

New tribunal spells problems for name copy cats

One of Birmingham's top intellectual property lawyers says the newly-formed Company Names Tribunal is likely to prove a cost-effective and speedy way for victims of copycat naming to protect their brands. Neil Maybury, a consultant with Else Solicitors, believes that the result of the first case heard by the tribunal – involving a company trying to call itself Coke Cola Ltd – may well serve as a pathfinder for other aggrieved firms.

He said: "The Tribunal ruled that Coke Cola Limited had one month within which to change its name and if it didn't the Tribunal would choose a new company name on its behalf.

"In the meantime Coke Cola Limited has been ordered to pay £400 covering the Coca Cola application and £300 as a contribution towards its costs."

"With an application fee of only £400 and strict and short time limits for the exchange of evidence, it may be that what was good enough for Coca Cola will serve as an example to others in the future."

New provisions of the Companies Act 2006 from October 1 last year allow a person, or the owner of a company name, to object to the introduction of another company name which is the same or similar. "The plaintiff would argue its use would be likely to mislead the public by suggesting a connection between the plaintiff's company or the owner of the brand," said Mr Maybury.

"These same provisions also established the Company Names Tribunal to adjudicate on such objections." "In the Coca Cola case it was argued that the name Coke Cola was misleading and 'opportunistic' and was taking advantage of Coca Cola's famous trademark."

The ruling offered trademark and company name owners an alternative to pursuing registered trademark infringement and passing off actions through the Courts.

"While the Tribunal has made it clear that it will only deal with 'opportunistic registrations', it nevertheless offers a very speedy and cost effective method of dealing with would be emulators."

Various defences are available to such companies but if it could be shown that the main purpose of registering the name was to obtain money or to prevent a genuine user from registering the name, then the defences may not apply.

Mr Maybury said it remained to be seen how the provisions of the objection process were applied, particularly with regard to the interpretation of what was a "sufficiently similar" name "likely to mislead".



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