

ORDER under the Companies Act 2006

In the matter of application No 118

by Sun Microsystems, Inc.

for a change of the company name of registration

No 06932590

DECISION

The company name Jawa and Co. Ltd. has been registered since 12 June 2009 under number 06932590.

By an application filed on 29 October 2009, Sun Microsystems, Inc. applied for a change of name of this registration under the provisions of section 69(1)(b) of the Companies Act 2006 (the Act).

A copy of this application was sent with an accompanying letter to the primary respondent's registered office on 16 November 2009, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008. This was sent via Special Delivery and specified a date for reply, being 17 January 2010. The *Royal Mail* subsequently returned the letter marked "not called for". In accordance with established practice, the letter was resent using ordinary mail and it was returned again by the *Royal Mail*. The date for reply to the letter had not changed.

The primary respondent did not file a defence within the 2 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) Jawa and Co. Ltd. shall change its name **within one month** of the date of this order to one that is not an offending name¹;
- (b) Jawa and Co. Ltd. shall:

- (i) take such steps as are within its 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.

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.

Sun Microsystems, Inc. having been successful is entitled to a contribution towards its costs. I order Jawa and Co. Ltd. to pay Sun Microsystems, Inc. costs on the following basis:

Fee for application:	£400
Statement of case:	£300
Total:	£700

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 day of 09 February 2010

Mark Bryant
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.