

O/0814/26

TRADE MARKS ACT 1994

**IN THE MATTER OF A PROCEDURAL HEARING
HELD IN RELATION TO REGISTRATION NO.
UK00003320083**



**IN THE NAME OF
WALI AFZAL**

AND

**AN APPLICATION FOR REVOCATION UNDER NO.
CA000509380
BY
SHENZHEN FANGYIHAO E-COMMERCE CO., LTD.**

BACKGROUND

1. These proceedings concern an application by Shenzhen Fangyihao E-Commerce Co., Ltd. (“the cancellation applicant”) to revoke trade mark registration number UK00003320083 shown on the cover page of this decision in the name of Wali Afzal (“the registered proprietor”).
2. It was applied for on 24 June 2018 and has a registration date of 12 October 2018. It is registered for the following goods and services:

Class 6 Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes; Hooks (Clothes -) of metal; Hooks (Door -) of metal; Hooks of metal for use in building.

Class 11 Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

Class 28 Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

3. The application to revoke the trade mark (Form TM26(N)) was made on 5 September 2025. The application for revocation was based on sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 (“the Act”) and was directed against all of the goods and services in the registration.
4. On 22 September 2025, the Tribunal wrote to the registered proprietor by email and by post serving the Form TM26(N). An extract of the serving letter is copied below, with the original emphasis:

“Rule 38(3) of the Trade Marks Rules 2008 require that you must file your notice of defence and counterstatement (Form TM8(N)) within **two months** from the date of this letter.

IMPORTANT DEADLINE: A completed Form TM8(N) MUST be received on or before 24 November 2025.”

5. On 18 January 2026, the Tribunal wrote to the registered proprietor as follows:

“As no TM8(N) and counterstatement have been filed within the time period set, Rule 38(6) applies. Rule 38(6) states that:

“Where the proprietor fails to file a Form TM8(N) within the period specified in paragraph (3) the registration of the mark shall, unless the registrar directs otherwise, be revoked.”

It is our preliminary view to treat the proprietor as not opposing the application for revocation and to revoke the registration because no defence was filed by the deadline referred to above.

If you disagree with the preliminary view, you **must** file the Form TM8(N) and counter-statement **and** a witness statement setting out the reasons for the failure to meet the deadline on, or before, **2 February 2026.”**

6. The above letter was sent by email and by post. The email bounced back from the email address that the Tribunal had on file on 18 January 2026. The letter, which had been sent to the name and address that the Tribunal had on file, came back to the Tribunal on 30 January 2026 marked “gone away” by Royal Mail.

7. Writing from a different email address, the registered proprietor attempted to file a defence on 27 January 2026 but did so in person (at that point he was on the Tribunal's records as a represented party) and on the wrong form – he used a Form TM8 rather than a Form TM8(N).
8. On 24 February 2026, the Tribunal emailed the registered proprietor to ask him to refile his defence via his representatives or to notify the Registry that he was no longer represented so that the Registry could update its records accordingly.
9. On 24 February 2026, the registered proprietor replied to say that the company that he owned – W&H Enterprises Limited – that was on file as his representatives had closed and that he would be sending in a Form TM33.
10. The Form TM33 notifying the Registry that the registered proprietor's representation had changed from W&H Enterprises Limited to himself was received on 25 February 2026.
11. On 4 March 2026, the Tribunal wrote to the registered proprietor as follows:

“I refer to the Form TM33 filed on 25 February 2026 and can confirm that you have been recorded as the representative for the above proprietor.

...

I also refer to the Form TM8 filed on 27 January 2026. However, this is not the correct form. Please note that the official letter(enclosed) dated 18 January 2026 advised that you must file a Form TM8(N).

...

In addition, it is noted that you did not file a witness statement explaining why the Form TM8(N) was not filed by the original deadline provided in the letter dated 22 September 2025.

...

In light of the above, please file a Form TM8N and a witness statement within 14 days of this letter, that is on or before 18 March 2026.”

12. The letter in question also notified the registered proprietor of the cancellation applicant’s representatives’ address to which all future correspondence was to be sent, but in his subsequent dealings with the Tribunal the registered proprietor did not copy in the cancellation applicant which he should have done.

13. On 4 March 2026, at 17:59, the registered proprietor replied to the letter by email, enclosing the original Form TM8, as follows:

“Hello, I did file TM8 and I was asked to change the representative in order to accept the TM8 form.

I am shocked why someone overseas will try to cancel my trademark.

Copy of my Tm8” [*sic*]

14. On the same date, the registered proprietor emailed again at 18:01, enclosing the original Form TM8, as follows:

“Hello, I did file TM8 before but was asked to change the representative and Same Tm8 will be acceptable.

Sending Form again to file my defence.” [*sic*]

15. Evidently, at this point the registered proprietor had still not picked up on the point that his defence needed to be filed on a Form TM8(N) and the Tribunal wrote to him as follows on 27 March 2026:

“I acknowledge receipt of two forms TM8 filed on 4 March 2026.

As stated in the letter dated 4 March 2026, you are required to file a Form TM8(N) which is different to the Form TM8 you filed.

In addition, it is noted that you have not filed a witness statement explaining why the Form TM8(N) was not filed by the original deadline provided in the letter dated 22 September 2025.

In light of the above, you are given a final 7 days, that is on or before **7 April 2026**, to file a late Form TM8(N) and a witness statement.

If you do not submit these two documents, the Tribunal will direct the registration of the mark be revoked.”

16. On 14 April 2026 – 7 days after the deadline – the registered proprietor sent in a Form TM8(N), but no formal witness statement. The form was accompanied by a covering email as follows:

“I apologise for late delay response it was out my reach and control, I was going through very stress period in my life where I close my business in december 2025 after being self employed for 12 years, My mother kidneys was Transplanted successfully and took 6 months taking care of Her as doctors suggested, Things are better now These are my personal reasons which I am explaining the latency of response.

I did file form TM8 and sent twice which was wrong forms I am new to filling defence but Learning every day.

I request your office to please accept my Apologies and TM8N form.”
[sic]

17. On 3 June 2026, the Tribunal wrote to the registered proprietor as follows:

“I refer to the late TM8(N) received on 14 April 2026.

The official letter dated 22 September 2025, which was sent to you by email and via Royal Mail’s “Signed for” service stated that the deadline to file a completed form TM8(N) was on 24 November 2025. Both letters contained the following paragraph:

Rule 38(6) of the Trade Marks Rules 2008 states that “Where the proprietor fails to file a Form TM8(N) within the period specified in paragraph (3) the registration of the mark shall, unless the registrar directs otherwise, be revoked.” It is important to understand that if the deadline date is missed, then in almost all circumstances, the registration will be treated as revoked in whole or part.

The Registrar can only utilise its very limited discretion in such cases where there exists either ‘compelling reasons’ or ‘extenuating circumstances’ to do so. While there is considerable sympathy for your circumstances, the reasons presented confirm neither.

It is therefore the Registry’s preliminary view that, as the notice of defence and counterstatement would be filed outside of the statutory deadline, it cannot be permitted into the proceedings.

...

If you disagree with the preliminary view you must provide full written reasons and request a hearing on, or before, **17 June 2026**. If no response is received within the time allowed, the preliminary view will

automatically become final immediately after that date and the trademark will be revoked.”

18. On 9 June 2026, the registered proprietor, writing by email from a different email address from that which is on file, requested a hearing saying the following:

“I was Director Employed in Company for 10 years and after Covid and inflation times I was betrayed by my own trusted people and Business completely closed, I was left with debt and stress dealing with CCJ defaults Very stressful me for me and my family I am a father with special child register child disability who got diagnosed with Autism.

This was not enough My mother got kidney transplanted from Govan hospital In Glasgow and Was strictly advised to be caution with food in first 3 months where infection can be dangerous.

These are stress times where I was held while an Overseas company filled the cancellation. The letter sent by IPO was never received because the company and premises both closed and I was under so much stress and family take care that I was unable to update the Trademark address and complainant took advantage of that.

After checking online the trademark I saw cancellation request and I quickly apply the TM8 form but in few weeks I got reply that I can't reply as owner I need to change IPO representative which I did in 24hrs and send the TM8 form again I have documented all my communications, Later few weeks I receive a reply that Form needs to be TM8A send this with statement this was the time my Mother was in hospital and we was waiting new kidneys to fully work.

I sent my statement and Defence but I was few days late.

It was not my attention and I apologise for delay please understand my situation being A main household I had to deal with all this and now with Cancellation, I have worked hard on Sourcing Maps and The Complaint knows and registered His trademark in december while business was closing.

I request a hearing and Will do my best to defence my Hard Work done over the years on this Trademark. I will bring to your attention That This trademark is also registered with Amazon Brand Registry.”
[sic]

THE PROCEDURAL HEARING

19. The procedural hearing took place before me, via Microsoft Teams, on 30 July 2026.

20. Wali Afzal attended as the registered proprietor, representing himself. Andrew J. Murch from Brandsmiths SL Limited, the cancellation applicant’s representatives, appeared for the cancellation applicant.

21. Mr Afzal sent in a statement for my consideration three days before the hearing. It was identical to his email of 9 June 2026, but with the following additional text:

“HIGHLIGHTS

Own the trademark UK00003320083 12 October 2018.

(Opponent Registered His Trademark in December 2025, While I was Resigning from my company W&H Enterprises Limited SC533370.

SOURCING MAP TRADEMARK is registered with Amazon brand registry.

Over the years I had created many product listings and sourcing of those products from EU & China in Amazon UK market place.”

22. Mr Murch did not file skeleton arguments.
23. The registered proprietor had not copied the cancellation applicant into his statement and so I was obliged to summarise it for Mr Murch’s benefit.
24. Mr Afzal did not add to his statement other to say that it was a true statement, that his mother continued to be hospitalized and that his mother became ill and his child was diagnosed with autism when his business went down.
25. Mr Murch said that personal circumstances do not remove the obligation to meet the Tribunal’s deadlines unless for example one was having an operation oneself, but even then, paperwork could be submitted prior to the date of the operation. His own mother was ill during the proceedings and that did not prevent him from complying with the Tribunal’s deadlines. Furthermore, the registered proprietor had not filed a witness statement.
26. I confirmed that the statement received by Mr Afzal along with the late Form TM8(N) was not a sworn statement.
27. In terms of non-received correspondence, I said that I would study the file to confirm the forms of communication that were used to write to the registered proprietor and what the response was.
28. Mr Murch pointed out that it was the registered proprietor’s responsibility to keep their details on the Register up to date.
29. Mr Murch summed up by saying that the circumstances at issue and what he had heard at the hearing did not constitute extenuating circumstances.
30. Turning to Mr Afzal, he said that his mother’s health was his first priority, as was his child, and that he had endured a year and a half of stress. On the question of non-received correspondence, Mr Afzal was not expecting any

challenges to his trade mark to be made, it having been on the register since 2018 without incident. Had he known that was going to happen, he would have updated his contact information.

31. Mr Afzal said that Mr Murch was a professional person with an office who knows how to do things. This was the first time he had dealt with such a matter. Now he had more knowledge, but dealing with any of the paperwork while under stress was difficult.

32. Furthermore, Mr Afzal said that the cancellation applicant had made its own “SOURCING MAP” trade mark application and an overseas company should not be allowed to “steal” his work.

33. Mr Murch was prepared to discuss the circumstances of the cancellation application and his client’s own separate “SOURCING MAP” trade mark application, but I confirmed that the principal matter before me was whether to admit the registered proprietor’s late filed defence to the cancellation application on the basis of extenuating circumstances.

34. Mr Murch had also asked whether the registered proprietor had filed the correct form - a Form TM8(N). I said that correct form had been filed, but the cancellation applicant was not copied in.

35. I drew the hearing to a close, confirming that I was reserving my position.

DECISION

Statutory provisions and relevant case law

36. The period allowed for the filing of Form TM8(N), as per rule 38(3), is a non-extensible one governed by Schedule 1 of the Rules. Other than where rule 77(5) is invoked because there is found to have been an irregularity on the part of the tribunal, the only basis on which the registrar may allow a proprietor to file a Form TM8(N) after the due date is if he is satisfied that it is

appropriate to exercise his discretion as contained in rule 38(6) which reads as follows:

“38(6) Where the proprietor fails to file a Form TM8(N) within the period specified under paragraph (3) the registration of the mark shall, unless the registrar directs otherwise, be revoked.”

37. There has been no irregularity on the part of the Tribunal in this case and so the only basis on which the late Form TM8(N) may be admitted is if I exercise the discretion afforded to me by the use of the words “unless the registrar otherwise directs” in rule 38(6).

38. In approaching the exercise of discretion in these circumstances, I take into account the decisions of the Appointed Person in *Kickz AG v Wicked Vision Limited* (BL O-035-11) and *Mark James Holland v Mercury Wealth Management Limited* (BL O-050-12) i.e. I have to be satisfied that there are extenuating circumstances which justify the exercise of the discretion in the registered proprietor’s favour.

39. In *Music Choice Ltd’s Trade Mark* [2005] RPC 18, the Court indicated that a consideration of the following factors (underlined below) is likely to be of assistance in reaching a conclusion as to whether or not discretion should be exercised in favour of a party in default. That is the approach I intend to adopt.

The circumstances relating to the missing of the deadline including reasons why it was missed and the extent to which it was missed

40. The first letter from the Tribunal to the registered proprietor which served the Form TM26(N) on him was dated 22 September 2025 and was sent by email and by post. The deadline for filing a Form TM8(N) was 24 November 2025. There is nothing to suggest that the email and the letter were not received by the registered proprietor, but he failed to respond to the Tribunal’s letter.

41. A second letter, on 18 January 2026, by email and by post, informed the registered proprietor that no Form TM8(N) had been received and required him to file a Form TM8(N) and a witness statement setting out the reasons for the failure to meet the deadline of 24 November 2025 by 2 February 2026.
42. The second letter was subject to an email bounce back and was returned marked “gone away”. I am told that the registered proprietor’s business closed in December 2025. He had failed to notify the Registry of new contact details.
43. The registered proprietor attempted to file a defence on 27 January 2026 but did so using the wrong form. Having updated the Registry with new contact information and becoming self-represented as opposed to being registered by his company, the registered proprietor continued to file the wrong form – filing duplicate Form TM8s on 14 March 2026.
44. The registered proprietor was given a final seven days to file a valid form – i.e. a Form TM8(N) – and a witness statement being set a deadline of 7 April 2026.
45. The registered proprietor did file a Form TM8(N), but it was seven days’ late, being received on 14 April 2026. He continued to fail to file a witness statement.
46. As well as the registered proprietor’s business closing in December 2025, the above events took place against challenging family circumstances. Although he has not provided precise dates, at some point during this time his mother had a kidney transplant, and his child was diagnosed with autism.
47. The deadline for filing a Form TM8(N) was 24 November 2025. A Form TM8(N) was not received by the Tribunal until 14 April 2026 and so it was four months and 21 days’ late.

The nature of the cancellation applicant's allegations in its statement of grounds

48. The application for revocation is based on sections 46(1)(a) and 46(1)(b) of the Act and is properly made out.

The consequences of treating the registered proprietor as defending or not defending the cancellation application

49. If the registered proprietor is allowed to defend the cancellation application, the proceedings will continue and the matter will be determined on its merits.

50. If the registered proprietor is not allowed to defend the cancellation application, it will lose its registration from the earliest date of revocation sought i.e. 13 October 2023.

Any prejudice caused to the cancellation applicant by the delay

51. A considerable amount of time has elapsed since the deadline for filing the Form TM8(N) of 24 November 2025 and this will have had some impact on the cancellation applicant.

Any other relevant considerations such as the existence of related proceedings between the parties

52. The cancellation applicant had separately made its own "SOURCING MAP" trade mark application, but that was its prerogative.

My findings

53. I have to be satisfied that there are extenuating circumstances which justify the exercise of discretion in the registered proprietor's favour.

54. There is nothing to suggest that the original letter from the Tribunal, dated 22 September 2025, and requiring the filing of a Form TM8(N) by the non-extensible deadline of 24 November 2025, was not received by the registered proprietor. The registered proprietor's business was open at that point (I have been told that it closed in December 2025). He should have been in a position to file the form by the required deadline, the impending closure of his business and his stressful family circumstances not having begun to have full effect at that point. As such, he could be said to be the author of his own misfortune.¹

55. The second letter from the Tribunal bounced back/was returned as addressee "gone away" because the registered proprietor's business had closed by then. However, that is the registered proprietor's responsibility. He failed to notify the Registry of new contact information.

56. The registered proprietor missed further opportunities to file the correct Form TM8(N), not doing so until 14 April 2026 – four months and 21 days' late and 7 days after a last and final deadline had been set.

57. There is also the matter of the failure to file a witness statement. All that I have from the registered proprietor are comments in the form of standard emails and documents. These are not properly constituted, signed statements of truth. Over and above the registered proprietor failing to follow the directions of the Tribunal, he has not furnished me with something of the appropriate evidential standing.

58. All of the above being said, I am conscious that the registered proprietor was initially formally represented by his company but then became a fully-fledged litigant in person. However, I am mindful of the decision of Geoffrey Hobbs QC (as he was then) in *BOSCO* (BL O/399/15) where, sitting as the Appointed Person, he maintained that:

¹ *Kickz*, paragraph 15

“18. It continues to be the position in civil proceedings in the High Court that: ‘[...] if proceedings are not to become a free-for-all, the court must insist on litigants of all kinds following the rules. In my view, therefore, being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules’: *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ. 1633 at paragraph [46] per Moore-Bick LJ, Vice President of the Court of Appeal, with whom Tomlinson LJ and King LJ agreed. In the same vein, it was observed in *Nata Lee Ltd v Abid* [2014] EWCA Civ. 1652 at paragraph [53] per Briggs LJ with whom Moore-Bick LJ, Vice-President of the Court of Appeal, and Underhill LJ agreed, that: ‘... the fact that a party (whether an individual or a corporate body) is not professionally represented is not of itself a reason for the disapplication of rules, orders and directions, or for the disapplication of the overriding objective which now places great value on the requirement that they be obeyed by litigants. In short, the CPR do not, at least at present, make specific or separate provision for litigants in person. There may be cases in which the fact that a party is a litigant in person has some consequence in the determination of applications for relief from sanctions, but this is likely to operate at the margins’.

19. The same approach should, in my view, be adopted in relation to the need for compliance with rules, orders and directions in Registry proceedings under the 1994 Act and the 2008 Rules.”

59. Notwithstanding the registered proprietor becoming a litigant in person in person during these proceedings, he did not respond to the Tribunal's first letter when represented by his company when it was still trading. When his company closed, he failed to discharge his responsibilities as a

trade mark owner in that he did not supply the Registry with up-to-date contact information. He then neglected to follow the clear directions of the Tribunal, nor did he copy in the cancellation applicant at various points.

60. Having considered this case carefully, I am not satisfied that there are extenuating circumstances which justify the exercise of discretion in the registered proprietor's favour. The loss of his trade mark registration to the potential benefit of other parties is the unfortunate consequence of a failure to comply with a non-extensible Form TM8(N) deadline.

CONCLUSION

61. I decline to exercise the discretion available to me under rule 38(6).

62. Subject to any successful appeal, the registered proprietor will be treated as not opposing the application for revocation and the registration will be revoked in full under sections 46(1)(a) and 46(1)(b) of the Act with effect from the earliest date sought, i.e. 13 October 2023.

COSTS

63. As my decision terminates the proceedings, I must consider the matter of costs. As the cancellation applicant has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are governed by Tribunal Practice Notice 1 of 2023. I award costs as follows:

Preparing a statement:	£250
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Attending the procedural hearing:	£250
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Official fees:	£200
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Total: £700

64. I order Wali Afzal to pay Shenzhen Fangyihao E-Commerce Co., Ltd. the sum of £700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 8th day of September 2026

John Williams
For the Registrar