



## LATEST IP UPDATE FROM POTTER CLARKSON

### UK REGISTERED COMPANY NAMES WATCH

Since October 2008, it has been possible to file complaints against the registration of “opportunistic company name registrations” in the UK. These matters are decided by the newly created Company Names Tribunal (“the Tribunal”).

The complaint will not succeed if the Complainant merely claims that the company name is the same as, or similar to, the Complainant’s registered trademark or own company name. The Complainant is likely to have to show that it has a reputation or goodwill acquired through use in a name and that, as a result of this, the registration of the new company name was “opportunistic” and designed to prejudice the Complainant’s position.

Examples of “opportunistic company name registrations” would be where a party registers one or more variations of the name of a well-known company in order to induce the latter company to buy the registration(s), or where a party knows that a merger is about to take place between two companies, and so registers one or more variations of the name that the newly formed commercial entity is likely to have.

As such, a complaint to the Tribunal is unlikely to succeed where:

- a) the “offending” name was registered before the start of the activities upon which the Complainant relies to show it has goodwill or a reputation; or
- b) the new company is already 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
- c) the name was registered in the ordinary course of a company formation business and the company name is available for sale on the standard terms of that business (known as an “off the shelf company”); or
- d) the name was adopted in good faith; or
- e) the interests of the Complainant are not adversely affected to any significant extent.

As mentioned above, a complaint might still succeed, even if the above criteria do not apply, where the Complainant can show that the purpose of registering the new company was to extract money from the Complainant or to prevent the Complainant from registering the name.

Since it began operations in October 2008 the Tribunal has issued a number of decisions, some of which are set out in the table below.

Complainant	Company Name Applied for	Decision
The Coca-Cola Company	Fanta Limited	Complainant successful
I.T.V. Productions Limited	Newton & Ridley Beer Company Limited	Complainant successful
Reebok International Limited	Reebox Limited	Complainant successful
Société Des Produits Nestlé S.A.	Kitty Kat UK Limited	Complainant successful
Adidas AG	Adidos Limited	Complainant successful
Harrods Limited	Harrods Limousine Limited	Complainant successful
Zurich Insurance Company	Zurich Risk Transfer Limited	Complainant successful
The Coca-Cola Company	Coke Cola Limited	Complainant successful

If a complaint is successful, the Tribunal will issue an order requesting that the owners of the company change the company name. If the owner of the company name refuses to cooperate, then the company name will automatically be changed at Companies House (under instruction from the Tribunal) to the number of the company followed by the word "Limited" (for example, "1234567 Limited").

The Tribunal does not, however, have the power to prevent the use of the Complainant's earlier rights, so trademark infringement and/or passing off action(s) in the courts may still be required to prevent such unauthorised use.

#### Recommendation

We recommend that, if clients are concerned about this possible misappropriation of their rights within UK registered company names, we place those names on a Company Name Watch which will alert us to any conflicting company names that are registered. We provide an annual subscription Company Name Watch service.

Additionally, if you are interested in filing a complaint at the Tribunal please provide us with details of the company name against which the complaint would be directed, and details of your earlier rights, so that we may provide an initial assessment.

For further information on these matters, please contact Sanjay Kapur, John Peacock, Jackie Tolson or Lucy Mills

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The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Potter Clarkson LLP. All comments contained here are of a general nature and full professional advice should be sought on any specific problem. Please note that all our Newsletters can be found on our website: [www.potterclarkson.com](http://www.potterclarkson.com).

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