December 2016, Ms Mattison was joined as a co-respondent. On the same date, 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 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) HIDROMEK UK LTD shall change its name **within one month** of the date of this order to one that is not an offending name¹;
- (b) HIDROMEK UK LTD and Gemma Mattison 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 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.

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.*

Hidromek-Hidrolik ve Mekanik Makina Imalat Sanayi ve Ticaret A. Ş (t/a Hidromek) has been successful as the application has not been defended and has made a request for costs. Accordingly, I have considered whether it is appropriate to make an award of costs in their favour. The following question is asked at box 7 of the statutory application form (CNA1):

“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?”

The following answer is given to this question:

“A letter was sent on behalf of the Applicant by its solicitors to Hidromek UK Limited (‘the respondent’) marked for the attention of Ms Gemma Mattison on 3 June 2016. The Applicant has received no response to date.

The letter explained the Applicant’s international reputation and goodwill within the construction machinery industry, having operated under the HIDROMEK name for more than 35 years. The Respondent was asked to change its name to one which did not include the name HIDROMEK or any similar designations thereof.”

This answer gives no indication that Hidromek-Hidrolik ve Mekanik Makina Imalat Sanayi ve Ticaret A. Ş (t/a Hidromek) informed the respondent of their intention to file the subject application with the Company Names Tribunal if the name was not voluntarily changed. That being so, Hidromek-Hidrolik ve Mekanik Makina Imalat Sanayi ve Ticaret A. Ş (t/a Hidromek) is not entitled to an 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 15TH day of March 2017

Beverley Hedley
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.