

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 11062 BY
INTERNATIONAL TIME RECORDER COMPANY LTD
FOR REVOCATION OF REGISTRATION No 1066783
STANDING IN THE NAME OF
BLICK PLC**

TRADE MARKS ACT 1994

5 **IN THE MATTER OF Application No 11062 by
International Time Recorder Company Ltd for
revocation of registration No 1066783 standing
in the name of Blick Plc**

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DECISION

The trade mark ITR is registered in the name of Blick Plc for a specification of goods in Class 9 which reads:

15 "Apparatus and instruments all for time registering and recording, data processing,
time signalling and for programme control; automatic ticket dispensers; programme
clocks; punched card readers; temperature and smoke detecting, indicating and
20 recording instruments and apparatus; audio and visual warning devices (not for
vehicles); electric switches; electric bells; electric relays; power supply units comprising
transformers and rectifiers; battery chargers; cabinets and containers, all adapted for
use with all the aforesaid goods; parts and fittings included in Class 9 for all the
aforesaid goods; computer programmes recorded on magnetic tape and on punched
25 cards."

It is numbered 1066783 and has a filing date of 5 August 1976.

On 23 August 1999 International Time Recorder Company Ltd applied for this registration to be revoked under the provisions of Section 46(1)(a) or (b) of the Act. The applicants add that
30 the (then) proprietors were invited to demonstrate the mark was in use notwithstanding the fact that they are dormant but declined to do so.

I should explain at this point that at the time these proceedings were launched the registration stood in the name of ITR International Time Limited, a wholly owned subsidiary of Blick Plc.
35 At a late stage in the action the registration was assigned to Blick Plc. The counterstatement and evidence in defence of the action were filed by ITR International Time Ltd as proprietor of record at the time. In the counterstatement ITR International Time Ltd deny the above grounds and say that genuine use of the mark had been made by Blick Plc with their consent. Nothing therefore appears to turn on the assignment of the registration. References in what
40 follows to "registered proprietors" should be construed with the above background in mind.

Both sides ask for an award of costs in their favour.

Only the registered proprietors filed evidence. The parties were asked whether they wished to
45 be heard in the matter. Neither did but written submissions were received from Brookes & Martin on behalf of the applicants (their letter of 25 September 2000).

Acting on behalf of the Registrar and after a careful study of the papers I give this decision.

The relevant parts of Section 46 read as follows:

- 5 "46.-(1) The registration of a trade mark may be revoked on any of the following grounds-
- (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
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- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;"
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The relevant dates under subsection (1)(a) are 17 June 1982 to 16 June 1987, the registration procedure having been completed on 16 June 1982. The applicants have not specified a period under subsection (1)(b) so I take it to be the five year period up to the filing date of the application for revocation on 23 August 1999, that is to say starting from 23 August 1994.

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Under the provision of subsection 3 of Section 46 (and subject to the proviso to that subsection) the registration of a mark is not to be revoked on the ground mentioned in subsection 1(a) or (b) if such use as is referred to is commenced or resumed after the expiry of the five year period and before the application for revocation is made.

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Section 100 is also relevant and reads:

"100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

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This is one of three related revocation actions launched on the same date. The other two involve registrations in Classes 14 and 16. The cases have not been consolidated. Individual statutory declarations are before me from Richard Collins, Company Secretary of ITR International Time Ltd though the content of these declarations is essentially the same.

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Mr Collins says that his company is a wholly owned subsidiary of Blick Plc and that the marks at Exhibit RC1 (block capital and stylised versions of the letters ITR) have been used by the latter with the consent of his company (confirmed by a letter at Exhibit RC2). The goods in respect of which use is claimed initially reflect the wording of the respective specifications but then is refined in the following terms:

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"And in particular in relation to time recording apparatus and instruments, parts and fittings therefor, and the Class 16 goods listed above the EX30 time recorder, parts and fittings, therefore (sic), and stationery supplies therefor".

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A sample brochure showing the ITR EX30 time recorder is at Exhibit RC3. The mark is said to be stencilled on to the product casing and printed on brochures. Annual turnover for the last five years is given as follows:

5	Year	Value (£)	Units
	Oct-Dec 1995	18,821	190
	1996	103,126	791
	1997	40,931	243
10	1998	8,388	44
	1999	8,153	53

Mr Collins adds that these are wholesale values. Mark-up of approximately 21% is applied to give final retail values. He goes on to say:

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"Blick has made most of these sales in the form of maintenance contracts for the goods, which include the supply of replacement goods and spare parts. A selection of invoices for these maintenance contracts is now produced and shown to me marked Exhibit RC4".

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Approximately 5% of all items sold have been exported to foreign countries. These include Germany, the Channel Islands, Gibraltar, The Netherlands and Malta. Blick Plc is said to have approximately 30% of the UK market for time recording apparatus and the ITR products make up approximately 2% of these sales. Marketing is by direct sales with about 5000 brochures (of the kind at Exhibit RC3) being produced each year. Goods have been sold to customers in the towns and cities identified in a list at Exhibit RC5.

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That completes my review of the evidence. I go on to consider what conclusions can be drawn from this evidence. It will be apparent that the specification of the registration in Class 9 covers a broad range of goods. In practice the registered proprietors' evidence is directed towards a very specific subset of goods namely time recording apparatus and instruments. Only one exhibit has been provided (RC3) to illustrate the nature of these goods. This consists of a two page brochure. The device pictured on the first page has the outward appearance of a clock (further detail is indistinct from the photocopied document in evidence). The heading indicates that it is an ITR EX30 time recorder. The explanatory text on the second page describes it as being suited to both commercial and industrial environments with "easy to read clock face and automatic time and programme setting in the event of power failure". The specifications show power requirements and power consumption along with other technical data. The item shown would, I think, fall squarely in the Class 9 specification set out above.

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Above the technical specifications is what I take to be an example of a card or record sheet produced by the time recorder or at least based on information logged by the recorder. It has headings to record number, name and a week ending date. The example shown has (somewhat curiously in the context of a printed brochure) manuscript entries showing 095,

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J Wright and 17 May 1991. A printing reference at the foot of the brochure suggests a date of 5/91. No other date reference is shown. It is of course possible that a brochure produced in 1991 was used after that date but this is not expressly stated to be the case.

5 Mr Collins gives turnover figures under the marks (plural because one of the other cases has
the letters presented in stylised form) for the years 1995 to 1999. The amounts involved are
modest sums but more importantly I am left in considerable doubt as to whether, or to what
10 extent, the figures actually relate to the sale of goods. Mr Collins says that "Blick has made
most of these sales in the form of maintenance contracts for the goods, which include the
supply of replacement goods and spare parts". The only exhibit which provides a point of
reference against which to test these assertions is RC4 consisting of invoices most of them
relating to ITR contracts. As the applicants point out in their written submissions these
15 invoices are, without exception, for maintenance contracts that is to say the provision of a
service rather than goods. It is clear from the invoice dates that they are forward contracts
covering in each case the next yearly period. If the provision of replacement goods or spare
parts formed part of this trade (contingent or otherwise) it is not possible to deduce the extent
of it from the material provided and no breakdown is given. From the customers' perspective
they would simply have been purchasing a maintenance contract. The turnover figures, taken
20 in the context of Mr Collins' other comments and Exhibit RC4 cannot be relied on to
substantiate a trade in goods (time recorders or spare parts).

If there has been a continuing trade in the sale of time recorders or other goods under the
mark ITR the registered proprietors can reasonably be expected to have provided more recent
(than 1991) product literature and to have made unequivocal and substantiated statements
25 about that trade.

Making the best I can of the information available to me I am left with the impression that the
registered proprietors have a small, perhaps residual, trade in maintaining time recorders sold
under the mark ITR. I find nothing in the evidence to substantiate the sale of goods (including
30 spare parts). The other assertions as to market share, export trade and geographical spread of
sales lack contextual explanation and/or fail to place any such trading activity in a relevant
timeframe.

Having reached a conclusion of non-use I go on to consider the consequences.

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Sections 46(5) and (6) read as follows:

"(5) Where grounds for revocation exist in respect of only some of the goods or
40 services for which the trade mark is registered, revocation shall relate to those goods
or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the
proprietor shall be deemed to have ceased to that extent as from -

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(a) the date of the application for revocation, or

- (b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date."

5 The consequence of my above findings is that the application must at the very least be successful taking the matter at the date of application for revocation (for Section 46(1)(b) purposes). Under Section 46(6)(b) it is open to me to go beyond this and to find that the grounds for revocation have been made out as at an earlier date or that the registered proprietors have not answered the attack under Section 46(1)(a).

10 I find myself in some difficulty on this point. It is not unreasonable to infer from the existence of maintenance contracts (the genuineness of these is not disputed) that they must have been preceded by sales of goods. One is unlikely to exist without the other. The brochure at RC3 suggests a product existed in May 1991 but there are no sales figures or other substantiating information for that time. I regard the evidence as being insufficient to save the mark at that
15 date.

I have, therefore, decided that the registration will be revoked in its entirety from
16 June 1987 this being the date five years after the completion of the registration procedure (the Section 46(1)(a) ground). If on appeal I am found to be wrong on this point then I would
20 hold that revocation should take effect from the date of application for revocation (the Section 46(1)(b) ground), so far as "apparatus and instruments all for time registering and recording; parts and fittings included in Class 9 for all the aforesaid goods" is concerned. The revocation would still take effect from the earlier date so far as the balance of the specification is
25 concerned as no use at all has been shown on the other items.

As the applicants for revocation have been successful they are entitled to a contribution
towards their costs. I order the registered proprietors to pay them the sum of £435. This sum
is to be paid within seven days of the end of the appeal period or within seven days of the final
30 determination of this case if any appeal against this decision is unsuccessful.

Dated this 6 day of October 2000

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M REYNOLDS
For the Registrar
the Comptroller-General