

O/0502/25

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION No. UK3677760

**IN THE NAME OF MEGAN HESSION
FOR THE FOLLOWING TRADE MARK:**



IN CLASSES 35, 36 AND 41

AND

APPLICATION FOR RECTIFICATION

UNDER NO. 84920

1. The trade mark UK 00003677760 (“the Contested Mark”), shown on the cover of this decision, stands registered in the name of Megan Hession, the Registered Proprietor (“the RP”). It was applied for on 5 August 2021 by the RP, in respect of services in classes 35, 36 and 41, achieving registration on 18 February 2022.
2. On 15 November 2023, an application to rectify the Register was made by way of Form TM26R¹ by the Applicant, People Potential Possibilities (“PPP”), filed by its legal representative, Dean International IP Limited.
3. The Application is made pursuant to Section 10B of the Trade Marks Act 1994 (“the Act”).² PPP claims that the Contested Mark was registered by the RP while they were acting as a representative for PPP by undertaking publicity work for it.³ It is stated that the Contested Mark was, at the time of its application for registration, owned by PPP (which also trades as P3 and Rugby Portobello Trust) and that the registration, although in the RP’s name, shows one of PPP’s addresses.⁴ PPP states that it has attempted to contact the RP to request their cooperation in the instant proceedings; however, to date, no reply has been received.⁵
4. PPP filed evidence in support of its application by way of a Witness Statement from Michael Brian Dean, Chartered Trade Mark Attorney representing PPP, dated 26 January 2024. Mr Dean’s statement is accompanied by six exhibits: MD1 to MD6. PPP’s evidence will be addressed later at [15].
5. Section 10B of the Act states:

“10B Prohibition on the use of a trade mark registered in the name of an agent or representative

¹ Application to rectify the register (registered trade marks only).

² The claim was initially erroneously pleaded pursuant to section 60 of the Act. Section 60 was, on 14 January 2019, superseded by section 10B of the Act. The Applicant subsequently filed an amended Form TM26R to reflect the updated legislation.

³ Form TM26R, at section [5].

⁴ As above.

⁵ As above.

(1) Subsection (2) applies where a trade mark is registered in the name of an agent or representative of a person (“P”) who is the proprietor of the trade mark, without P’s consent.

(2) Unless the agent or representative justifies the action mentioned in subsection (1), P may do either or both of the following-

(a) prevent the use of the trade mark by the agent or representative (notwithstanding the rights conferred by this Act in relation to a registered trade mark);

(b) apply for the rectification of the register so as to substitute P’s name as the proprietor of the registered trade mark.”

6. The requirements for an application for rectification pursuant to section 10B to succeed were examined by the Court of Appeal (“the CA”) in the case of *Quantum Advisory Ltd v Quantum Actuarial LLP*.⁶ The CA first set out what the High Court had stated to be the requirements: [my text added in parentheses]

“i. LLP [the Registered Proprietor] must have been the agent or representative of Quad [the Applicant for rectification].

ii. Quad must have been proprietor of a trade mark that (a) is identical with or similar to the registered trade mark and (b) subsisted in goods or services identical or similar to those for which the registered trade mark was registered.

iii. LLP must have applied for registration of the trade mark in its own name.

iv. LLP must have applied for registration without Quad's consent.

v. LLP fails to establish that its action in applying for registration of the trade mark was justified.”⁷

⁶ [2024] EWCA Civ 247.

⁷ As above, [69].

7. The meaning of ‘agent or representative’ was considered in the judgment of the High Court in the *Quantum* case^{8,9}, which cited the following dicta referred to by Richard Arnold QC [as he then was] as the Appointed Person in *In the Matter of an Application for Rectification by Sribhan Jacob Company Limited* (O-066-08):

“[89] [...]

[38] In *Promat v Pasture*¹⁰ it was held at [14]:

‘The terms “agent” or “representative” must be interpreted broadly to cover all kinds of commercial relationships, regardless of the *nomen juris* of the contractual relationship between the principal-proprietor and the agent-CTM applicant. Thus, it is sufficient for the purposes of Article 8(3) CTMR that there is some kind of agreement of commercial co-operation between the parties of a kind that gives rise to a fiduciary relationship by imposing on the applicant, whether expressly or implicitly, a general duty or trust and loyalty as regards the interests of the TM owner. [...]’

[39] In *Sotorock v Gordon*¹¹ it was held at [17]:

‘[...] In the spirit of the original provision, Article 8(3) CTMR aims at providing a safeguard for trade mark proprietors against attempts at misappropriation of the trade marks by persons who are in a close business relationship with the proprietors. Such persons may have the capacity of a proprietor’s agent or representative, as is mentioned in the wording of Article 8(3) CTMR. The term “representative” is a broad concept and may include a distributor or an importer of the proprietor’s goods or any party who acts for the proprietor in any trade connection. Both agent and representative, by virtue of the close commercial relationship they have with the trade mark proprietor, may be able to take

⁸ [2-23] EWHC 47 (Ch), [89].

⁹ Although the CA overturned the decision of the inferior court on rectification, the meaning of agent or representative, as set out in the HC judgment, was not part of the appeal and, therefore, remains good law.

¹⁰ Decision 164C/00054844/1, Cancellation Division, 19 December 2002.

¹¹ Case R336/2001-2, Board of Appeal, 7 July 2003.

advantage of the proprietor's intellectual property. This provision sets down the limits of this relationship and offers protection to the trade mark proprietor where there is proof that the relationship exists and that the trade mark proprietor never consented to the agent's or representative's registering the proprietor's trade mark in its own name.'

[90] The approach set out in *Sribhan Jacob Company Limited's Application* is consistent with the more recent remarks of the Court of Justice of the European Union in *EU IPO v John Mills Ltd*¹², which concerned the words "agent and representative" in the provisions relating to relative grounds for refusal of registration in Article 8 of Council Regulation (EC) No. 207/2009¹³. At [83] the Court observed that the objective of article 8 was

"to prevent the misuse of the earlier mark by the agent or representative of the proprietor of that mark, as those persons may exploit the knowledge and experience acquired during their business relationship with the proprietor and may therefore improperly benefit from the effort and investment which the proprietor himself has made."

The Court continued:

[85] [...] those concepts ['agent' and 'representative'] must be interpreted in such a way as to cover all forms of relationship based on a contractual agreement under which one of the parties represents the interests of the other, with the result that it is sufficient, for the purposes of the application of that provision, that there is some agreement or commercial co-operation between the parties of a kind that gives rise to a fiduciary relationship by imposing on the applicant, whether expressly or implicitly, a general duty of trust and loyalty as regards the interests of the proprietor of the earlier mark'."

8. Given that the application for rectification was made by a party other than the RP, it was necessary to notify the RP in accordance with Rule 44(2) of the Trade Marks

¹² Case C-809/18P, EU:C:2020:902, [2021] Bus LR 123.

¹³ Of 26 February 2009.

Rule 2008 (“the Rules”). This was done by letter dated 25 June 2024, sent by regular post and by email, to the RP. The letter directed as follows:

“The registered proprietor is now invited to submit a counter-statement together with evidence or submissions in accordance with Rule 44(2)(b) of the Trade Marks Rules 2008.

Therefore, in accordance with Tribunal Practice Notice 3/2008 a period of two months from the date of this letter is allowed for this purpose.

The counterstatement and evidence or submissions should therefore be received on or before **26th August 2024** and in accordance with Rule 64(6) a copy must be sent to the other party.”

9. Subsequently, on 25 June 2024, the Registry received email correspondence from the RP as follows:

“Hi [*caseworker name redacted*] – This looks fraudulent to me as this person is using a BT Connect email and not an email from said company this person is representing. I believe it is fake”.

10. On 25 July 2024, the Registry wrote to PPP acknowledging receipt of its email of 25 June 2024 and reminded it of the 26 August 2024 deadline to file a counterstatement and evidence/submissions.

11. On 8 September 2024, the deadline for filing a counterstatement having passed, and with no indication of one having been filed, the Registry wrote to the RP in the following terms:

“The Registry’s letter dated 25 June 2024 informed you that if you wished to continue with your registration, you should file a counterstatement on or before 26 August 2024.

As no counterstatement has been filed within the time period set, the Registry is minded to treat the proprietor as not opposing the application for rectification and will rectify the registration as no defence has been filed within the prescribed period.

In accordance with paragraph 10 of Tribunal Practice Notice 2/2011, if either party disagrees with the preliminary view they should request a hearing within 14 days from the date of this letter; that is on or before **23 September 2024.**”

12. No reply was received from the RP by the prescribed deadline of 23 September 2024. On 7 October 2024, the Registry wrote to the RP to provide one further opportunity for a counterstatement to be filed, setting a deadline of 9 December 2024.

13. On 7 January 2025, in the absence of any reply from the RP, the Registry wrote to the parties with the Preliminary View that the RP is to be treated as not opposing the application for rectification. A deadline of 21 January 2025 was set for the RP to disagree with the Preliminary View, file reasons for the disagreement and request a hearing. The Official Letter contained the following wording:

“If no response is received by the deadline, the preliminary view will be automatically confirmed, and the rectification will then be reviewed by a hearing officer”.

14. No response was received from the RP by the prescribed deadline of 21 January 2025.

15. I note the following from PPP’s evidence:

a) Mr Dean has given narrative evidence that Rugby Portobello Trust (‘RPT’) is part of PPP, which is a charitable organisation, ‘regularly abbreviated to P3’.¹⁴ Mr Dean states that, in 2018, RPT (of which PPP is part) started running ‘a studio complex

¹⁴ Witness Statement of M. Dean, [2].

for youth, training and exercising in musical and other studio activities'.¹⁵ He states that RPT invited users of the facility to find a brand name for it and that they chose 'AMPLIFY'.¹⁶ Mr Dean goes on to say that, in 2018, RPT 'engaged Megan Hession for a branding project, to include producing an initial design brief for a brand image for this AMPLIFY brand'.¹⁷

b) Two invoices, dated 2 October 2020 and 16 March 2022, respectively, have been provided to support Mr Dean's statement that the RP was working for RPT before and after 5 August 2021 (i.e. the date when the application was filed for the registration in suit).¹⁸ Both invoices appear to have been issued by the RP as a member of an outfit named Blakely Advisors. Both invoices include the RP's contact email 'megan@artsalliance.co.uk'. It is convenient to set out the other details thus:

Invoice dated 2 October 2020:	Invoice dated 16 March 2022:
Addressee/payee: Rugby Portobello Trust.	Addressee/payee: 'P3 Charity p/a RPT'.
Description of service rendered: 'Consultation Services – September 2020'.	Description of service rendered: 'Amplify Consulting – March 2022'.
The reference 'Amplify Studios' is shown underneath the bank details for payment.	The payment details differ from those shown on the other invoice.
Balance due: £3,560.00.	Balance due: £1,200

¹⁵ As above, [3].

¹⁶ Witness Statement of M Dean, [4].

¹⁷ As above, [5].

¹⁸ As above, [6]; Exhibits MD1 and MD2.

c) A copy of the design brief referred to by Mr Dean has been provided, intended to demonstrate that the RP was working on the branding project as of 2018.¹⁹ Mr Dean states that the RP was 'brought in to develop the AMPLIFY project including to prepare the design brief' concerning the mark.²⁰ The document is dated 4 October 2018, and the cover page bears the following text:

'The Rugby Portobello Trust and Arts Alliance
AMPLIFY STUDIOS
Brand Identity – Design Brief'.

Broadly speaking, the document sets out RPT's vision on the concept that they would like their branding to convey. The author of the design brief is not apparent, and the RP's name does not appear anywhere within the document. However, 'Arts Alliance' appears on the cover in conjunction with 'The Rugby Portobello Trust' and 'marries up' with the email address 'megan@artsalliance.co.uk' noted on the invoices.

d) Mr Dean states 'Attached Exhibit MD4 shows that the address at which work was carried out in connection with the AMPLIFY project, which is one of the Company's addresses, is the same as the address registered for the instant registration'.²¹ Mr Dean has not stated what the material in Exhibit MD4 is. The absence of cover sheets between the exhibits makes it difficult to see where the exhibits begin and end. I presume that Exhibit MD4 is the page following the Design Brief, the invoice dated 30 November 2020. The payee name shown in the header is 'Michaelis Boyd Associates'. The details are as follows:

- The invoice is to 'Rugby Portobello Trust', at the following address:

'Rugby Portobello Trust
221 Walmer Road
London

¹⁹ As above, [7]; Exhibit MD3.

²⁰ Witness Statement of M Dean, [11].

²¹ As above, [10].

W11 4EY'

- The contact to whom the invoice is directed is 'Megan Hession'.
- The description of the service rendered is 'Phase 3: Stage 3 – Develop Design 226 Walmer Road'.
- The sum due is £3,600.

One further observation, although I do not consider that anything turns on this, is that Mr Dean's statement that the address at which the work was carried out is the same as that recorded on the Register, is not strictly correct. I note that the Register records the following address for the RP: 226 Walmer Rd, London, W114EY, United Kingdom; whereas the address in Exhibit MD4 is 222 Walmer Road. However, I accept that these addresses are in the same road.

e) Undated webpages, specifically about 'Amplify Studios,' from the website of 'rugbyportobello.org.uk' have been provided.²² The page details night sessions at Amplify Studios, called 'Friday Lates', which were launched in 'January 2020'. The Rugby Portobello Trust logo is clearly visible on each page. The contact address in the footer matches the address on the invoice exhibited at MD4. Also in the footer, adjacent to the logo for 'Rugby Portobello Trust', I can make out the words 'Potential Possibilities'. Most of the top part of the text on the word 'Potential' appears to have been cut off (perhaps due to the display of the web page). I presume that the word 'People' has also been cut off, such that the text would otherwise read 'People Potential Possibilities'. The text 'Part of p3 Charity and social enterprises' appears underneath.

f) Exhibit MD6 appears to be a brochure or leaflet containing information on PPP's 'Amplify Studio' initiative. Although undated, the wording 'There is an ambition to begin construction on a larger Amplify premise [sic] as part of Phase II in August 2020' has been highlighted on the document. It can, therefore, be presumed that the document pre-dates August 2020. The contested mark is clearly visible on the front and back covers of the document. The marks can also be seen on screens,

²² Presumably Exhibit MD5

walls and a t-shirt, which feature in photographs within the document. The content of the document makes it clear that RPT is responsible for the Amplify project. I note that the contact email for donation and volunteering enquiries is 'volunteer@rpt.org.uk'. At the end of the document is the following: 'We have started a fundraising drive to cover our operating costs and begin phase 2 of Amplify Studios, the big build! Please contact **megan@amplifystudios.co.uk** for more further details'. [original bold].

DECISION

16. Rectification of the register is provided for under section 64 of the Act, which states:

'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

17. There is no statutory definition of a 'person having a sufficient interest'.²³ Historically, under the 1938 Trade Marks Act, most rectification proceedings which could be brought by persons other than the Registrar or Registered Proprietor, required that the application be 'a person aggrieved'.²⁴ The requirement was interpreted very broadly, and, in general, anyone in the trade concerned had sufficient locus to apply.²⁵ The effect of the requirement was, therefore, to exclude persons with only a fanciful interest.²⁶

18. I am satisfied that PPP has sufficient interest to bring the proceedings, for the following reasons:

- I accept that RPT is part of a larger charitable organisation PPP, which is, from time to time, abbreviated to 'P3'.
- The totality of evidence demonstrates that RPT has developed the AMPLIFY initiative and that the mark has been used by RPT.
- I do not consider these factors to indicate 'only a fanciful interest'.

Is it an error capable of correction?

19. Section 72 of the Act states:

²³ Kerly's Law of Trade Marks and Trade Names, 17th ed., [5-037].

²⁴ As above.

²⁵ As above.

²⁶ As above.

‘72. In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original rectification and of any subsequent assignment or other transmission of it.’

20. Where an application for rectification has been filed pursuant to section 10B, the Registrar must be satisfied of the following:

- The RP must have been the agent or representative of PPP (or RPT);
- PPP must have been the proprietor of a trade mark that is identical/similar to the registered trade mark and for identical/similar goods or services;
- The RP must have applied for registration of the trade mark in its own name;
- The RP must have made the application without PPP’s consent;
- and
- The RP must have failed to establish that its action in applying for registration of the trade mark was justified.

21. If the above requirements are satisfied, then the Register can be rectified.

Should rectification of the register follow?

22. Taking the evidence in the round, my view is that it is apparent that the RP was in a contractual relationship with RPT (and, by implication, PPP) whereby she provided work by way of undertaking a branding project for PPP, in respect of its charitable project ‘AMPLIFY’, for consideration of payment. The invoices addressed to RPT, bearing the RP’s name as payee, together with the descriptions of the services rendered, make this clear. To my mind, it is implicit in the nature of the contractual relationship between the parties that the RP owed to RPT (and, by implication, PPP) duties of trust and loyalty. RP’s service to RPT entailed using her knowledge and expertise to develop a branding strategy designed to promote RPT’s ‘AMPLIFY’ initiative, in line with its vision, in order to fulfil, and raise funds for, its charitable aims. It is clear that the address currently recorded on the Register

in respect of the mark in suit is that of RPT and not that of the RP. The presence of the email address 'megan@amplifystudios.co.uk' as a contact for fundraising matters for Amplify, in my view, indicates that the RP was working on behalf of RPT in relation to fundraising activities to progress the AMPLIFY initiative. I find that the RP was an agent for RPT (and, by implication, PPP) while engaged in the branding project.

23. I now consider whether PPP was the proprietor of the mark in suit at the time when application for its registration was filed by the RP. In my view, RPT has provided ample evidence to demonstrate that: it had engaged the RP with, inter alia, the task of creating a design brief for its 'AMPLIFY' project; and it has made use of the mark in material on its website, in brochures, and in and on its studio. RPT has also promoted studio events under the mark. I, therefore, find that PPP was the proprietor of the mark.

24. Registration of the mark was applied for in the RP's name.

25. I have no reason to doubt that the RP applied for registration of the mark in their name without the consent of PPP.

26. The RP has failed to provide any justification for their action in applying for registration of the mark in their name.

27. In the light of the above, the requirements for an application for rectification pursuant to section 10B of the Act have been made out, and rectification of the Register should follow.

28. The outcome of the above results in the removal of the name Megan Hession from the Register and the recording of People Potential Possibilities instead as proprietor of registration UK3677760.

Outcome

29. The application for rectification has succeeded. I, therefore, direct that the Register be rectified; that the name of Megan Hession shall be removed as the Proprietor and that People Potential Possibilities shall be substituted in its place.

Costs

30. There is no official fee for filing an application for rectification and no request for costs has been made. I therefore make no order for costs.

Dated this 4th day of June 2025

N. R. Morris

**For the Registrar,
the Comptroller-General**