

Companies Act 2006

**In the matter of application no 61
by Jewson Limited
for a change of the company name
of company registration no 06851155**

Background

1) The company name Jewson's Drives Limited (JDL) has been registered since 18 March 2009 under number 06851155.

2) By an application filed on 15 May 2009, Jewson Limited (JL) applied for a change of name of this registration under the provisions of section 69(1) of the Companies Act 2006 (the Act). JL states in its application that the name Jewson has been associated with it since 1836 and that it enjoys goodwill in relation to this name. It states that Jewson is the leading timber and builders' merchant in the United Kingdom.

3) JL states that JDL is offering flagging, paving, fencing and related services under the name Jewsons Drives Ltd. In an advertisement JDL uses the address of a branch of JL in Aberdeen. JL states that it has direct experience of customers who have been misled into believing that JDL has a connection with its business.

4) On 28 May 2009, the company names adjudicator wrote to Saint Gobain Limited, which is acting for JL in these proceedings, in the following terms:

"In your application you state:

"Enclosed is a copy of a press advert published by the registered company advertising the goods and services offered by the company of flagging, paving, fencing and related services."

You go on to comment on the confusion that has arisen owing to the use of the company name.

Under section 69(4)(b)(i) of the Companies Act 2006 (the Act), a company has a defence to an application under section 69 if it is operating under the name. Section 69(5) of the Act states:

"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."

There is nothing to suggest in your application that the main purpose of the respondent in registering the name was "to obtain money (or other consideration) from the applicant or prevent him from registering the name."

As you have stated that the respondent is using the company name, your application has no reasonable prospect of success and is misconceived, unless you can show that section 69(5) of the Act applies. Consequently, under rule 5(2) of the Company Names Adjudicator Rules 2008 I am minded to strike out the application.

If you consider that my preliminary view is erroneous you can request a hearing in relation to this matter. If you want a hearing in relation to this matter you will need to submit from CNA4, with the fee of £100, within two weeks of the date of this letter; that is on or by 11 June 2009.”

5) No response to this letter has been received.

Decision

6) Section 69 of the Companies 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 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)

(3)

(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 those 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)

7) JL has shown that at the time of application that JDL was using its company name, this is a defence to the application under section 69(4)(b)(i) of the Act. Under the provisions of section 69(5) of the Act, however, this defence will be insufficient to defeat the application if the applicant shows that the main purpose of the respondent in registering the name was to obtain money (or other consideration) from the applicant or to prevent him from registering the name.

8) JL has provided no indication either in its application or in any response to the adjudicator's letter of 28 May 2009 that it has grounds under section 69(5) of the Act to counter the defence under section 69(4)(b)(i) of the Act. It has made no request to be heard in relation to the preliminary view to strike out the application.

9) Rule 5(2) of the Company Names Adjudicator Rules provides:

"The adjudicator may strike out the application or any defence in whole or in part if it is vexatious, has no reasonable prospect of success or is otherwise misconceived."

10) The presence of the word 'may' indicates that the adjudicator has a discretion in this matter. JL has provided no indication that section 69(5) of the Act may come into play in these proceedings. It has given no indication that it disagrees with the adjudicator's preliminary view of 28 May 2009; that is, that the application has no reasonable prospect of success and is misconceived. In this case I can see no reason to allow the application to continue and, therefore, decline to do so.

11) I hereby strike out the application made on 15 May 2009 by JL for a change of the company name of company registration no 06851155 because the application has no reasonable prospect of success and is misconceived.

12) Any notice of appeal against this decision must be given within one month of the date of this decision. Appeal is to the High Court in England, Wales and Northern Ireland and to the Court of Session in Scotland.

Dated this 7th day of July 2009

**David Landau
Company Names Adjudicator**