

Make Sure You Don't Pick A Ropey Company Name

The decision of the Company Names Tribunal in MB Inspection Ltd v Hi-Rope Ltd shows care should be taken to avoid choosing a company name which could affect the goodwill of an existing business.

MB Inspection Ltd ("MBI") applied to the Tribunal for an order under section 73 of the Companies Act (the "Act") requiring Hi-Rope Ltd to change its name and for payment of its reasonable costs in connection with the application.

MBI's application was decided on the basis of written evidence rather than a hearing and was successful on both counts.

The written evidence from MBI (formerly part of the Motherwell Bridge group of companies) included that:

- MBI had run a successful rope access business under the name "Hi-Rope" for a number of years;
- The trade mark "Hi-Rope" is registered in MBI's name; and
- MBI previously had a sister company called Hi-Rope Ltd

Two months after MBI's sister company Hi-Rope Ltd was dissolved in May 2008, a new company of the same name was incorporated by a third party.

MBI viewed this as an opportunistic registration of the name, which was intended to take advantage of its goodwill in the Hi-Rope name.

MBI argued that, even if it could be shown that the incorporation was not opportunistic, the use of the name however could cause it damage, including the possibility of harming MBI's "impeccable safety record and quality standards" in particular.

Hi-Rope Ltd disputed that the registration had been opportunistic, contending that:

- The company had been incorporated to provide walking holidays and would not trade in competition with MBI nor seek to take advantage of MBI's goodwill;
- The name of the company had been chosen in good faith (itself a defence under section 69(4)(d) of the Act) and that therefore it was merely coincidental (but did not lead evidence to support this);
- A tourism business of this particular kind would not infringe MBI's trade mark; and
- The defence under section 69(4)(e) of the Act, namely that "the interests of the applicant are not adversely affected to any significant extent", should also be available to it, as the business areas were different and particular as MBI had since re-branded its rope access business.

The Tribunal determined that MBI had established that it had goodwill in the Hi-Rope name as at the date of the application, and that the name was the same as the company name Hi-Rope Ltd for the purposes of the application.

The Tribunal rejected the two defences put forward by Hi-Rope Ltd, on the basis that it had not provided any evidence that the name had indeed been chosen in faith, and that it had also failed to establish that MBI's interests would not be adversely affected to any significant extent by the use of the name.

In particular, the Tribunal reasoned that any health and safety failure on the part of Hi-Rope Ltd could "readily damage the reputation" of MBI because of the importance of MBI's safety record to its business, and that therefore customers and potential customers would be likely to make the link to MBI even though it no longer used the name. As well as an order requiring Hi-Rope Ltd to change its name within one month, the Tribunal awarded MBI costs of £1,350. The full decision can be found here: <http://www.ipo.gov.uk/WQOZQ/o10610.pdf>

Neil Kennedy is a Partner in the Corporate Group at MacRoberts LLP. For further information, please email neil.kennedy@macroberts.com

This article featured in the December 2010 issue of Cable Talk Magazine.

[See our website for full Copyright notice and Disclaimer.](#)

© MacRoberts LLP 2010