

Company Names Adjudicator Rules 2008

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CATEGORY:

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What are these?

These rules provide the basis for proceedings at the Company Names Tribunal that consider objections to a company's registered name/the registration of a company. They provide for protection against opportunistic company name registrations which can be similar to opportunistic cyber-squatting. Its procedure is similar to the existing cyber-squatting procedures.

What does this mean for my business?

These rules apply if someone has registered a company name at Companies House in order to obtain money from you or prevent you from registering a company or trading name. In these cases you may be able to make an application to the Tribunal to have the name changed or struck-off the register. In order to succeed you must be able to show that the registration was made opportunistically.

When is a name 'opportunistically' registered?

An example of opportunistic company name registration is when someone registers one or more variations of a name of your company in order to get you to buy the registrations, or to take advantage of your company's standing. Another example may be where someone knows a merger or take-over is about to take place and therefore registers one or more variations of the name that the newly formed commercial entity is likely to require.

How do I lodge a complaint?

A complaint is made through an application to the Tribunal under sections 69 (1)(a) and (b) of the Companies Act 2006 (CA 2006). The applicant must show the offending name is identical to its own business or company name or is so similar that people are likely to be misled. The other side must show one of a number of defences to defeat the claim. The claim must fall within section 69 of the CA 2006 which provides for a very limited set of circumstances.

Can I apply to the Tribunal about a company name which is too close to my own even if it is not opportunistic?

There must have been an opportunistic registration. The Tribunal *cannot* deal with complaints where you feel that another company name is too similar to your own company name but there is no suspected opportunism behind the registration. In this situation, Companies House deals with the complaint under current rules.

What about Trade Marks and Passing Off?

Alternatively you may be able to use trade mark or passing off remedies to defend your company or trading name. We strongly recommend that you always register your main company or trading name as a trade mark. This will give you the strongest protection for your business name against opportunistic registrations, cyber squatting and general trading.

What happens if someone lodges a complaint against the name of my registered company?

The CA 2006 lists several defences to applications to the Tribunal, which include:-

- The name was registered before the start of activities on which the applicant relies to show it has goodwill or reputation; or
- The company is operating under the name or is planning to do so and has incurred substantial start-up costs, or was operating under the name but is now dormant; or
- The name was registered in the ordinary course of company formation business and the company name is available for sale to the applicant on the standard terms of that business; or
- The name was adopted in good faith; or
- The interests of the applicant are not adversely affected to a significant extent.
- An application to the Tribunal will fail if the registration holder shows that it registered the name with another purpose in mind.

What power does the Tribunal have?

If the application is successful, the adjudicator will order that the company name registrations change to a name which does not cause offence. If the registration holder refuses to do this, the company name adjudicator has the power to order the Registrar of Companies to change the name to a name of the adjudicator's choosing. The Tribunal also has the power to order the losing party to pay some or all of the costs of the other party.

You can only appeal a decision of the Tribunal to the courts.