

## Shakespeare Putsman Corporate Team Update

### Company Names Tribunal opened this week

The creation of a new tribunal will give companies an extra tool to protect their business' reputation. The Company Names Tribunal came into existence on 1 October 2008 and has the power to deal with opportunistic company name registrations.

Until now a brand owner had no way of complaining about someone else with the same or similar registered company name trading off the back of their reputation. Instead they would have had to take legal action on the basis of "passing off" (where, for instance, it could reasonably be thought by a customer that the products/services offered by the 'pretender' brand were actually those of the 'genuine' brand) and/or trade mark infringement.

An example of an opportunistic company name could be where a company, actually unconnected to Coca-Cola, registers a misleading name such as Coca Cola Developments Limited with the aim of trading off the reputation of the Coca-Cola brand and/or hoping to force Coca-Cola to pay it to hand over its name because it is too similar to the Coca-Cola brand.

This is a very similar situation to opportunistic domain name registrations - or "cyber-squatting" - where established brands have been held to ransom over similar domain names registered by other businesses or individuals.

Applicants to the tribunal, which is based at the UK Intellectual Property Office in Newport, will need to prove that the company name about which they are complaining is the same or sufficiently similar to a name associated with the applicant in which he has goodwill. The applicant also needs to demonstrate that there was goodwill or an established reputation in the name at the time that it was adopted by the registration holder as the company name.

It is unclear at the moment how the tribunal will interpret the rules as to how much goodwill will need to be shown or how 'reputation of any description' can be successfully demonstrated.

Companies House will retain its existing remit of dealing with disputes where a registered company feels that another company name registration is 'too like' its own name and where there is no suspected opportunism behind the registration. The existence of goodwill is irrelevant in this scenario.

If the application is successful, the adjudicator will order the registration holder to change the company name to something which does not offend. If the registration holder fails to change the name by the date specified, the adjudicator may determine a new name for the company and order the change without the holder's consent. If the applicant disagrees with the decision made by the adjudicator, it can appeal to the High Court.

At this stage it is too early to tell whether or not the tribunal, with its restricted remedial scope, will provide an effective form of redress for brand owners who suffer at the hands of opportunists. Importantly, the tribunal has no power to award damages and so it may well be preferable for the brand owner to pursue other avenues such as trade mark infringement and/or an action in passing off if the company name is used as a trading name. However, what the tribunal will hopefully do is to offer an alternative forum for a brand owner to enforce its rights where someone else is trying to take advantage of its hard earned reputation.

#### How to find out more

For more information on the team's services please contact Nicholas Briggs on 0121 237 3057 or [email](#).

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