



## ***Challenging a Company Name***



## Preliminary

On incorporation of a company, the proposed company name is checked against the Index of Company Names maintained at Companies House. To save the public from confusion it is a long-standing principle that no two companies can have the same name.

The Companies Act 2006 introduced a new provision designed to protect a company where another company is registered with the same, or a very similar name. The protection afforded by the earlier 1985 Act has also been continued in the 2006 Act. As a result, there are now two routes available if you wish to challenge another company name.

## A “too like” objection

Where another company has registered a name that is the same as, or very similar to, that of your own company, it may be possible to raise a “too like” objection at Companies House. Section 67 of the Companies Act 2006 gives the Secretary of State the power to direct a company to change its name, within a specified period of time, if it has been registered with a name that is the same as or, in the opinion of the Secretary of State, is too like:

- a name already appearing (at the time of the registration) in the Registrar's Index of Company Names, or
- a name that should have appeared in the Index at that time.

The aim of this power is to prevent the public from becoming confused by the appearance of two identical, or very similar, names on the Index of Company Names. The rules apply to any name which appears on the Index which includes companies, LLPs and other bodies such as Limited Partnerships.

## Will my objection be successful?

This type of objection is considered solely on the basis of the company names themselves. Factors such as disputes between directors, trademark infringements and/or trading/business names will not be taken into account in deciding whether to issue a direction.

Companies House guidance explains that, in practice, a company name will be considered to be “too like” another company name where:

- the names differ by only one or two characters, (and the longer the company name, the more likely a single character difference will make); and/or
- the names differ because of punctuation, or the spacing or order of letters and words; and/or
- the names look and sound the same.

Names that differ by the inclusion of additional words (as opposed to a few characters) will not be treated as “too like” regardless of whether the additional word does or does not describe an activity in detail.

## How do I raise a “too like” objection?

A “too like” objection should be delivered to the Secretary of State at Companies House within 12 months of the date of registration of the name. There is no set form for such an objection.

## The Company Names Tribunal

Additionally, or alternatively, section 69 of the Companies Act 2006 allows a company name to be challenged on the basis that:

- the name is the same as a name associated with the objector and the objector has goodwill in that name;

and/or

- the name is sufficiently similar to such a name that it would be likely to mislead.

An application under this provision is submitted to The Company Names Tribunal on a CNA 1 Form. Unlike a “too like” objection, a complaint of this sort will include an element of opportunism. If the only reason for the challenge is that the names are too similar, The Company Names Tribunal will simply refer the complaint to Companies House.

## Possible defences and the chances of success

To make a successful defence to the challenge, the respondent would have to establish one of the following:

- 1) the name was registered before the activities that the objector relies on to show goodwill had begun; or
- 2) the respondent company is operating under the name or is proposing to do so and has incurred substantial start up costs, or was operating under the name and is now dormant; or
- 3) the name was registered in the normal course of a company formation business and the company is available for sale to the objector on the standard terms of that business; or
- 4) the name was adopted in good faith; or
- 5) the interests of the objector are not negatively affected to a significant extent.

If the respondent could not establish any of the above, the objection would be successful and an order to change the respondent company's name would be made.

If the circumstances listed in 1, 2, or 3 above were established by the respondent, a challenge under this provision would still be very likely to succeed if it could be



established that the main purpose for registering the name was to obtain money (or some other form of consideration) from the objector or to prevent the objector from registering his name.

## Should I raise this challenge?

The costs and time implications of pursuing a change of name order through The Company Names Tribunal should be carefully weighed against the risk of the potential issues that could be caused by the respondent using the similar name. The initial £400 fee to file the CNA 1 Form would be followed by further fees to file evidence for example and so costs could quickly rise.

For further information, the Company Names Adjudicator Rules 2008 provides the basic procedural machinery for objections under section 69.

## Coke Cola / Coca-Cola

Having only come into force on 1 October 2008, the first decision under this right of complaint occurred in December 2008 when The Company Names Tribunal made an order against Coke Cola Limited in response to an application made by The Coca-Cola Company Limited. The adjudicator required the respondent to change its name within one month as the use of the name, within the UK, would have likely misled by suggesting a connection between the companies.

## Other options

A company may be liable for the tort of 'passing off' where:

- a third party can prove it has goodwill in the company name;
- the other company is misrepresenting itself as that third party; and
- damage is caused as a result.

Alternatively, a company may commit trade mark infringement where it uses a name which is the same, similar, or in some cases dissimilar, to a registered trade or service mark. Further information can be obtained from the UK Intellectual Property Office website: <http://www.ipo.gov.uk>.



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