

**Decision under the Companies Act 2006**

**In the matter of application no 58**

**by HBL Media Limited**

**for a change of the company name of registration**

**no 06757087**

**DECISION ON COSTS**

1) On 7 May 2009 HBL Media Limited, hereinafter HBL, made an application, under the provisions of section 69(1)(b) of the Companies Act 2006 (the Act), for a change of name of the company registered under 06757087; at the time of the application the company name was Webs Edge Limited. A copy of this application was sent to the primary respondent's registered office on 27 May 2009, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008 (the Rules).

2) On 6 August 2009 HBL advised that the company name had been changed. (The records of Companies House show that the company name was changed to Top Media Training Limited on 29 July 2009.) HBL noted that the proceedings were, consequently, without object and should be closed. HBL requested an order of costs against the respondent. Consequent upon this an adjudicator sent a letter to the respondent asking for comments about the request for costs.

3) Following this request for costs an adjudicator advised me, prior to his writing a decision on the costs issue, that "without prejudice" material had been filed. I advised the adjudicator that he should identify this material and separate it from the main body of the file. I would then write the decision, not having been "tainted" by sight of the "without prejudice" material. Consequently, I write this decision without sight of the "without prejudice" material.

4) Rule 11 states:

"11. The adjudicator may, at any stage in any proceedings before him under the Act, award to any party by order such costs (in Scotland, expenses) as he considers reasonable, and direct how and by what parties they are to be paid."

5) On 15 September 2009 the Tribunal received a letter from Mr Levinson, on behalf of the respondent. The letter attached correspondence. In the letter Mr Levinson asks the adjudicator to reject the request for costs. Mr Levinson says that he was a founder and largest shareholder of HBL. He states that the ownership of the name Webs Edge became part of a dispute between him and the directors of HBL after his position as an executive director was terminated. He states that negotiations in relation to the dispute are

continuing but that he has made it clear on numerous occasions from February 2009 onwards that in order to resolve outstanding matters that he was prepared to give up the name or change it. Mr Levinson states in the letter that Webs Edge Ltd was set up to protect the name Webs Edge, which was being used as a trading name but he became concerned when he realised that it had not been registered by HBL. A letter from Field Fisher Waterhouse, the representatives of HBL, dated 19 January 2009 is amongst the correspondence attached; in this letter the following appears:

“It has been brought to our attention that your client recently incorporated a company (number 6757087) with the name Webs Edge Limited. Your client is well aware that our client has been trading under the WEBS EDGE trade mark for eighteen months and has acquired a substantial reputation in the use of the name.....

.....3. In addition your client’s incorporation of a company called Webs Edge Limited was in breach of Section 69 of the Companies Act 2006. As a result our client is entitled to bring an action before the Company Names Adjudicator at the UK Intellectual Property Office requesting an order that the name of the company be changed.

4. Our client requires your client to confirm, within 14 days of the date of this letter, namely by 2 February 2009, that he will provide undertakings in which he agrees not to make any or any further use of the WEBS EDGE name and that he will immediately change the name of company number 6757087.

5. If your client agrees to this, our client will make no claim against him for costs and damages (providing that undertakings are agreed and complied with without delay) in respect of his incorporation of this company.

6. If he does not provide the required undertakings, our client reserves the right to take action against your client without further notice. Such action is likely to include two separate actions:

(a).....

(b) an application to the Company Names Adjudicator at the UK Intellectual Property Office as referred to above.”

In an e-mail dated 2 February 2009 from Silverman Sherliker LLP, who were acting for Mr Levinson in his dispute with HBL, the following appears:

“In the meantime, I can inform you that I am instructed my client’s company Webs Edge Ltd has not traded or made any other use of the name to which you are objecting. Having regard to the terms of your letter of 19 January, it is not intended to do so pending resolution of this matter between us.

Please provide evidence of your client's use of the name Webs Edge. Have they registered a trademark or any other interest? If it is alleged your clients have suffered damage by reason of my client's registration or the company called Webs Edge Ltd, please provide full details. What passing off is alleged to have taken place? We are continuing to investigate the matter and to obtain full instructions. From information so far available to me, I believe this aspect of matters between our respective clients should be resolved without resort to litigation."

In a letter from Field Fisher Waterhouse, dated 3 March 2009, the following appears:

"We consider that it would be in the best interests of all parties if all outstanding issues could be resolved in one go: that is the employment issue, your client's directorship, his shareholding and the Websedge issue.....

If we are not able to resolve things as one package:

..... (b) we would be instructed to take proceedings in relation to the Websedge matter if that was not satisfactorily resolved...

In a letter dated 3 April 2009 from Silverman Sherliker LLP the following appears:

"As to Webs Edge, you have my e-mail of 2 February and also have had it confirmed that my client is prepared to concede this. I understand that both this and his resignation from the board will be resolved in your client's favour, as soon as my client receives his money. You are pushing against an open door."

6) On 26 October 2009 HBL filed a response to the letter from Mr Levinson. HBL rejects the claim that Webs Edge Limited was incorporated with a view to protecting the name Webs Edge. HBL believes that Mr Levinson incorporated the company Webs Edge Limited with a view to either appropriating HBL's goodwill and/or using the company Webs Edge Limited as a means of gaining leverage when negotiating his exit from the company as a director. HBL states that Mr Levinson offered to transfer the company name to HBL for the sum of £15,000. In relation to this a redacted e-mail dated 23 January 2009 from Irwin Mitchell, sent on behalf of Mr Levinson, is attached. The e-mail is marked "Without Prejudice, Save As To Costs" and so can be considered in relation to the costs issue. Only point 4 of the e-mail can be seen, this reads:

"4. In respect of the company name Webs Edge Limited, our client will address your open letter in due course, but would add that he is willing to transfer this name to your client in return for £15,000".

7) The change of the name of Webs Edge Limited effected what HBL set out to do in making an application to the Tribunal. Webs Edge Limited filed no

defence to the application. HBL's action must be considered to have been successful.

8) In Practice Notice 01/08 the Tribunal set out its policy in relation to the award of costs. Pertinent to this case is the following:

"If a party makes an application without reasonable notice to the registered holder of the company name and the latter does not defend the application, the applicant normally will not receive an award of costs. If a respondent decides not to defend the application and considers that it did not receive adequate notification from the applicant before the filing of the application, the respondent should inform the tribunal on or before the due date for the filing of the defence. Once an order for a change of name is issued by the tribunal, the adjudicator cannot revisit any costs issues."

Webs Edge Limited was clearly put on notice of HBL's intention to file an application with the Tribunal if the name of the company was not changed; the letter of 19 January 2009 is explicit in expressing this intention. This was reiterated in the letter of 3 March 2009. As HBL did not make the application until 7 May 2009 Webs Edge Limited was allowed a great deal of time to change its name prior to the application being made. It cannot claim that the application came as a surprise or that it was not on notice.

9) As no evidence has been filed in this case I cannot make a comment on the merits or otherwise of the cases of the parties. However, I can decide that owing to the change of name HBL was successful. HBL also gave very reasonable notice about its intentions to file an application to the Tribunal. Consequently, HBL is entitled to a contribution towards its costs. I order Top Media Training Limited to pay HBL Media Limited costs on the following basis:

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

As per section 74 of the Act there is no right of appeal against this decision.

Dated  
day of November 2009

this

12<sup>th</sup>

David Landau  
Company Names Adjudicator