

O/1047/24

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION Nos. UK3321217 AND
UK3321223

IN THE NAME OF LAUREN CAITLYN
FOR THE FOLLOWING TRADE MARKS:

MISS DIVA

AND

MISS DIVA

IN CLASSES 3, 25 AND 35

AND

APPLICATIONS FOR RECTIFICATION

UNDER NO. 84942

1. The trade marks on the cover page of this decision were applied for and registered as follows:

UK00003321217

Filing date: 28 June 2018

Date of entry in register: 12 October 2018

For the following goods and services:

Class 3:

Cosmetics; perfumery, perfumes, aftershave lotion; make-up; bleaching preparations included in this class; preparations for laundry use; cleaning, polishing and scouring preparations; abrasive preparations (not for dental use); non medicated toilet preparations; preparations for the hair; non medicated preparations for the care of the skin; perfumes; eau de cologne; essential oils.

Class 25:

Footwear, shoes, boots, sandals, wellington boots, galoshers, training shoes, slippers.

Class 35:

Retail services (including retail services provided online via a website on the internet) connected with the sale of cosmetics, make-up, perfumery, after-shave lotions, preparations for the hair, non-medicated [sic] toilet preparations, footwear, shoes, boots, sandals, wellington boots, galoshers, training shoes, slippers, handbags, wallets, purses, leather goods, belts, jewellery, shoe cleaning equipment and shoe horns.

UK00003321223

Filing date 28 June 2018

Date of entry in register: 12 October 2018

For the following goods and services:

Class 3:

Cosmetics; make-up; bleaching preparations included in this class; preparations for laundry use; cleaning, polishing and scouring preparations; abrasive preparations (not for dental use); non medicated toilet preparations; preparations for the hair; non medicated preparations for the care of the skin; essential oils.

Class 25:

Footwear, shoes, boots, sandals, wellington boots, galoshers, training shoes, slippers.

Class 35:

Retail services (including retail services provided online via a website on the internet) connected with the sale of cosmetics, make-up, preparations for the hair, non-medicated [sic] toilet preparations, footwear, shoes, boots, sandals, wellington boots, galoshers, training shoes, slippers, handbags, wallets, purses, leather goods, belts, jewellery, shoe cleaning equipment and shoe horns.

2. On 15 January 2024, an application to record a change of ownership, for both registrations, was filed by way of Form TM16. The name 'Halima Ashiq' was provided as 'Old owner', and the name 'Lauren Caitlyn' ('the Registered Proprietor') was provided as 'New owner'. At section [10] of the Form TM16, the 'Person making this request' is stated to be 'Halima Ashiq' ('the Applicant'). Attached to the form was a document headed 'Certified Copy of the Document Assignment of Trade marks (Deed) of Halima Ashiq', which appears to be a deed of transfer for the registrations for the sum of £20,000, purportedly signed by the Applicant and Registered Proprietor, in the presence of witnesses. The recordal was confirmed by the Registry on 23 January 2018.
3. On 30 January 2023, an application to rectify the Register was made by way of Form TM26R by the Applicant, filed by their legal representative, Groom Wilkes & Wright LLP. The legal representative stated that the trade marks had been fraudulently assigned to a third party, a Lauren Caitlyn, who had, prior to the unauthorised assignment, hacked into the Applicant's 'Domain name' account in

late 2023, and 'stolen' the Applicant's domain names. The Form TM26R was accompanied by: copies of correspondence between the Applicant and their legal representative in which the Applicant gives their account of events; and copies of passports for the Applicant and the party purported to have witnessed the Applicant's signature on the purported deed of transfer.

4. Given that 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 in accordance with Rule 44(2) of the Trade Marks Rules 2008 ('the Rules'). On 19 April 2024, the Registry served the TM26R on the Registered Proprietor setting a deadline of 19 June 2024 for it to file evidence and/or submissions. The official letter included the following paragraph:

TM26R – sensitive information.

Sensitive information has been provided in the form of copies of passport pages in order to evidence claims of forged signatures on the TM16. Please note these pages have been removed, and reference to passport pages will be disregarded at this stage. It is noted signature detail may be provided as evidence at a later date, in an alternative example, or a format that redacts any potentially sensitive data that may not be suitable to be placed on public file.'

5. The Registered proprietor did not file a counterstatement.
6. The Applicant did not elect to re-file its evidence comprising the signatures in a redacted format. As explained in the official letter of 19 June 2024, the signature material, as filed, is inadmissible.

Evidence

7. The material provided by the Applicant is by way of a statement ('the Statement'), accompanied by an email dated 29 January 2024, excerpts from other emails, and various screenshots, sent to their legal representative. As a general observation, the way in which the Statement and evidence are assembled is somewhat

confusing and it is difficult to see where the Statement ends and the excerpts from emails begin. The evidence is without annotation and have not been organised into exhibits or any other 'indexed' format. It is therefore difficult to cross-reference the various materials to the counterstatement. The narrative material appears variously 'voiced' by: the Applicant's legal representative; Humaira Ashiq; and the Applicant (Halima Ashiq). I note that the mailname for Humaira Ashiq's email is in the same format as that of the Applicant, indicating that it relates to 'missdiva.co.uk'. The reference to 'my son in law Humaira's husband' is presumably voiced by the Applicant, Halima Ashiq. I, therefore, presume that Humaira Ashiq is the Applicant's daughter. It is not always clear which parts of the narrative are to be attributed to which individual. I have read all of the material provided to me and I will refer to it to the extent that it is necessary.

8. The Statement and evidence can be summarised thus:

- a) A statement that an individual named 'Lauren Caitlyn' had 'fraudulently transferred' the trade marks into their name, and that the Applicant's 'domain' had been hacked in early December 2023;¹
- b) It is stated that, on 27 January 2024, the Applicant received an email from the mailname 'xyzmissdiva@gmail.com', signed by 'Lauren', in which the sender: claimed to be the owner of the trade mark 'MISS DIVA'; accused the Applicant of infringing the trade mark; and asked the Applicant to cease use of it.² A copy of the aforementioned email has been provided. The 'header' indicates that the sender is 'Lauren Caitlyn Miss Diva'. The body of text includes requests for the Applicant to, *inter alia*: cease use of the 'infringing trade mark'; deliver up material incorporating such trade marks; withdraw any applications for 'infringing' trade marks or domain names incorporating such marks; and to assign to the Registered Proprietor any domain names incorporating the 'infringing trade mark'. The email concludes with the text: 'I expect your acknowledgement of this letter and your response to my

¹ Email from Humaira Ashiq, to Trevor Wright, the Applicant's legal representative, dated 29 January 2024.

² A statement from Halima Ashiq, the Applicant, first unnumbered paragraph. This 'statement' appears to be included in the body of text of the email cited in the footnote above.

requests by 27 January 2024. Failure to respond by this date will result in my seeking further legal remedies’.

c) It is stated, also on 27 January 2024, that the Applicant ‘received an email from DRS with a complaint’.³ There is no information on what ‘DRS’ is, but the email referred to is on the final page attached to the Form TM26R. I note that none of the usual ‘features’ of email messages are present. The document appears to be an undated page of mere text, perhaps an excerpt from a transcript, with no details as to: ‘subject line’; the names of those making the exchanges; or email addresses.

- The content of the document can be summarised thus:

A request from an individual to ‘claim’ the domains associated with ‘MISS DIVA’. They allege that the Applicant has sold the trade mark rights and all domains linked to the business for the sum of £20,000, the payment having been transferred to Halima Ashiq. They allege that the Applicant had reneged on an agreement to transfer the trade marks and domains to them. The individual purports to support their allegation by providing hyperlinks to the UK trade mark register which show the details of the contested marks.

- In relation to the document, the Applicant states the following:⁴

‘The email states ‘Lauren Caitlyn’ has bought the domain and name MISS DIVA and has paid for it and transferred funds. Halima does not know who Lauren is and has neither sold her brand name MISS DIVA or domain. Halimas [sic] address on that email is incorrect therefore Halima has not received any letter correspondence to do with this.

³ This narrative is from Halima Ashiq and appears to be part of an email.

⁴ Third unnumbered page attached to Form TM26R, third paragraph.

To confirm till date I have not received any money nor sold my trademark or brand Miss Diva nor have I received a sum of £20,000 from Lauren Caitlyn as it was never for sale’.

- d) The Applicant states that ‘Miss diva’ is a family-run business with: Nasreen Akhtar (Applicant’s mother); Mohammed Ashfaq (Applicant’s brother) and that they are ‘attaching a copy of all 3 of our passports’ to demonstrate that the passport signatures do not match the signatures on ‘Lauren Caitlyn’s false document of assigning the trademark’. For the reasons provided above, at [6], the material comprising the copies of the signatures cannot be considered.
- e) The Applicant states that, on 26 December 2023, they had noticed that their website had been ‘down’ and their domain inactive and discovered that their emails had been ‘hacked’ and their credentials to access their domain host ‘Fasthosts’ had been changed.⁵ It is stated that, after regaining access to ‘Fasthosts’, the Applicant discovered that their 12 domains, including `missdiva.co.uk`, were being held out for sale on website ‘Go Daddy’. The Applicant states that they contacted the owner of the domain ‘`missdiva.co.uk`’ via the brokering service and were informed by the broker that the owner of the domain was selling it for \$85,000. Screenshots from ‘Go Daddy’ have been provided, most of which are illegible due to their very small size and poor resolution. However, a screenshot of an email exchange, dated 26 December 2023, with the subject line ‘`MISSDIVA.CO.UK – negotiations Update`’ shows a message from a ‘`@godaddy.com`’ email address to Humaira Ashiq informing her that the domain was for sale for \$85,000 USD.⁶
- f) The Applicant states that, following the domain name incident, they ‘immediately got in touch with the police’ by telephone, albeit their son-in-law, Mr Umar Ali, had to ‘take over’ the phone call to explain the situation

⁵ First unnumbered paragraph of the fifth unnumbered sheet attached to Form TM26R.

⁶ Sixth unnumbered sheet attached to Form TM26R.

when the Applicant became upset.⁷ A screenshot of part of an undated email from 'actionfraud.police.uk' to Mr Ali with the header 'ActionFraud' has been provided, stating that the report [made by the Applicant/Mr Ali] had been sent to the National Fraud Intelligence Bureau [NFIB] and that they would aim to update Mr Ali within 28 days.⁸

- g) The Applicant states that their email account and domain name were 'reverted' back to them following liaising with 'Fasthosts' (their domain host) and 'Nominet';⁹ with the domain 'returned' to them as of Tuesday 9 January 2023.¹⁰ The narrative goes on to detail that, on Wednesday 24 January 2023, the Applicant received an email purportedly from Nominet, from an individual named 'Ellie Blake', according to which there was an apparent 'dispute' with a Lauren Caitlyn and that the Applicant needed to prove that they had 'rights in respect of a name or mark which is identical or similar to the domain name'.¹¹ Upon calling Nominet, the Applicant states that she was informed that there was no person named Ellie Blake working for them and advised to report the email as fraudulent.¹² The Applicant has provided a 'crime reference number' for the matter.

Decision

9. Rectification of the register is provided for under section 64 of the Act. This 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.

⁷ Seventh unnumbered sheet attached to Form TM26R, first paragraph.

⁸ Seventh unnumbered sheet attached to Form TM26R.

⁹ I understand that 'Nominet' is the Official Registry for UK Domain names.

¹⁰ Tenth unnumbered sheet attached to Form TM26R.

¹¹ As above.

¹² As above.

(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

10. The Applicant must have a sufficient interest to apply for rectification. The Applicant was the previous Registered Proprietor of the trade marks before the transfer of ownership was recorded. I therefore accept that the Applicant has sufficient interest to bring the proceedings.

Is it an error capable of correction?

11. Where an application is filed to record the assignment, the information provided on the Form TM16 is taken at face value. The Registrar does not investigate or otherwise seek to establish the legality of the claim to change of ownership unless the recordal of change of ownership is challenged. When the ownership is challenged, it is incumbent on the registered proprietor to show that the contested

marks were transferred to the proprietor under a valid assignment. Section 24(3) of the Act states:

‘An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative.’

12. Section 72 of the Act states:

‘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.’

Should rectification of the register follow?

13. In the absence of any evidence, or replies to official correspondence, from the RP, I must treat the application for rectification as being uncontested. I note that the Applicant took action promptly after being alerted to the alleged unauthorised transfer of the marks. I have no reason to doubt the Applicant’s account of events. The claim that the mark was transferred without the Applicant’s permission has not been disputed. Taking all of this into account, I find that the change of ownership of the trade mark was made without authority

14. In the light of the above, recording Lauren Caitlyn as the proprietor of the trade mark was an error, and the register should be rectified.

15. The outcome of the above results in the reversion of the recorded ownership to Halima Ashiq.

Outcome

16. The application for rectification has succeeded. I, therefore, direct that the register be rectified; that the name of Lauren Caitlyn shall be removed as the Proprietor and that Halima Ashiq shall be substituted in its place. The effect of my decision is that the recordal of the change of ownership to Lauren Caitlyn shall be deemed never to have been made.

Costs

17. 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 6th day of November 2024

N. R. Morris

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