

TRADE MARKS ACT 1994

**IN THE MATTER of an application
(Rectification No. 9833)**

**by AZTEC INFORMATION MANAGEMENT (UK) LTD.,
T/A NETBENEFIT**

**for the rectification of the Register in respect
of Trade Mark No. 2121611 registered in
Class 35 (schedule iv) in the name of
LARRY BLOCH**

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of Trade Mark No. 2121611 registered in
Class 35 (schedule iv) in the name of
LARRY BLOCH

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DECISION

The Trade Mark was registered on 8 August 1997 under no. 2121611 in Class 35 (schedule iv) to the Trade Marks Rules 1994 in respect of

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“Business Management and information services; internet company registration services”

The Registered Proprietor shown on the Register is Larry Bloch.

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By an application dated 20 October 1997, Aztec Information Management (UK) Limited, T/A Netbenefit, “the applicants”, applied for the rectification of the Register under Section 64 of the Act in respect of the Trade Mark registered under no. 2121611 (“the mark”) by the correction of the name of the proprietor to that of the applicants.

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The grounds of rectification are that the application was made in error in the name of one of the directors of the company, Mr Larry Bloch.

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The applicants filed evidence in these proceedings in support of their application. This evidence comprises a Statutory Declaration by the trade mark agent acting in respect of both parties, Mr Oliver John Orchard.

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Mr Orchard states that his firm was instructed by an employee of Aztec Information Management (UK) Limited, T/A Netbenefit (“the company”) to file the application for registration in the name of a director of the company, Mr Larry Bloch. Mr Orchard exhibits first of all a copy of an electronic mail message dated 24 April 1997 from Mr Bloch to other directors and officers of the company. Sections of this electronic mail message are deemed confidential by the Registrar because they contain commercially sensitive information. A censored copy of this exhibit is available for the public file and this shows Mr Bloch to claim that an administrative error was made in applying for the trade mark in his name rather than that of the company. Mr Bloch, in his message, states that he has no use for, nor a wish to own, the trade mark, and that he is only the Registered Proprietor as a result of an administrative error made by an employee of the company. Mr Bloch goes on to state that he has no objection to releasing the mark to Aztec Information Management (UK) Limited, T/A Netbenefit.

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5 Mr Orchard goes on to exhibit a copy of a letter dated 10 June 1997 from Mr Bloch to his co-directors. This exhibit also is deemed confidential by the Registrar because it contains commercially sensitive information. A censored copy has however been provided for the public file and this shows Mr Bloch to tender his resignation as a director of the company with immediate effect.

10 Mr Orchard, in his Statutory Declaration, goes on to state that he has been consulted by the remaining directors of the company in order to have the rights in the trade mark registration recorded in the name of the company. He further exhibits a copy of a cheque dated 21 January 1997 to the value of £1,010.50 that was received by his firm in connection with this trade mark application and other matters. The cheque is signed on behalf of the company, Aztec Information Management (UK) Limited, T/A Netbenefit.

15 Mr Orchard goes on to state that, in view of the above mentioned evidence, also the law as set out in *Fine Industrial Commodities Limited v. Powling* (71RPC 253), the rights of the trade mark belong to the company, and as the director recorded as the proprietor has said that an error was made in the application that was filed, the register should be rectified accordingly.

I now turn to consider the grounds of rectification under Section 64 of the Act which states:

25 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.

30 (2)

(3)

35 (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)

40 I am satisfied that the applicants have the qualifying status demanded by Section 64 of the Act; they have a significant interest in the registration. I am also satisfied that an error occurred as a result of which the registration stands in the wrong name. Therefore, in the exercise of the discretion conferred upon me by Section 64 of the Trade Marks Act 1994, I direct that the

5 Register be rectified by the deletion of the name shown against the Registered Proprietor in respect of Trade Mark registration no. 2121611 and replaced with the name Aztec Information Management (UK) Limited, T/A Netbenefit.

10 Dated this 1 day of May 1998

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20 M KNIGHT
Acting for the Registrar
The Comptroller General