

**Companies Act 2006**

**In the matter of application No 131  
by T.E. Penny & Co. Ltd  
for a change of the company name  
of company registration no 06837473**

**Background**

1. The company name ENVELOPE SYSTEMS LIMITED (hereafter ESL) has been registered since 5 March 2009 under number 06837473.
2. By an application filed on 26 November 2009, T.E. Penny & Co. Ltd (hereafter TEP) applied for a change of name of this registration under the provisions of section 69(1) of the Companies Act 2006 (the Act). TEP states in its application that the name associated with it is Envelope Systems which it has been trading under since August 1977, supplying collection envelopes to churches and charities throughout the UK. It states that ESL's representatives, Adams & Moore (accountants) had informed TEP that ESL had started trading in the construction industry and was on target for a turnover of £1.2 million by March 2010. TEP claimed that there was no evidence of trading. It stated that the registered company name had caused confusion in the market place, leading people to believe that TEP had only just started in business.
3. The application (Form CNA1) was served on ESL, the respondent, on 21 December 2009. ESL filed a Form CNA2 and counterstatement on 21 January 2010 denying the grounds and, in particular, denying that its company registration was opportunistic. It stated the following:

I. The term 'envelope systems' is actually an internationally recognised technical term that refers to the construction of brick veneer, double-skinned brick construction, insulated concrete form and timber in the building of a property. It is commonly used by architects and other professions in the construction industry.

II. The Respondent contacted a reputable firm of Accountants affiliated to the Associated of Chartered Accountants to assist them to incorporate their company with the objective of running a business in the construction industry and not any industry in which the Applicant is engaged in.

III. The firm of Accountants performed the relevant searches on Companies House website and were unable to find any company that held a name that resembled Envelope Systems Ltd. Therefore they proceeded to register the name, currently in dispute, on their client's behalf. This clearly satisfies Section 66(1) of the Company Act 2006, which states that the chosen name should not appear on the registrar's index of company names. Furthermore, to the Respondent's knowledge, T.E. Penny & Co. Ltd has not

submitted an application at that time to trademark the name or incorporate any of their other companies with the name now belonging to the Respondent.

IV. The Respondent commenced trading within days of being incorporated in an industry totally different to that of the Applicant, thereby removing any doubt that it was set up opportunistically.

V. The directors of Envelope Systems Ltd wanted to create a company that reflected a sub-set of the work they intended to undertake, i.e. construction of envelope systems and general construction work. Therefore, they saw no reason not to register with that name.

VI. The Respondent was not aware of the existence T.E.Penny & Co. or what any of its subsidiaries were engaged in.

VII. The Respondent is not engaged in any business that is the same or even remotely similar to that of the Applicant.”

4. The Company Names Adjudicator directed that ESL should file evidence to first, which it did on 16 April 2010. TEP filed its evidence on 21 June 2010.

## **Evidence**

5. ESL's evidence is comprised of a witness statement by Natalie Bunce (of Adams & Moore) and exhibits. Ms Bunce reiterates some of the contents of the counterstatement (which I have set out above). She states that the company name was selected as it is an internationally recognised technical term commonly used by architects and other construction professionals. Exhibit R is a Google® search (limited to the UK) for 'envelope systems' showing some references to building (the prints are dated 14 April 2010). Ms Bunce states that ESL commenced trading a few days after its incorporation (5 March 2009). Exhibits B to G comprise copies of Barclays bank statements with a covering letter from the bank dated 18 June 2009. Activity commenced in the account on 7 April 2009. The letter is addressed to Envelope Systems Ltd; this name also appears on the bank statements. The entries include wages to various individuals, receipts from Pioneer Cladding and payments to Screwfix, B&Q and Toucan Tools. Exhibit P is a copy of a letter from HM Revenue & Customs (HMRC) regarding tax returns made by Envelope Systems Limited dated 3 June 2009. The letter requires VAT returns to be submitted at three monthly intervals; Ms Bunce explains that this is because ESL's turnover exceeds the minimum threshold. There are lists of subcontractors (the names which appear on the bank statements as wage recipients) which Ms Bunce states were supplied to HMRC. Ms Bunce states:

“The Respondents successful trading history is primarily built upon their capacity to construct 'envelope systems', namely the construction of brick veneer, double skinned brick construction, insulated concrete form and timber for properties being constructed.”

6. TEP's evidence is from Penny Miles in the form of a witness statement and exhibits. She states that ESL only serves one customer (Pioneer Cladding Solutions

Ltd) which is not meaningful trading. Ms Miles states that a business contact looking for TEP's details on the Companies House website had found ESL's instead and had nearly passed on ESL's details to a third party instead of TEP's details. Ms Miles also states that confusion can be shown by the many cheques and letters TEP receives each year addressed to Envelope Systems Ltd; she refers to "confusion as to whether we are Ltd or not." Ms Miles says:

"37. The point here is that there was no scope for confusion before the 2009 registration. There wasn't another Envelope Systems. The fact that there is now a new company trading under exactly the same name as ours and shown as active on the register can only ever lead to confusion.

38. Neither does our not having registered a limited company called Envelope Systems Ltd entitle the respondent to capitalise on any opportunity it sees from registering the company itself."

7. Ms Miles disputes ESL's claim that envelope systems is a specific type of construction technique; she submits a definition of 'envelope system' from Mr Peter Crabtree, head of the built environment at Anglia Ruskin University. Mr Crabtree states that a building envelope refers to the outside of a building; it is a system of walls enclosing a cavity.

8. Ms Miles says that ESL's evidence suggests that ESL is a payroll bureau "specialising in CIS returns...Such companies offer an outsourced payroll services to building companies. In simple terms, the practice enables sub-contractors to be treated as self employed, saving employer's national insurance."

9. The adjudicator wrote to the parties on 5 July 2010, in the following terms:

"I have conducted a review of the papers filed thus far.

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 or your evidence to show 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.'

You refer in your grounds to confusion in your market, which appears from your evidence to have been one instance of a person looking for your details on the Companies Register and finding the respondent's details. Applications to the Company Names Adjudicator are not for the purpose of removing

confusion. Company names adjudicators cannot deal with cases where someone feels that another company name registration is too similar to, or 'too like', their own company name, but where there is no suspected opportunism behind the registration. In particular, the fact that a company name is already in use may mean that the company name holder already has a defence against a potential application. Unless an applicant can show that despite the fact that the company has already been operating under the name that the main purpose of its registration was to obtain money (or some other consideration) from the applicant or to prevent the applicant from registering the name, the application is likely to fail. An application which is made because the applicant is aggrieved that someone has a company name which is too similar is unlikely to succeed, even if the name is not yet in use, unless it can be shown that the purpose of registering the company name was to extract money from the applicant or to prevent the applicant from registering the name. An application to the Company Names Tribunal will fail if the registration holder shows that it registered the name with another purpose in mind.

I note that the respondent has shown trading activity in its evidence and that it operates in a sector that is entirely different to your business field. As it appears 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 form CNA4, with the fee of £100, within two weeks of the date of this letter; that is on or by 19 July 2010."

10. TEP replied on 19 July 2010 stating that it did not wish to be heard and had no further evidence to submit.

## **Decision**

11. 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) ....."

12. ESL's evidence shows that at the date of application it 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 to prevent him from registering the name. There is nothing to suggest in the application or TEP's evidence to show 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. TEP has provided no indication that it has grounds under section 69(5) of the Act to counter the defence

under section 69(4)(i)(b) of the Act. It has made no request to be heard in relation to the preliminary view to strike out the application.

13. 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.”

The presence of the word ‘may’ indicates that the adjudicator has a discretion in this matter. TEP has not contested the preliminary view that the application has no reasonable prospect of success. I can see no reason to allow the application to continue and, therefore, decline to do so.

**14. I hereby strike out the application made on 26 November 2009 by T.E. Penny & Co. Ltd for a change of company name registration number 06837473 because the application has no reasonable prospect of success.**

### **Costs**

15. ESL is entitled to a contribution to its costs on the following basis, following the scale of costs published in Company Names Tribunal Practice Notice 01/08:

Fee for CNA2	£150
Preparing a counterstatement	£250
Preparing evidence	£200 <sup>1</sup>

**Total: £600**

16. I order T.E.Penny & Co. Ltd to pay to Envelope Systems Ltd the sum of £600. 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.

17. Any notice of appeal against this decision to order a change of name must be given within one month of the date of this decision. Appeal is to the High Court in England, Wales and Northern Ireland.

**Dated this 20<sup>th</sup> day of August 2010**

**Judi Pike**  
**Company Names Adjudicator**

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<sup>1</sup> Although the scale gives £500 as a minimum, this figure is for preparing evidence and considering and commenting on the other side’s evidence, which ESL was not required to do in the light of the uncontested preliminary view to strike out the application. I have therefore reduced the figure.