

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION (RECTIFICATION No 9776)
BY GILLIAN BRENNAN FOR RECTIFICATION OF THE
REGISTER IN RESPECT OF TRADE MARK No 1035674
REGISTERED IN CLASS 25 (SCHEDULE IV)
IN THE NAME OF OCCO LIMITED**

TRADE MARKS ACT 1994

5 **IN THE MATTER OF Application (Rectification
No 9776) by Gillian Brennan for Rectification of
the register in respect of trade mark No 1035674
registered in Class 25 (Schedule IV) in the name
of Occo Limited**

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DECISION

15 Trade mark No 1035674 is registered in Class 25 in respect of:

“Articles of outerclothing for men and women”.

The mark is the word INEGA and it stands in the name of Occo Ltd.

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By application filed on 21 July 1997 Gillian Brennan applied for rectification of the register of trade marks. The relief sought is that the register should be amended to show Gillian Brennan as the registered proprietor. The underlying ground is that Mrs Brennan claims to be the proprietor of the mark by virtue of an assignment dated 27 October 1987 and that, as a consequence, any other assignment in respect of the trade mark was fraudulent.

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Background

In the unusual circumstances of this case it is necessary to give a little background information before going on to consider the evidence that has been filed. Firstly I should say that I have referred and for convenience will continue to refer to No 1035674 as being registered. Strictly speaking it is at this point in time an expired mark but the Registry has on file a request by Mrs Brennan for restoration and renewal which it has been unable to action until this set of proceedings has been resolved. The registration is also the subject of a separate rectification action (No 6897) under the 1938 Act on grounds, inter alia, of non-use. Shortly before that action was due to be heard or decided Mrs Brennan’s claim to ownership was lodged initially by way of an intervention request but subsequently, following an interlocutory hearing, by means of this rectification action. The earlier action has, therefore, been suspended pending a decision on Mrs Brennan’s claim to ownership.

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Registry records show that the registration has in the past been subject to a number of assignments as follows:

45	Steepleglade Ltd	to	Quad Clothing Ltd	on	1 August 1985
	Quad Clothing Ltd	to	Maincourse Ltd	on	24 July 1987

Maincourse Ltd to Looksmart Ltd on 8 February 1988
Looksmart Ltd to Occo Ltd on 11 December 1991

5 It is the first of the above assignments from Steepleglade Ltd to Quad Clothing Ltd that is challenged by Mrs Brennan's rival claim though it necessarily follows that if that challenge is successful each of the subsequent claimed changes of ownership is of no effect and a nullity.

10 I should also say that the agents who were acting for the proprietors of record (Occo Ltd) in relation to rectification action No 6897 had indicated that they had received confirmation from the Official Receiver of Primewish Group Ltd (of which Occo Ltd was a part) that he saw no value in the INEGA mark and was not going to defend the rectification action or take any further interest in the mark. It follows, therefore, that there is in effect no other party involved to challenge Mrs Brennan's claim. It is also understood that Occo Ltd has in fact been dissolved and that, pending a decision on the current action, the applicant for
15 rectification has taken the precautionary measure of acquiring the mark from the Crown by virtue of Section 654 of the Companies Act 1985 (the provisions under which any assets held by a dissolved company will be *bona vacantia*). I mention this only by way of further explanation as to why there is no other party to these proceedings.

20 I, therefore, have only the applicant for rectification's evidence to consider. No hearing has been requested. Acting on behalf of the Registrar and after a careful study of the papers I give this decision.

Applicant's evidence

25 The applicant filed four statutory declarations as follows:-

	John Brennan	-	dated 21 July 1997
	James Spence Sealy Smyth	-	dated 19 May 1997
30	John Brennan	-	dated 30 March 1998
	Richard John Albert Gordon	-	dated 26 March 1998

35 Mr Smyth's declaration was originally filed and headed in relation to Mrs Brennan's application to intervene in the separate rectification action (No 6897). Following a decision at an earlier interlocutory hearing the applicant was told that the intervention request would need to be supported by a formal rectification application (now this case No 9776). The purpose of Mr Gordon's declaration (he was previously Mrs Brennan's representative in these proceedings) is simply to ask that Mr Smyth's declaration be admitted into these proceedings. I need say no more about Mr Gordon's declaration but will consider the other declarations in
40 turn.

45 Mr Brennan in his first declaration explains the background to the filing of the rectification action following the interlocutory hearing on the intervention request. It was claimed at that hearing that the assignment (from Steepleglade Ltd to Quad Clothing Ltd) which predated the assignment to Mr Brennan's wife was the result of a criminal act for which the person responsible had been charged and found guilty. The trade mark, and its assignment, was a

feature of the trial and, therefore, he says, it can be established that the earlier assignment was fraudulent. He exhibits (JB1) a copy of a letter dated 11 July 1997 from Detective Inspector Tony Clark of South Wales Police and adds that:-

5 “The letter informs me that a Kenneth Ian Banks was investigated by South Wales
Police Fraud Squad in 1989 for offences of Fraudulent Trading and obtaining property
by deception in relation to several companies of which he was a director, including
Steepleglade Ltd. The letter also informs me that files of the case relate to transfer of
10 the Inega trade mark. Finally, the letter did not deny (and therefore did not contradict)
my assertion that Mr Banks was convicted at the Crown Court of Fraudulent Trading
and Criminal Deception and sentenced to two years imprisonment, which was later
reduced, on appeal, to twelve months.”

The next declaration comes from Mr Smyth who practised as a sole practitioner solicitor
15 under the name Smyth & Co between September 1984 and April 1994. He says that he was
instructed by John Brennan on behalf of his firm Inside Out Fashion Merchandising in
connection with the INEGA mark. The trade mark was registered in the name of a company
called Steepleglade Limited which had been put into receivership initially and subsequently
liquidation. The Liquidator was the Official Receiver (in Swansea). On behalf of
20 Mr Brennan and Inside Out Fashion Merchandising he says his firm successfully negotiated
with the Official Receiver for the acquisition by Mr (sic) Brennan of the trade mark. He
exhibits (JSSS1) a copy of the assignment document dated 27 October 1987 and adds that the
original assignment which was shown to him by Mr Brennan bears the embossed imprint of
the seal of Steepleglade Ltd beside the signature made on behalf of that company. He says
25 that the signature of the witness to the application of Steepleglade’s seal is not known to him
but it could be that of Mr R K Goodhand (of the Official Receiver) with whom he and his
firm had numerous dealings in connection with the assignment. He further exhibits (JSSS2) a
bundle of copy correspondence between his firm and the Official Receiver in Swansea
between 13 May 1987 and 23 October 1987. He draws attention in particular to the Official
30 Receiver’s letter of the 2 June 1987 (confirming the Official Receiver’s interest in principle in
disposing of the trade mark), the Official Receiver’s receipt dated the 18 August 1987 for the
consideration and the Official Receiver’s letter of the 23 October 1987 returning to his firm
the sealed version of the Assignment.

35 Mr Brennan filed a second declaration for the purposes of exhibiting (JB1) a true copy of a
letter dated 24 March 1998 from the Insolvency Service confirming that there could have
been no valid assignment of the INEGA trade mark prior to the assignment from the Official
Receiver to Mrs Gillian Brennan in October 1987. I will deal with the contents of the letter
from the Insolvency Service in reaching my decision.

40 That completes my review of the evidence.

The statement of grounds supplied in support of the application for rectification does not
specify a Section of the Act but I think it is reasonably clear that the nature of the claim goes
45 to Section 32. This reads as follows:-

“32.-(1) Any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Court or, at the option of the applicant and subject to the provisions of section fifty-four of this Act, to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as the tribunal may think fit.”

The first matter I have to consider is whether the applicant has the necessary status of “person aggrieved”. Given Mrs Brennan’s claim to be the true proprietor of the mark at issue I have no difficulty whatsoever in concluding that she has the necessary status.

The nub of Mrs Brennan’s claim is that the earlier assignment from Steepleglade Ltd to Quad Clothing Company Ltd was fraudulent and/or ineffective and that subsequent assignments must also, therefore, be ineffective. In support of this Mr Brennan firstly exhibits a letter from Detective Inspector Tony Clark of the South Wales Police Fraud Squad. Detective Inspector Clark refers, inter alia, to investigations into Kenneth Ian Banks, who was a director of Steepleglade Ltd (and Quad Clothing Company Ltd). He also refers to the fact that his office had contact with the Trade Marks Registry in connection with Mr Banks’ activities. Although the Registry’s records do not form part of the evidence in these proceedings I think it is in order to confirm that the contact referred to did indeed take place. However, notwithstanding Mr Banks’ activities and, it is said, his subsequent conviction for fraudulent trading and criminal deception, it is a matter of record that the Registry actioned the sequence of assignments referred to above by which title to the mark devolved from Steepleglade Ltd to (eventually) Occo Ltd. Prima facie this might seem an odd state of affairs but it must be borne in mind that, so far as the Registry was aware, whatever offences were committed by Mr Banks were as an individual. The INEGA registration has always been in corporate ownership rather than in the name of Mr Banks or any other individual. The Registry would not have been aware, absent a formal challenge and concrete evidence, of the extent of Mr Banks’ control over the companies or whether his actions in a personal capacity or as a director of the companies should have cast doubt on the validity of otherwise prima facie valid assignments. It is clear from comments made in Detective Inspector Clark’s letter that there would at this late stage be considerable difficulty in obtaining from the Crown Prosecution Service original witness statements relating to Mr Banks’ trial such as might be necessary to re-open the assignment issue on this ground. In short the information supplied by Mr Brennan on this aspect of the rectification action does not in my view add in any material way to information already in the Registry’s possession and on the basis of which it was felt that the sequence of assignments should be recorded.

There is, nevertheless, filed on Mrs Brennan’s behalf a true copy of an assignment dated 27 October 1987 from Steepleglade Ltd (in liquidation) to herself along with copy correspondence between the solicitors acting for her and the Official Receiver’s office in Swansea leading up to her claimed acquisition of the mark. The documentation includes a copy of the Official Receiver’s receipt for the consideration paid and a copy of the letter returning the sealed version of the assignment. Prima facie this appears to be a persuasive case in Mrs Brennan’s favour but it presents something of a conflict of evidence from the

Registry's point of view (because of the Steepleglade/Quad assignment) and a specific problem in relation to dates. I set out earlier the sequence of assignments entered in the Registry's records and the dates thereof. The first three (including the Steepleglade/Quad assignment) were all filed at the Registry on 24 February 1988 which is, of course, after the
5 date of Mrs Brennan's claimed acquisition. However the actual date of the first of the assignments (Steepleglade to Quad) is 1 August 1985. This, of course, predates Mrs Brennan's claim. As title to the mark could not have been disposed of twice by the same party (that is to say Steepleglade) this raises questions as to the Official Receiver's role at the relevant time and/or whether in assigning the mark to Mrs Brennan he was aware of the
10 purported earlier assignment. So far as the latter point is concerned I take the view that if he was not aware that the mark had been disposed of prior to his involvement and if that first assignment was valid then, notwithstanding that he entered into the assignment with Mrs Brennan in good faith, the "second" assignment must have been ineffective and a nullity. However further light is shed on the matter by Exhibit JB1 to Mr Brennan's second
15 declaration. The letter is from the Assistant Official Receiver and is headed "re: Steepleglade Ltd". The relevant paragraph reads as follows:

"I can confirm that the Official Receiver as liquidator was never made aware of the
20 purported assignment of the "Inega" trademark to Quad Clothing Ltd. I would now confirm that I also dealt with the liquidation of Quad Clothing Limited and would confirm that by reference to the audited accounts produced for the year ended 31 December 1985, these accounts do not disclose any intangible assets, nor is the trade mark included amongst the tangible fixed assets. In addition I would point out
25 that under Section 524 of the Companies Act 1985 a compulsory liquidation is deemed to commence from the date of the presentation of the petition, in this case from 7 May 1985 and that any disposition of company property made after that date shall, unless the Court otherwise orders, be void (Section 522 of the Companies Act 1985). Therefore given that the purported transfer of the trademark took place after
30 the 7 May 1985 the transfer would be void. Therefore I am content that my assignment of the trademark "Inega" is a valid transaction."

Although the agreement under which Steepleglade assigned the INEGA mark to Quad Clothing is not part of the formal evidence in these proceedings, in the unusual circumstances of this case I think it is in order for me to say (on the basis of Registry records) that it
35 contains no acknowledgement of the fact that the assignor was in liquidation. Nor of course would the Registry have been aware of the position. On the basis of the information now made available by the Assistant Official Receiver it seems that any disposition of company property after the material date (in the compulsory winding up proceedings) of 7 May 1985 is void unless the court orders otherwise. The assignment from Steepleglade to Quad on 1
40 August 1985 falls within the prohibition and no court order having a contrary effect has been brought to my attention. I, therefore, find the assignment from Steepleglade to Quad Clothing to have been invalid and that the assignment from the liquidator to Mrs Brennan makes her the true proprietor of the mark. It follows that in this respect the rectification action is successful.

For convenience I set out the consequences of this decision as follows:-

- (i) the register will be rectified to show Gillian Brennan as proprietor;
- 5 (ii) Mrs Brennan's request for restoration and renewal of trade mark No 1035674, which had been suspended pending the outcome of these proceedings, can now be determined;
- 10 (iii) if the restoration and renewal request is decided in Mrs Brennan's favour her request to intervene in the separate rectification action (No 6897) will also fall to be determined.

No costs have been sought in relation to these proceedings. In the circumstances of the case it seems to me that there is no other party against whom any such order could be made or
15 enforced. I, therefore, make no order as to costs.

Dated this 21st day of August 1998

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M REYNOLDS
For the Registrar
25 the Comptroller General