



Case No: CH-2022-000004

Neutral Citation Number: [2022] EWHC 2957 (Ch)

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY DIVISION**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Wednesday 26 October 2022

BEFORE:

**THE HONOURABLE MR JUSTICE LEECH**

BETWEEN:

**BOTANICA AGRICULTURE AND EXTRACTION LIMITED**

Appellant

- and -

**BOTANICA LIMITED**

Respondent

MR S GBLA appeared on behalf of the Appellant

MR A SHARMA, MR S VARAICH and MS R VARAICH appeared on behalf of the Respondent

**APPROVED JUDGMENT**

Digital Transcription by Epiq Europe Ltd,  
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE  
Web: [www.epiqglobal.com/en-gb/](http://www.epiqglobal.com/en-gb/) Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)  
(Official Shorthand Writers to the Court)

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*

**MR JUSTICE LEECH:**

1. This is my oral judgment following the hearing of an appeal by the Appellant, Botanica Agriculture and Extraction Ltd, against the decision of the Company Names Tribunal (the "**Tribunal**") for a change to the company name of the Respondent, Botanica Ltd, published on 9 November 2021 (the "**Decision**"). Neither company was represented by solicitors and counsel before the Tribunal. Before me, the Appellant was represented by Mr Sembu Gbla (a director) and the Respondent was represented by Mr Sandeep Singh Varaich and Mr Atul Sharma (both directors) and also by Ms Ravinder Varaich (Mr Varaich's sister).
2. On 12 May 2022 Sir Anthony Mann adjourned the hearing of this appeal to enable proper notice to be given to the Respondent and gave directions for service of the appeal bundle. He also directed that the Appellant's application to adduce new evidence in box 10 of the Appellant's Notice should be heard at the same time as the appeal. It is regrettable that it was necessary to adjourn the appeal and it does mean that it is now almost a year since the Tribunal's original decision.
3. I turn first to the application made by the Appellant to the Tribunal. On 17 April 2020 the Respondent was incorporated and registered under the name "Botanica Limited". On 29 September 2020 the Appellant made an application to the Tribunal under section 69 of the Companies Act, which provides as follows:

"(1) A person ('the applicant') may object to a company's registered name on the ground—

- (a) that it is the same as a name associated with the applicant in which he has goodwill, or
- (b) that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant.

(2) The objection must be made by application to a company names adjudicator (see section 70).

(3) The company concerned shall be the primary respondent to the application. Any of its members or directors may be joined as respondents.

(4) If the ground specified in subsection (1)(a) or (b) is established, it is for the respondents to show—

(a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or

(b) that the company—

(i) is operating under the name, or

(ii) is proposing to do so and has incurred substantial start-up costs in preparation, or

(iii) was formerly operating under the name and is now dormant; or

(c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business; or

(d) that the name was adopted in good faith; or

(e) that the interests of the applicant are not adversely affected to any significant extent.

If none of those is shown, the objection shall be upheld.

(5) If the facts mentioned in subsection (4)(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name.

(6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.

(7) In this section, 'goodwill' includes reputation of any description."

4. Mr Gbla did not include the Appellant's original application in the appeal bundle. Nevertheless, the Tribunal quoted it at some length and I take its contents (ignoring the typographical errors) from the Decision itself (which was not challenged in this respect). The Tribunal recorded that, in the application, Mr Gbla had requested that the individual directors, including both Mr Varaich and Mr Sharma, should be joined as additional Respondents. The Tribunal acceded to that request and they are therefore parties to this appeal. The Tribunal also recorded that the Appellant had stated that it had recently registered the name "Botanica Pharmaceuticals Limited" because of the threat posed by

the Respondent. In relation to the Appellant's goodwill or reputation the Tribunal also recorded the Appellant's case to be as follows:

"The company has worked extremely hard to develop a strong brand reputation and good social presence. We are now registered in four countries and counting, and are recognised by our trading name (which is the prefix of our full name) Botanica. The company has research partnerships pending with the University of Westminster Life Sciences Department and UCL. These are, of course, relationships we worked very hard to develop and do not wish to jeopardise. We are also working very hard to acquire various licences abroad which will benefit our UK-based business tremendously. The situation at present, however, remains highly sensitive and any ambiguity to this may cause irreparable damage to our brand, which has taken many years to develop."

5. The Tribunal continued that the Appellant had contended that its field of business was life sciences, pharmaceutical preparation and the cultivation of medicinal crops and also that it had objected to the Respondent's company name for a number of reasons. Before me, Mr Sharma and Mr Varaich took strong objection to the way that Mr Gbla had formulated his objections. For that reason, I quote them in full:

"Careful investigation has revealed severe concerns about the credibility, integrity and conduct of the defendants as they both display some very peculiar online activity. A company Mr Sharma was recently appointed director of, Sapphire Independent Finance Limited, has overdue accounts even though the appointment was only made this year. Scott Thomas Findlay, who was supposedly born in June 1988, resigned on 3 July 2020 and was replaced by Mr Sharma. What is most peculiar about this is that the two gentlemen seem to share the same personal address, which of course may give rise to the consideration that this name may in fact simply be an alias used by Mr Sharma. Scott Thomas Findlay was actually a rifleman in the Auckland war who died in September 1916. Sandeep Singh is the director of another company, Property No 6, which in five years has only reported losses. On 1 September, he started another business, The Spice Fox, which is in the catering industry. The true occupation of this individual is not known. In addition to being involved in catering, this individual has also declared himself a property investor and now a pharmacist. Most respectfully, above is the clear activity of fraudsters. As such, the company wishes to have no affiliation with any persons concerned."

6. The Tribunal also recorded that the Applicant sought a range of relief but, primarily, that it wanted Botanica Ltd to be dissolved or instructed to change its name so that the other

Respondents were not able to claim association with Mr Gbla's group of companies. In the Appellant's notice, Mr Gbla also sought aggravated damages for the damage done to the Appellant.

7. I turn next to the evidence in support of the Appellant's application. The Tribunal summarised the evidence submitted by the Appellant in paragraphs 15 to 28 of the Decision. They recorded that the Appellant was incorporated on 11 November 2019 (approximately five months before the Respondent) and that Botanica Pharmaceuticals Ltd had only been incorporated on 27 September 2020 (approximately five months after the Respondent's incorporation). The Tribunal also recorded that in January 2021 the Appellant's website which later used the identities "Botanica" and "Botanica MediCare" was under construction and that, although the Appellant had an Instagram account by 17 December 2020 in the name of "botanicamedicare", in his witness statement dated 30 March 2021, Mr Gbla had accepted that the domain name botanicamedicare.co.uk was no longer in use.
8. In paragraphs 17 to 23 the Tribunal referred to a number of exhibits which Mr Gbla had produced, all of which post-dated the Respondent's incorporation. In paragraphs 24 to 26 they then referred to an exchange between Mr Gbla and a senior lecturer at the University of Westminster, which showed that Mr Gbla was hoping to interest the university in a research project. In paragraph 32 the Tribunal set out the following chronology, to which Mr Gbla also referred me in his oral submissions:

"18 October 2017 - applicant incorporated in the UK as ACAS INTERNATIONAL LTD;

11 November 2019 - applicant's name changed to Botanica Agriculture and Extraction Ltd;

26 February 2020 - email exchange with the University of Westminster regarding a research partnership proposal;

17 April 2020 - Botanica Limited incorporated in the UK, ie the primary respondent;

August 2020 - agreement between Botanica Agriculture and Extraction Ltd and a German lawyer;

3 September 2020 - Botanica Agriculture and Extraction Ltd registered in Sierra Leone;

23 September 2020 - Botanica Pharmaceuticals Ltd incorporated in the UK;

3 November 2020 - initial enquiries regarding incorporation in Portugal;

19 November 2020 - Botanica Pharmaceuticals BV incorporated in the Netherlands."

9. I turn next to the Tribunal's reasons for the Decision. In paragraph 33, the Tribunal asked first what name the Appellant was relying on and concluded that it was relying on "Botanica Agriculture and Extraction Limited", i.e., the full name of the company shown in the application. The Tribunal then went on to consider whether the Appellant had the necessary goodwill or reputation at the date of the respondent's incorporation. They adopted the wide definition of "goodwill" which Lord Macnaghten had used in answering the following question in *IRC v Muller & Co's Margarine Ltd* [1901] AC 217:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

10. Mr Gbla did not challenge this test and he was right not to do so since its adoption was in the Appellant's favour. The Tribunal members also directed themselves by reference to a number of trademark cases that it is well established that goodwill of more than a trivial nature is capable of protection. Again, Mr Gbla did not challenge this direction and, again, he was right not to do so because this test was also in the Appellant's favour. The Tribunal then set out their reasons for dismissing the application in paragraphs 36 to 41 (which I must quote in full):

"36 ... In his evidence, Mr Gbla states: '... the initial establishment of our brand with the formation of Botanica Agriculture and Extraction ...'

37. That, in our view, is an admission that there was no use of any of the names being relied upon (particularly Botanica solus) prior to the date the applicant changed its name from ACAS INTERNATIONAL LTD to its current name, ie 11 November 2019. However, even if such use had been made, as no evidence has been provided in this regard, it is not a matter upon which the applicant may now rely. Thus, it appears that, at best, the applicant's use of some of the names being relied upon commenced only five months before the primary respondent was incorporated in April 2020.

38. We note that the primary respondent requested certain evidence in its notice of defence. We also note that the applicant questioned

the legitimacy of the primary respondent's request for information about 'the affairs of our brand'. Whilst it is true that the respondent(s) cannot dictate the evidence which should be filed by the applicant, there remains a burden on the applicant to establish before the Tribunal that it has goodwill/reputation in one or more of the names being relied upon. Whilst that is a relatively low hurdle, we would normally expect to see that, prior to the relevant date, the applicant had made outward-facing use of one or more of the names being relied upon, together with, for example, an indication of the number and types of customers the applicant enjoyed, turnover figures achieved and promotional efforts.

39. Although the applicant has provided evidence to show that it has arranged for various companies to be incorporated which contain the word 'Botanica' and has engaged a lawyer in Germany, as one can see from the above chronology, all the evidence in this regard is from after the relevant date. In addition, the evidence filed by the primary respondent which relates to a website which was not to be made operational until January 2021 and an Instagram account which can only be dated from December 2020 does not assist the applicant in establishing a goodwill/reputation in one or other of the names being relied upon at the relevant date.

40. As far as we can tell, the only evidence that has been provided that can be dated prior to the relevant date is the redacted email exchange between Mr Gbla and an individual at the University of Westminster regarding a 'research partnership proposal' (exhibit 6), which is dated 26 February 2020. Although this exhibit contains an upper case letter 'B' on the left-hand side of the page, it does not appear to contain any references to any of the names being relied upon, nor does it indicate the nature of the proposed research partnership. However, even if it did, without more, a single example of use of this nature falls a long way short of meeting even the relatively low hurdle necessary for the applicant to establish that, at the relevant date, it had goodwill/reputation in the name 'Botanica' solus or any of the other names being relied upon.

41. Without the necessary goodwill/reputation, the application falls at the first hurdle and is dismissed accordingly."

11. Before I turn to the Grounds of Appeal, I make some observations about the application of section 69(1)(a). The Tribunal assumed in the Appellant's favour that Botanica Ltd was "the same as a name associated with the applicant". I would not necessarily have accepted that the names are the same. For example, in *Zurich Insurance Co v Zurich Investments Ltd* [2011] RPC 6 the Tribunal stated as follows at [37]:

"An undertaking cannot trade by reference to a company name under which it is not incorporated and, under section 66 of the Act, identical company names cannot be registered. Taking this into

account, section 69(1)(a) of the Act would be virtually redundant if it requires the name upon which the applicant relies to include the designation of the nature of the company. For the purposes of section 69(1)(a), a company name and the name associated with an applicant are the same if the only difference that arises is from the designation of the nature of the company. So, in this case, the presence of the word 'Limited' of itself does not prevent a finding that the names are the same."

12. In *Zurich* the Tribunal also relied on the decision of the Court of Appeal in *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159. If the members of the Tribunal had considered the decisions in *Reed* and *Zurich* and asked themselves whether "Botanica Agriculture and Extraction Limited" was the same name as "Botanica Limited" by comparing the words "Botanica Agriculture and Extraction" with the word "Botanica", I am not satisfied that they would necessarily have reached the conclusion that they were the same name. Moreover, I am not satisfied that they would have found the test in section 69(1)(b) to be satisfied either (and this is a point to which I will return below).
13. The Tribunal members also directed themselves that the relevant date for considering whether section 69(1)(a) was satisfied was the date of the Respondent's incorporation. In *Zurich*, however, the Tribunal stated that the relevant date was the date of the application: see [34]. The Tribunal also adopted the same approach in *MB Inspection Ltd v Hi-Rope Ltd* [2010] RPC 18 at [43]:

"The applicant must show that it has a goodwill or reputation under the name at the date of the application, in this case 7 October 2008. If this is established, the respondent has a **prima facie** defence if it can establish that the name was registered prior to the commencement of the activities upon which the applicant relies, as per section 69(4)(a) of the Act. This is not the same as establishing that the goodwill or reputation must have been established before the name was registered. Such an approach will militate against a successful application being brought where a company name was registered in anticipation of a goodwill or reputation being established."

14. It may be that the Tribunal thought that there was little or no difference between the exercise which they were required to carry out under section 69(1)(a) and the exercise which they were required to carry out under section 69(4)(a) although the burden was on



the Appellant to prove its objection under section 69(1)(a) and the burden was on the Respondent to establish its defence under section 69(4)(a). But I am not satisfied that the outcome would have been the same if the burden of proof had been reversed for the reasons given by the Tribunal in *MB Inspection Ltd* (above).

15. Although I did not hear argument on the point and the parties did not address it in their Skeleton Arguments, it seems to me that section 69(4)(a) would be largely redundant if the relevant date for the purposes of section 69(1)(a) is the date of incorporation of the primary Respondent. Moreover, in the absence of any appellate authority, the Tribunal ought (in my respectful judgment) to have followed its own decisions in *MB Inspection Ltd* and in *Zurich*. Finally, it is clear that the Tribunal did not consider the application of section 69(1)(a) and section 69(4) separately and Mr Gbla placed much reliance on this point in both his Skeleton Argument and his oral submissions.
16. With these observations, I turn to the Grounds of Appeal. In paragraph 2 of his Skeleton Argument dated 17 May 2022 Mr Gbla accepted that on 11 November 2019 the Appellant changed its name to "Botanica Agriculture and Extraction Limited" by special resolution and that it purchased the Botanica company logo at the same time. There can be no challenge, therefore, to the Tribunal's reasoning in paragraph 37. It follows that it was for the Appellant to satisfy the Tribunal that it had goodwill in the name "Botanica Limited" either by the date of incorporation or at the date of the application itself (whichever is the correct date).
17. Mr Gbla's substantive Ground of Appeal was that the Appellant had goodwill in the name "Botanica Limited" before the date of its incorporation. He relied on a number of additional documents which were not before the Tribunal. Moreover, there was no application for permission to adduce these documents as fresh evidence and I am not satisfied that he could not have put them before the Tribunal before the Tribunal's decision in November 2021. But, even if they are admissible in this appeal, I am not satisfied that they would have led the Tribunal to conclude that the Appellant had more than trivial goodwill in the name "Botanica Limited" at the date of the Respondent's incorporation.

18. Nevertheless, I am not satisfied that the Tribunal would have reached the same conclusion if it had considered whether the Appellant had goodwill in the name "Botanica Limited" as at the date of the application, namely, 29 September 2020 either on the basis of the material which the Appellant put before the Tribunal or upon the basis of the new material upon which Mr Gbla now relies and relied on this appeal.
19. Mr Gbla also appeals on the basis that he was given misleading advice about the relevance of the Appellant's trademarks by an officer of the Tribunal and he exhibits a detailed email which he sent to the Tribunal on 22 November 2021 immediately after receiving the publication of the Tribunal's decision. He relied on this as evidence that the Tribunal was partial and he relied on a number of other features of the Tribunal's conduct as evidence of bias. For present purposes, the most important objection that he took was that the Respondent failed to provide any of the evidence to support their defence under section 69(4)(a) but the Tribunal went on to decide against the Appellant without any real effort by the Respondent to prove its own case. I have read the passage from the Decision in which that is what the Tribunal appears to have done.
20. Finally, Mr Gbla seeks permission to rely on a without prejudice letter dated 28 November 2021, which was sent to him by the Respondent after the Decision was published in which it indicated that it was interested in selling the company to the Appellant. Mr Sharma addressed this letter in his oral submissions. He said that given the dispute between the parties he could see nothing wrong in offering to sell Mr Gbla the company as a means of resolving the overall dispute. Mr Gbla relied on this willingness to sell the company as evidence that the Respondent's main purpose in registering the name was to obtain money from the Appellant and not to use it as a legitimate trading name itself and that his application should now be allowed under section 69(5).
21. For the reasons which I have stated, I am not satisfied that the Tribunal applied the right test under section 69(1)(a) and considered whether the Appellant had goodwill in the name "Botanica Limited" at the date of the application, namely, 29 September 2020 or that they would have reached the same conclusion if they had done so. Moreover, I accept Mr Gbla's submission that there is no suggestion in the Decision that the Respondent adduced any evidence to prove its defence under section 69(4). Both Mr

Varaich and Mr Sharma accepted openly and frankly before me that they put in no evidence at all in front of the Tribunal and Mr Varaich gave a number of explanations for his decision to do so.

22. It seems to me, therefore, that the Tribunal erred as a matter of law in failing to consider the application of both section 69(1) and section 69(4) separately and that this is a reason for allowing the appeal. Moreover, if the Tribunal members had considered each issue separately and had directed themselves that the relevant date under section 69(1)(a) was the date of the application rather than the date of the Respondent's incorporation, then they might have come to the conclusion that the objection was a valid one. Likewise, if they had addressed section 69(4) separately, they might have rejected the Respondent's defence on the basis that it had offered no evidence in support of it.
23. Section 74(4) of the Companies Act 2006 sets out the powers of the court on the hearing of an appeal. The subsection provides as follows:

"If on appeal the court— (a) affirms the decision of the adjudicator to uphold the application, or (b) reverses the decision of the adjudicator to dismiss the application, the court may (as the case may require) specify the date by which the adjudicator's order is to be complied with, remit the matter to the adjudicator or make any order or determination that the adjudicator might have made."

24. In my judgment, the appropriate course in the present case is to remit the matter to the Tribunal to decide the Appellant's application again. I have reached this conclusion because I am not satisfied that I can properly decide all of the questions of fact on the hearing of this appeal. I also reach this conclusion with some reluctance because, as Mr Varaich fairly pointed out, the parties have been dealing with this particular issue for almost two years now and the function of the Tribunal is to decide applications of this nature promptly and quickly and with the absence of legal costs and complication. Nevertheless, it seems to me that it is the right course to take in the present case for a number of reasons:
  - (1) Once the application has been remitted to the Tribunal, the Tribunal must consider separately whether the appellant has proved the objection under 69(1)(a) and, if so, whether the respondent has proved its defence under section 69(4)(a).

- (2) In deciding those matters, it will be open to the Tribunal to decide whether "Botanica Limited" is the same name as "Botanica Agriculture and Extraction Limited". If the Tribunal finds in the Respondent's favour on that issue, that will be the end of the matter.
- (3) However, if the Tribunal finds in the Appellant's favour, it will then go on to consider whether the appropriate date for assessing whether the Appellant had sufficient goodwill in the name "Botanica Limited" was either the date of the Respondent's incorporation or the date of the application and, if so, whether the Appellant has proved its case on the evidence at the relevant date.
- (4) Moreover, in addressing that issue it will be open to the parties to make submissions on the legal issue if they wish to do so, and they may this time wish to take advice on this point. But, unless they contest the conclusions which I have reached in this particular judgment, the Tribunal ought to consider the date to be the date of the application and not the date of incorporation.
- (5) Finally, if the Tribunal finds the objection in section 69(1)(a) proved, it will then go on to consider whether the Respondent has proved its defence under section 69(4)(a). For that purpose, it will be open to the Respondent to offer some evidence to prove its case. Again, the Respondent may choose not to do so (as it did first time round). But, for the reasons I have given, it would be in its interests at least to consider putting some evidence before the Tribunal to make out its case on section 69(4).
- (6) I also see some force in Mr Gbla's Ground of Appeal that the Respondent's purpose in registering the name "Botanica Limited" was to obtain money from the Appellant by offering to sell the company to it. I would not have been prepared to allow the appeal on that ground alone or on the ground that the Tribunal was guilty of bias or apparent bias. Nevertheless, it seems to me that both of these grounds provide additional reasons for remitting the application to a different Tribunal. It will be open to the Tribunal to draw the inference that the Respondent's purpose was to extract money from the Appellant and it will also be open to the Respondent

to argue that the letter is privileged because it was sent on a without prejudice basis and also to offer any evidence to rebut that inference.

- (7) Finally, in addressing all of the issues, the Appellant will have the opportunity to rely on its existing trademarks as evidence of goodwill at the relevant date even though those trademarks were registered very soon after and had not been registered by the date of the application (although they were registered only four days later).
25. For these reasons, therefore, I allow the appeal and remit the Appellant's application to the Tribunal to be determined again on the basis which I have explained in this judgment. I add one postscript: as I have indicated in the course of this judgment, Mr Varaich and Mr Sharma took significant exception to what were, in my judgment, allegations of fraud made in the application notice and of sharp practice. There is no evidence before me on this appeal that they were guilty of such matters and I make it clear that I have made no decision on those matters. Mr Gbla will have to consider very carefully whether he continues to make those allegations before the Tribunal. But I also note that the Tribunal did not decide those issues either and made no findings of fact in relation to the objections which Mr Gbla made.
26. Finally, I add that the relief which Mr Gbla sought in his Appellant's notice was not only for an order removing the company's name from the register but also for damages. This is not, of course, something which the Tribunal had power to award and it did not do so. Moreover, on this appeal I have done no more than remit the application to the Tribunal. If Mr Gbla wishes to pursue his application for damages before the Tribunal, he can do so. But, as I have indicated, that is not something that the Tribunal themselves had power to award him. With the direction that I have given in this judgment, the parties will know much more clearly where they stand when they come to make their submissions to the Tribunal and hopefully the issues will be narrowed before them. Indeed, it may be possible that, in the light of this judgment, they may be able to take a view about what the right outcome will be without troubling the Tribunal a second time.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)

**This transcript has been approved by the Judge**