

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 11060
BY INTERNATIONAL TIME RECORDER COMPANY LTD
FOR REVOCATION OF REGISTRATION NO 1066785
STANDING IN THE NAME OF BLICK PLC**

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5 **IN THE MATTER OF Application No 11060**
by International Time Recorder Company Ltd
for Revocation of Registration No 1066785
standing in the name of Blick Plc

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DECISION

15 The trade mark ITR is registered in the name of Blick Plc for a specification of goods in Class
16 which reads.

20 “Date and time stamps being articles of stationery, paper articles included in Class 16
and blank cards for use with time recording equipment; and cases and holders all
included in Class 16 for all the aforesaid goods.”

It is numbered 1066785 and has a filing date of 5 August 1976.

25 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
the (then) proprietors were invited to demonstrate the mark was in use notwithstanding the
fact they are dormant but declined to do so.

30 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.
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
35 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
follows to “registered proprietors” should be construed with the above background in mind.

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

40 The parties were asked to say whether they wished to be heard. 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:

“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;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;”

The relevant dates under subsection (1)(a) are 13 May 1982 to 12 May 1987 (the registration procedure having been completed on 12 May 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.

Section 100 is also relevant and reads:

“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.”

This is one of three related revocation actions launched on the same date. The other two involve registrations in Classes 9 and 14. 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.

Mr Collins makes a generalised claim that the marks (by which he means both a plain block capital and stylised version of the letters ITR) have been used with the consent of the proprietors on the full range of goods covered by this and the other registrations. This broad claim is followed by a more focussed one that the marks have been used

“.....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.”

The (ITR) EX30 referred to above is the only product shown in the evidence. It is an electrical/electronic time recorder. I have accepted for the purposes of my decision in the Class 9 registration that a product of this kind properly falls within that Class. Mr Collins’ evidence deals with the nature of the claimed trade in goods but does not differentiate between the various types of products said to be sold under the mark ITR. The reference in the above passage to the “Class 16 goods listed above the EX30 time recorder” is not explained but may refer to what appears to be a specimen time record card shown on the second page of the EX30 brochure. There is nothing to suggest that the mark ITR appears on the card itself. The sales figures given in Mr Collins’ declaration are said to relate mainly to maintenance

contracts. The invoice evidence (RC4) refers to the provision of maintenance contracts and not the sale of goods of any description. The claim to have used the mark in relation to Class 16 goods is, on my appraisal of the evidence, unsubstantiated. The application for revocation, therefore, succeeds.

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It remains for me to determine the date from which revocation will take place having regard to the provisions of Section 46(6). I consider that the registration should be revoked with effect from 12 May 1987 this being the date five years after the completion of the registration procedure (the Section 46(1)(a) ground).

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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 determination of this case if any appeal against this decision is unsuccessful.

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Dated this 6th day of October 2000

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M Reynolds
for the Registrar
the Comptroller General

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