

O-363-07

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO. 2402869
IN THE NAME OF JAYEX TECHNOLOGY LIMITED**

AND

**IN THE MATTER OF AN APPLICATION FOR RECTIFICATION NO. 82497
BY JAYEX GROUP LIMITED**

**TRADE MARKS ACT 1994
IN THE MATTER OF Registration No. 2402869
in the name of Jayex Technology Limited**

and

**IN THE MATTER OF an application for rectification No. 82497
By Jayex Group Limited**

BACKGROUND

1. On 30 September 2005, Jayex Technology Limited (“the proprietor”) applied for the following trade mark:



The trade mark was registered on 17 March 2006 under number 2402869, and stands in the name of Jayex Technology Limited of 13 Sovereign Business Park, Coronation Road, London, NW10 7QP. It is registered in respect of the following goods:

Class 09 Display screens (electric or electronic); electronic display boards; electronic display panels; display apparatus (electric or electronic); computer software in connection with electronic display systems; application software for electronic devices that display information.

2. On 08 May 2006, Lawdit Solicitors, acting on behalf of Jayex Group Limited (“the applicant”), filed a Form TM26(R) and accompanying witness statement seeking rectification of the register. The witness statement, signed by Mr Michael Coyle, Managing Director and Solicitor of Lawdit Solicitors Limited, stated that application no. 2402869 had been filed incorrectly. It claimed that the application should have been filed in the name of Jayex Group Limited of 24B Willesden Lane, London, NW2 5RE, and not in the name of Jayex Technology Limited. This error was noted only after receipt of the registration certificate.

3. In addition to the witness statement, the applicant also supplemented the Form TM26(R) with prints taken from the Companies House website. These papers present company details for two separate entities – Jayex Group Limited (the applicant), and Jayex Technology Limited (the registered proprietor). It is noted that the applicant company was originally incorporated on 23 June 1978 under the name “Jayex Sales Limited”. On 02 May 1989, its name was changed to “Jayex Technology Limited”, and then changed again on 16 September 2005 to “Jayex Group Limited”.

4. On 20 September 2005, a new company called “Jayex Technology Limited” was incorporated (four days *after* the applicant had dropped that name in favour of “Jayex Group Limited”). Therefore, from the Companies House records, it appears that the application for rectification has been made by a person other than the registered proprietor.

5. That being the case, it has been necessary to serve the application on the registered proprietor in accordance with Rule 34(2) of the Trade Marks Rule 2000 (as amended). This was done on 25 May 2006 via recorded delivery. The document was returned by Royal Mail on 21 June 2006 marked “not called for” (meaning that the intended recipient failed to collect the letter from the relevant post office). The letter was then resent via standard mail, but the registered proprietor still failed to respond. Therefore, the application for rectification has not been contested.

6. Even though the application for rectification has not been contested, I must still be satisfied that the register does stand in error before I can allow any rectification in the applicant’s favour.

DECISION

7. Section 64 of the Trade Marks Act 1994 deals with the rectification of the register, with the relevant parts reading as follows:

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.

8. I am satisfied that the applicant has the necessary qualifying status required by Section 64(1). The Companies House documents show that the applicant was trading under the name “Jayex Technology Limited” from 02 May 1989 until 16 September 2005 i.e. fourteen days before trade mark application no. 2402869 was filed. At the date on which the trade mark application was actually filed, the company formerly known as “Jaytex Technology Limited” was trading as “Jaytex Group Limited”.

9. Notwithstanding the fact that a *second* company entitled “Jaytex Technology Limited” was incorporated on 20 September 2005, it seems entirely reasonable that a trade mark application could be erroneously filed under a previous company name where that application is filed only fifteen days after a recorded name change. The applicant claims to be the beneficial owner of the registration and requires rectification of the register to demonstrate that fact. These circumstances clearly demonstrate a sufficient interest. I am also satisfied that this is not a request that should have been made to the court nor is it one that should be referred to the court.

10. In his witness statement, Mr Coyle claims that a trainee had been instructed to prepare the trade mark application, and that a subsequent clerical error resulted in it being filed under the wrong name. He also confirms that ownership of the applicant company has not changed during the course of the application.

11. In light of the date proximity between the erroneously-filed trade mark application and the company name change recorded at Companies House, I am prepared to accept what Mr Coyle has stated. The change of name from “Jayex Technology Limited” to “Jayex Group Limited” and concurrent incorporation of a new company entitled “Jayex Technology Limited” has complicated matters, ultimately leading to the serving of the Form TM26(R) on the registered proprietor. Nevertheless, I am prepared to accept what Mr Michael Coyle has stated in his statement, and am conscious of the fact that the application for rectification has not been contested by the registered proprietor.

12. In view of the forgoing, I am prepared to accept that the register does stand in error, and further that this is an error capable of rectification. I therefore direct that the name of the proprietor in respect of registration number 2402869 be amended. Consequently, the register will be rectified by the correction of the registered proprietor’s details to read:

Jayex Group Limited
24B Willesden Lane
London
NW2 5RE

13. Correction of these details will not affect the validity of the registration and I consider it right to exercise the Registrar’s discretion in this case. In accordance with Section 64(3), I deem that the error in respect of the registration was never made.

Dated this 13th day of December 2007

Nathan Abraham
For the Registrar
The Comptroller-General