

O-633-17

TRADE MARKS ACT 1994

IN THE MATTER OF THREE TRADE MARK REGISTRATIONS  
(NOS. 2529212, 2534902 AND 2580215)  
IN THE NAME OF STANLEY MYERS UK LTD  
IN RESPECT OF THE FOLLOWING MARKS:

**Pasha The Shisha Experts**

  
The Shisha Experts

**HOLLYWOOD SHAKES**

**AND**

**AN APPLICATION FOR RECTIFICATION OF THE REGISTER (NO. 84781)  
BY ZAMEER HUSSAIN**

## **Background and pleadings**

1. The three trade marks shown on the cover page of this decision were filed on 20 October 2009, 21 December 2009 and 5 May 2011, respectively, by Mr Zameer Hussain. The first two marks were registered on 16 April 2010 and the third on 21 October 2011.

2. By way of form TM16, the three registrations were assigned to Stanley Myers UK Ltd from Zameer Hussain. The TM16 was received by the Intellectual Property Office on 19 April 2017, with an effective date of assignment recorded as 10 April 2017.

3. On 31 May 2017, an application to rectify the register in respect of the three registrations was made on form TM26(R) by Zameer Hussain. Mr Hussain claims, in his statement of grounds, that he gave no authorisation for the assignments and requests that the three registrations are returned to him by reinstating him as the owner.

4. 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 (Stanley Myers UK Ltd) in accordance with rule 44(2) of the Trade Mark Rules 2008 (as amended). This was done on 13 June 2017 to the address recorded on the register, the address which was given for the new owner when the form TM16 was received. It was stated in the accompanying letter that the registered proprietor would be allowed two months in which to file a counterstatement and that, if none was filed, then any opposition to the application for rectification may be deemed withdrawn.

5. The serving documents, which were sent "Royal Mail Signed For", were returned to sender marked as "refused not at this address". A further serving letter was sent on 21 June 2017. No response was received. On 6 October 2017 a letter was sent to the registered proprietor noting that no defence had been received, also informing it that a rectification decision would now be issued, and giving the registered proprietor an opportunity to request a hearing. No response was received.

6. It should be noted that Zameer Hussain filed a form TM21 to record a change in the address of the registered proprietor, to one of his own. This could have hampered the serving of the documents on the registered proprietor, but I highlight that at all times the Tribunal has attempted to communicate with the registered proprietor at the address it provided.

7. As the registered proprietor has failed to respond, the application for rectification has not been contested. Even though it is not contested, I must still be satisfied that there is an error capable of correction and that a prima facie case exists for its correction.

### **Decision**

8. This is an application to rectify the register, the provisions relating to which are contained in section 64 of the Act:

“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.”

### **Sufficient interest?**

9. The applicant, Zameer Hussain, must have a sufficient interest to apply for rectification. A claim to being the legal owner of the registrations, and that an assignment which took the marks from his name was fraudulent, represents a clear form of interest. The applicant has an interest in this matter sufficient for the purposes of section 64(1) of the Act.

### **Is the claimed error capable of correction?**

10. Section 64(1) relates to errors or omissions on the register. No omission is claimed, the claim being that the name of the current recorded proprietor (Stanley Myers UK Ltd) is erroneous. I have no doubt that the provisions of section 64(1) cover more than the correction of simple clerical errors and can cover, for example, issues of disputed ownership including rescinding erroneous assignments. The registrar has issued a number of decisions to this effect<sup>1</sup>.

### **Was the assignment erroneous?**

11. As I have stated, absent any contest from the registered proprietor, I need only be satisfied that a *prima facie* case exists. Put simply, Zameer Hussain has stated that

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<sup>1</sup> See, for example: BL O/283/02, BL O/284/02, BL O/040/05, BL O/336/01 & BL O/408/11

the form TM16 purporting to assign the marks to Stanley Myers UK Ltd was not filed with his consent. His signature appears on the form TM16, but he says this is fake. Absent anything to counter what Mr Hussain has said, I am satisfied that a prima facie case exists to support that the assignment has been erroneously made. The application for rectification succeeds.

### **Conclusion**

12. The register will be rectified by the replacement of Stanley Meyers UK Ltd with the name of Zameer Hussain as the proprietor of the registrations. The assignment to Stanley Meyers UK Ltd is deemed never to have been made.

**Dated this 08<sup>th</sup> Day of December 2017**

**Oliver Morris,  
For the Registrar  
The Comptroller-General**