

TRADE MARKS ACT 1994

IN THE MATTER OF

Registration No.2399927

In the name of Pasty Express Ltd

and application for rectification under

No.82430 thereto by Richard Mark Bailey

BACKGROUND

1. The trade mark PASTY EXPRESS was applied for on 22 August 2005 in the name of Pasty Express Ltd under number 2399927 and was registered on 10 February 2006 in respect of the following goods:

Class 30: Baked foodstuffs; pastry products for food; pre-cooked foodstuffs; prepared snackfoods.

2. On 22 February 2006, an application to rectify the register was made on Form TM26(R) by Richard Mark Bailey, stating in a witness statement, dated 20 February 2006, attached to the Form 26(R), that a clerical error was made on the original application form for the trade mark and that Pasty Express Ltd had been entered instead of Richard Mark Bailey. The witness statement also says that Mr Bailey is operations manager of the registered proprietor and that ownership of the company had not changed during the course of the application.

3. Also attached to the Form TM26(R) is a letter on Pasty Express Limited headed paper, dated 20 February 2006, addressed to The Patent Office. Referring to trade mark number 2399927, it states the following:

“As Managing Director and owner of Pasty Express Ltd I write to confirm my Authorisation in the amendment of the registered owner of the mark PASTY EXPRESS from Pasty Express Ltd to Richard Mark Bailey.”

The letter is signed by Deborah Davey, Managing Director.

4. The third item attached to the application for rectification is the registration certificate for trade mark 2399927.

5. As the application for rectification was made by a person other than the registered proprietor, it was necessary to serve the application on the registered proprietor in accordance with rule 34(2) of the Trade Mark Rules 2000 (as amended). This was done on 10 March 2006 to the address for service recorded on the register and it was stated in the accompanying letter that the registered proprietor would be allowed six weeks in which to file a Form TM8 and counterstatement. If none was filed, then any opposition to the application for rectification may be deemed withdrawn. The registered proprietor failed to respond and therefore the application for rectification has not been contested. Even though it is not contested, I must still be satisfied that the register does stand in error before I can allow any rectification.

DECISION

6. Section 64 of the Trade Marks Act 1994 deals with the rectification of the register. It reads:

“64.- (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.

- (2) An application for rectification may be made either to the registrar or to the court, except that –
 - (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
 - (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.
- (3) Except where the registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.
- (4) The registrar may, on request made in the prescribed manner by the proprietor of a registered trade mark, or a licensee, enter any change in his name or address as recorded in the register.
- (5) The registrar may remove from the register matter appearing to him to have ceased to have effect.”

7. By virtue of the contents of the witness statement, the letter and the attachment of the registration certificate to the Form TM26(R), I consider that Richard Mark Bailey has sufficient interest to make the application for rectification. There appear to be no proceedings concerning the trade mark ongoing in the court and no reasons why they should be referred to the court.

8. The witness statement made regarding the clerical error made in filing the original trade mark application appears to be corroborated by the consent letter from the Registered Proprietor allowing registered ownership to stand in the name of Richard Mark Bailey and, further, by the return of the registration certificate. I am prepared to accept that the register does stand in error and that it is right that the error be corrected. The error is that the name of the registered proprietor should be Richard Mark Bailey and not Pasty Express Ltd.

9. I therefore direct that the register be corrected; that the name of Pasty Express Ltd be removed as proprietor and that Richard Mark Bailey shall be substituted in its place. The effect of my decision is that, in accordance with Section 64(3), I deem that the error in respect of the name of the registered proprietor was never made.

Dated this 12th day of July 2006

**JC Pike
For the Registrar
The Comptroller-General**