

O/193/12

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION 2504501

IN THE NAME OF THE EVENT BUS LIMITED

IN RESPECT OF THE TRADE MARK:



IN CLASS 39

AND

**AN APPLICATION TO RECTIFY THE REGISTER (UNDER NO. 83960) BY TINA
DUTTON**

The background and pleadings

1) Trade mark registration 2504501 is for the trade mark PINK LADIES (stylised) and is in respect of various transport services in class 39. The application for rectification relates, effectively, to a dispute about ownership. In view of this, it is useful to explain how the current proprietor, The Event Bus Limited (“Event”), came to be recorded as the proprietor of the mark:

- The trade mark was filed on 11 December 2008 by Launchpad (UK) Ltd (“Launchpad”);
- A Form TM16 (application to record a change of ownership) was filed on 1 September 2010 to change the recorded proprietor from Launchpad to Event. The form was signed by Mr Stephen Brocklehurst on behalf of Event. The form was not signed on behalf of Launchpad. The date the new proprietor is stated to have taken ownership was 23 August 2010.
- A deed of assignment was attached to the Form TM16 as evidence of the change of owner. The assignment is between Event and The Solicitor for the affairs of the Duchy of Lancaster. In the assignment document it is explained that Launchpad was wound up and then dissolved on 1 August 2009. It is stated that upon dissolution the property and rights of Event became the property of, and vested in, the Duchy of Lancaster.

2) The final bullet point above is a reference to what is often known as *Bona Vacantia* whereby, in layman’s terms, ownerless property, in certain circumstances, becomes the property of The Duchy of Lancaster. Applied to the trade mark registration in dispute here then, unless Launchpad assigned the trade mark to another party (or parties) prior to its dissolution, the trade mark would have become ownerless property upon its dissolution and, therefore, the trade mark would have vested with The Duchy of Lancaster and was therefore capable of being assigned by The Duchy of Lancaster to Event.

3) The applicant for rectification is Ms Tina Dutton. She was a director of Launchpad. Her claim is that Launchpad did, in fact, assign the trade mark to another party prior to its dissolution; the assignee is claimed to be Ms Dutton and her co-director, Ms Andrea Winders. Various claims are also made about Mr Brocklehurst; in summary, it is suggested that he was trying to invest in Launchpad’s business and/or to buy it and that he knew the mark had already been assigned to Ms Dutton/Ms Winders. Whilst these claims are noted, this is unlikely to be particularly relevant because the primary issue is reasonably straightforward. The primary issue is whether Launchpad did or did not assign the trade mark to Ms Dutton/Ms Winders. If it did, the registration would not have become *bona vacantia* and, consequently, The Duchy of Lancaster was not in a position to assign the mark to Event. If it did not, then the registration was *bona vacantia* and the Duchy of Lancaster was in a position to assign the trade mark to Event. It should be noted that whatever is proven, The Duchy of Lancaster has still acted in good faith because Ms Dutton admits that the assignment to her and Ms Winders was never recorded on the Trade Marks Register and, so, The Duchy of Lancaster knew nothing about it. Nevertheless, good faith or not, if the Duchy of Lancaster was not in a position to

assign the mark because it was not owned by him, then the rectification must still succeed.

Decision

4) The provisions relating to rectification 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

5) The applicant, Ms Dutton, must have a sufficient interest to apply for rectification. A claim to being the legal owner of the registration is one of the clearest forms of interest possible. It does not matter that Ms Winders has not joined her as an applicant to the rectification, although, Ms Winders will benefit from the relief being sought. Ms Dutton has an interest in this matter sufficient for the purposes of section 64(1) of the Act.

Is the claimed error capable of correction?

6) Section 64(1) relates to errors or omissions in the register. No omission is claimed, the claim being that the name of the current registered proprietor (Event) 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 effect¹. Therefore, subject to being satisfied that Launchpad did assign the trade mark to Ms Dutton/Ms Winders prior to its dissolution then there is potential for the claimed error to be rectified.

The assignment documents

7) With her statement of case Ms Dutton provided two assignment documents:

- i) A deed of assignment between a company called Pink Ladies (UK) Holdings Ltd (“PL”) as the assignor and Launchpad as the assignee. The deed is dated 17 December 2008. Rights such as “The Pink Ladies Brand” are referred to as is a reference to “trade mark pending”. The deed is signed by Ms Winders on behalf of the assignor and by Ms Dutton on behalf of the assignee. It is witnessed by Ms Joanne Liddle, a solicitor with Touchstone Legal Ltd; I will refer to this assignment as “assignment A”.
- ii) A deed of assignment between Launchpad as the assignor and Mr Dutton/Ms Winders as joint assignees. The deed is dated 31 December 2008. The deed refers to “assigned IP” specified in a schedule, but which has not been supplied. The deed is signed by Ms Winders on behalf of the assignor and by Ms Dutton on behalf of the assignee(s). It is, again, witnessed by Ms Liddle; I will refer to this assignment as “assignment B”.

8) As can be seen from the above details, the assignor/assignee details of assignment B match those of assignment A. Event highlighted this to the tribunal, also pointing out that the positions and the forms of all three signatures were identical. The suggestion is, therefore, that assignment B may have been produced fraudulently by copying the signature page (including the signatures themselves) of assignment A.

9) Ms Dutton responded by explaining that assignment B was an incorrect version of the deed representing the assignment from Launchpad to Ms Dutton/Ms Winders. It is further explained that a different version of the deed was produced to correct the error, a version which Ms Dutton then supplied to the tribunal (I will refer to this as assignment C). Assignment C shows a quite different signature page (compared to both assignment A and B) and is signed by Ms Winders on behalf of Launchpad as the assignor, by Ms Dutton and Ms Winders as the assignees, and, again, witnessed by Ms Liddle.

10) The above issues were discussed with the parties at a case-management conference. In order to clarify exactly what had gone on in relation to the various deeds of assignment, I directed that Ms Dutton, Ms Winders and Ms Liddle to provide affidavits setting out what had happened. This direction was duly complied with, leading to the evidence set out in the next paragraph.

11) Ms Liddle explains in her affidavit that on 31 December 2008 she was working in the offices of Touchstone Legal Ltd and met with Ms Dutton and Ms Winders and

¹ See the cases under the references: BL O/408/11, BL O/283/02, BL O/284/02, BL O/040/05 and BL O/336/01

they signed assignment B in her presence which she then witnessed. However, Ms Liddle then noticed that the signature page had been incorrectly drafted and she explained to Ms Winders how it should be done. Ms Winders and Ms Dutton then left and returned later on with a fresh deed [assignment C] and signed it in her presence which she then witnessed. Ms Dutton's explanation is consistent with that of Ms Liddle. She adds that she failed to destroy assignment B and kept it on file. She confirms that the incorrect version [assignment B] was also sent to Mr Brockenhurst. She provides further evidence in relation to the proceedings which I do not need to detail at this stage. Ms Winders' explanation is also consistent with that of Ms Liddle and Ms Dutton. She adds that Ms Dutton showed her the evidence filed with the rectification (presumably after the challenge to it had been made) and she explained to Ms Dutton that she must have mistakenly filed assignment B instead of assignment C which she believes was an innocent mistake. She also adds that during due diligence discussions with Mr Brockenhurst, Ms Dutton may also have sent him assignment B.

12) There is, though, one wrinkle that has not been explained in the above paragraph, namely: how the signatures on assignment B are identical to those on assignment A? To explain this, I directed that further evidence be filed and I also discussed such evidence at a hearing. It should be noted that since the original case-management conference, Event have played no real part in the proceedings; it appears that they may have moved addresses but not updated the tribunal's records. The tribunal has written to them on a number of occasions (including inviting them to attend the subsequent hearing) but no response was received. I am satisfied that the tribunal has done everything possible to keep Event informed.

13) The further evidence was submitted by Ms Dutton. She explains that assignment B was put together by printing the signature page of assignment A but she still contends that assignment B was signed on 31 December 2008 (so the signatures on assignment B were not copies of assignment A). She states that assignment B was dated incorrectly (as 17 December 2008) which was then "tippexed" out and replaced with 31 December 2008. Subsequently, and as highlighted by the three witnesses earlier, Ms Liddle noticed that the signature blocks were not as required and Ms Dutton and Ms Winders were sent away to produce a fresh version [assignment C]. None of this, in itself, explains why the signatures between assignment A and B are identical, however, when Ms Dutton supplied this further evidence she also provided what appears to be the original versions of assignments A and B. This shows different signatures (although clearly by the same people) as opposed to identical signatures. Assignment B is the same version as originally supplied by Ms Dutton, but assignment A is in a slightly different form. At the hearing the only real explanation for all this was that there must have been various mix-ups in Ms Dutton's house-keeping.

14) At the end of the hearing I asked Ms Dutton to provide all the original signed versions if they had not all already been filed. It was subsequently confirmed that all the originals were now with the tribunal. On the original copies before the tribunal all three assignments have different signatures (but from the same people) so, on this basis, the allegation of copying of signatures is weakened. All of this could have been pure fabrication with assignment deeds being produced retrospectively to support the claimed assignment. However, on this basis of the evidence before me,

including the three affidavits mentioned above, I am satisfied that the various assignments and their apparent inconsistencies have resulted from the poor house-keeping of Ms Dutton. With a number of house-keeping errors taking place it is difficult to give a fully coherent explanation, but it appears to me that the most plausible explanation is that assignment A originally provided by Ms Dutton was in fact a copy of the signature page of assignment B (before the date was corrected). I am not of the opinion that there has been an attempt to fabricate the deeds for the purpose of the proceedings. All three witnesses (including the solicitor who witnessed them) have attested to an error taking place with assignment B which was rectified by assignment C being produced on 31 December 2008. Assignment C is the relevant assignment for the purposes of the proceedings. **I am content that the deed I have defined as assignment C was executed on 31 December 2008.**

15) Assignment C is between Launchpad as the assignor and Ms Dutton/Ms Winders as the assignees. In assignment C as provided with Ms Dutton's first affidavit a schedule is attached which makes reference to the Pink Ladies Brand and "trade mark pending". On the basis of the deed as a whole I am content that this relates to the trade mark the subject of these proceedings. In view of this the trade mark was assigned by Launchpad to Ms Dutton/Ms Winders prior to its dissolution. **In the circumstances the assignment to Event should not have taken place because the mark did not become *bona vacantia*.**

Conclusion

16) In view of the above findings the application for rectification succeeds. I direct that the register be rectified so that the proprietorship of the registration stands in the joint names of Ms Tina Dutton and Ms Andrea Winders.

Costs

17) Ms Dutton, through her representatives at Hill IP, have highlighted the evidence that has been required in these proceedings as a factor to take account of in relation to costs. However, given that the requirement to clarify what has happened stems from Ms Dutton providing incorrect documentation in the first place, this should not be a factor in Ms Dutton's favour. In the circumstances, I consider the most reasonable outcome is that neither party should be favoured with an award of costs.

Dated this 10th day of May 2012

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