

Decision under the Companies Act 2006

In the matter of application No 11

by Credo Group (UK) Limited

for a change of the company name of registration

No 06695627

1) The company name Credo Financial Solutions Limited (the respondent) has been registered since 11 September 2008 under number 06695627. By an application filed on 21 November 2008 Credo Group (UK) Limited (the applicant) applied for a change of name of this registration under the provisions of section 69(1)(b) of the Companies Act 2006 (the Act).

2) The applicant states that the word CREDO has been registered as a trade mark in the European Union since May 1990 in classes 35, 36 and 41 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended. It states that the trade mark registration was assigned to it on 12 December 2000. With its statement of case it attaches printouts for United Kingdom trade mark registration no 1323420 and Community trade mark registration no 1914654. Both of these registrations are recorded as being in the name of Credo Corporate Finance Limited. The applicant states that class 36 protects the trade mark in relation to financial advisory services, insurance, factory and loan services, electronic funds transfers, investment, financing and banking services. The applicant states that the CREDO name and brand have become relatively well-known in the United Kingdom as well as internationally, for example in South Africa.

3) The applicant states that it is not aware of the extent of the respondent's business. It states, however, that owing to the respondent's name and the "stated scope" of its business, that use of the company name in the United Kingdom would be likely to mislead by suggesting a connection between the respondent and the applicant and that existing and new clients would be confused. The applicant requests that the tribunal directs the respondent to change its name.

4) The applicant attached a letter with its application form. In this letter it states that it is a company incorporated in England and Wales and that it is the holding company of Credo Capital Plc which was incorporated on 26 February 1999 and is authorised and regulated by the FSA in the United Kingdom and is a member of the London Stock Exchange. The applicant states that it is a financial services company which provides personalised wealth management services by providing asset management and stock broking services to "high net worth individuals", I assume that this means rich people. The applicant states that it is the holding company of Credo Corporate Finance Limited which was incorporated in England and Wales on 1 April 1999. A wholly owned subsidiary of the applicant, Credo Financial

Solutions (UK) Limited, was incorporated in England and Wales on 7 January 2000. The applicant states that on 13 August 2008 Credo Financial Solutions (UK) Limited was dissolved. The applicant notes that the respondent was "incorporated only a matter of a few weeks later, with an almost identical name".

5) The applicant states that the goodwill that it has developed as a group and a brand is illustrated by examples of coverage that it has included in its application. These illustrations are all pages downloaded from the Internet on 14 November 2008. All of these pages emanate from the domain name credogroup.com, which is the website of the applicant. The pages downloaded bear press releases from 29 May 2007, 26 June 2007, a part of an article from *The Financial Times* of 17 July 2007, an article from *Money Observer* of September 2007, a page advising of the launch of a commercial property fund, a transcript of an interview from *Business Day*, which appears to be a South African operation, an article from *Finance Week* of October 2007, which appears to be a South African publication, a page from *thewealthnet* dated 11 December 2007, a page from *Business Day* dated 24 January 2008, an article from *WealthBriefing.com* which bears contradictory dates of 3 April 2008 and 11 February 2008, an article from *WealthBriefing.com* which bears contradictory dates of 8 April 2008 and 10 April 2008; three other pages from the website are included.

6) The respondent filed a notice of defence. It states that that it is not in competition with the applicant. The respondent states that its business is primarily aimed at the motor trade. It states that it sources, supplies and finances vehicles of all descriptions. The respondent states that it also offers asset finance for businesses and sole traders. It states that it is affiliated with Credo Asset Finance and Credo Vehicle Contracts and the websites credoassetfinance.com and credovehiclecontracts.com. The respondent states that it has no knowledge of the applicant. The respondent states that its directors have a mutual interest in all three companies. It states that it is currently setting up the business and the expense so far is in the region of £8,000, which includes a consumer credit licence issued in the name of Credo Financial Solutions. The respondent states that it does not offer or intend to offer any of the following:

- personal wealth management;
- asset management;
- stock broking services;
- financial advice (personal);
- pensions;
- factoring;
- electronic fund transfers;
- banking services.

The respondent states that it intends to be a small limited company with its sister companies. It states that it considers that the applicant has made an unjust claim against it.

7) The parties were each given until 20 April 2009 to file evidence in support of their cases. They were both advised that evidence had to be in the form of witness statement, statutory declaration or affidavit. The applicant was advised that if it did not file evidence the adjudicator might treat the application as being withdrawn.

8) Neither party filed evidence nor forwarded any further correspondence in relation to the case.

9) Section 69(1) of the Companies Act 2006 (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.”

The effect of the above is that where a defence to an application has been filed, the applicant must establish that the name upon which it relies has a goodwill associated with it. Under section 69(7) of the Act goodwill includes reputation of any description. Under section 69(4) of the Act the applicant must prove that it has the requisite goodwill.

10) The applicant was given until 20 April to furnish proof of its goodwill. This is an evidential issue and can only be established by the furnishing of evidence; evidence upon which it can be tested. Rule 9 of The Company Names Adjudicator Rules 2008 (the Rules) states:

“9.—(1) Subject to rule 6(3), evidence filed under these Rules may be given—
(a) by witness statement, affidavit or statutory declaration; or
(b) in any other form which would be admissible as evidence in proceedings before the court,
and a witness statement may only be given in evidence if it includes a statement of truth.
(2) For the purposes of these Rules, a statement of truth—
(a) means a statement that the person making the statement believes that the facts stated in a particular document are true; and
(b) shall be dated and signed by the maker of the statement.
(3) In these Rules, a witness statement is a written statement signed by a person that contains the evidence which that person would be allowed to give orally.”

So the evidence must be in one of the three forms prescribed above. The applicant has furnished no evidence to substantiate the statements that it had made in its application. Further, the copies of the extracts from the applicant’s website and from other media are not sufficient of themselves to establish the

extent of the applicant's goodwill at the date of the application. Rule 5(1) states:

"1) Where the applicant files no evidence in support of its application the adjudicator may treat it as having withdrawn its application."

11) The applicant was given the opportunity to file evidence. It was advised of the possible effects of not furnishing evidence to substantiate its statements. I can see no reason why I should not exercise my discretion to treat the application as being withdrawn. I am fortified in my decision by the defence of the respondent; which indicates that the name was adopted in good faith, which is a defence to an application under section 69(4)(d) of the Act. (Although, the respondent has filed no evidence to substantiate its claim.) It is to be noted that there is no indication that the applicant contacted the respondent before making the application. There is nothing in the statement of case of the applicant to suggest that the respondent registered the company name in order to obtain money. In its application the applicant refers to possible confusion. This suggests a misconception by the applicant as to the purpose of applications before the tribunal. Possible or actual confusion are not in themselves determinative of the outcome of proceedings taking into account the nature of the defences under section 69(4) of the Act.

12) The application is to be treated as being withdrawn.

13) The respondent is entitled to a contribution towards its costs. I order costs on the following basis:

Fee for notice of defence:	£150
Preparation of defence:	£50

Total:	£200
--------	------

I order Credo Group (UK) Limited to pay Credo Financial Solutions Limited the sum of £200. 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 must be given within one month of the date of its issue. Appeal is to the High Court in England, Wales and Northern Ireland and to the Court of Session in Scotland.

Dated this 22nd day of May 2009

David Landau
Company Names Adjudicator