

O-403-12

IN THE MATTER OF REGISTRATION NO 2601387  
IN THE NAME OF RONALD BARRY TURNER

AND

AN APPLICATION FOR RECTIFICATION THEREOF UNDER NO 84353  
BY STEPHEN GILES

## **Background**

1. Registration No 2601387 is for the mark VPW. It was applied for on 15 November 2011 in the name of VPW Limited. On 23 February 2012, an application, by way of Form TM16 filed by Mrs Nicola Clarke, was made to record a change of ownership of the application for registration to Ronald Barry Turner. The change of ownership was subsequently recorded by the Trade Marks Registry ("TMR") and notice of it was published in the *Trade Marks Journal* No 6931 on 16 March 2012. The mark itself completed its registration process on 9 March 2012.

2. On 5 March 2012, an application seeking to rectify the register was filed by Stephen Douglas Giles. In his application, Mr Giles claims that he is a director of and 51% shareholder in VPW Ltd and that the change of proprietor was made without his consent or knowledge. He claims the change of ownership was an apparently fraudulent application made with a malicious intent by his fellow director and shareholder, Mrs Nicola Clarke and her father, Mr Turner. He sought rectification of the register to correct an error and return ownership of the trade mark registration to VPW Ltd.

3. A copy of the application was sent to Mr Turner on 27 March 2012. The letter invited Mr Turner to file evidence or submissions in response on or before 27 May 2012.

4. Mr Turner responded by way of a letter dated 16 April 2012. The letter was not received by the TMR until 9 May 2012. For completeness, I should explain that it arrived in a plastic bag from the Royal Mail indicating that the package had been posted by the sender with another postal operator and was damaged by the time it had been forwarded to the Royal Mail for delivery. There was no apparent damage to the content of the envelope and nothing turns on the delay in the postal system as the letter was received within the period allowed.

5. Mr Turner strongly contests Mr Giles' allegations and states that Mr Giles gave "his full agreement to the transfer of the mark". Mr Turner accuses Mr Giles of "attempting to back track on his agreement with Mrs. Clarke and (claims he) is blatantly lying in order to do so." Enclosed with his letter is a document from Nicola Clarke, described by Mr Turner as a Director and 49% shareholder in VPW Ltd.

6. The document signed by Mrs Clarke is dated 16 April 2012. Although headed "Without Prejudice" (sic) it is not. It is not in evidence in these proceedings, not least because it is not in the required format (witness statement etc.). The TMR wrote to the parties acknowledging the receipt of the letter and its attachments and formally inviting the filing of evidence by both parties to the proceedings. A witness statement was subsequently filed by Mrs Nicola Caroline Clarke, on behalf of the registered proprietor, Mr Turner. No evidence was received from Mr Giles.

## **The evidence**

7. This consists of a single witness statement of Mrs Nicola Caroline Clarke dated 19 July 2012. Mrs Clarke states that VPW Ltd was formed in April 2011. She states that

in February 2012, and as a result of an irreconcilable dispute between them, Stephen Giles, then Co-Director of VPW Ltd told her he wished for the company to be wound-up and for him to have nothing further to do with it. Mrs Clarke states that prior to the formal winding up of the company, Mr Giles agreed to the assignment of the trade mark to Mr Ronald Barry Turner. Mr Turner, she states, had been responsible for all sales of VPW products throughout the company's existence. She states she proceeded with the assignment.

8. Mrs Clarke states that on 23 April 2012, and whilst expected but unbeknown to her at the time, Mr Giles resigned as director of VPW Ltd. She states she found this out in a letter from HMRC which she exhibits at NCC1. The letter, from the Debt Technical Office of HMRC, is dated 7 July 2012 and states:

“Information available to us on Companies House shows that you have been the sole director of VPW Limited since the resignation of Stephen Giles on 23/04/2012.”

9. Mrs Clarke states that she is in the process of winding up the company and that Mr Turner has her full consent to retain proprietorship of the trade mark registration.

10. No further evidence was filed by either party. I therefore give this decision from the papers before me.

## **Decision**

11. 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.

(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.”

12. From the papers before me, there is no dispute that Mr Giles (51%) and Mrs Clarke (49%) were co-directors and joint shareholders of VPW Ltd. It appears the relationship between the two met some difficulties and ultimately broke down. Mrs Clarke filed a Form TM16 seeking the recordal of a change of ownership of the (then) application for registration from VPW Ltd to Mr Turner. There is no dispute that Mr Turner is her father. Mrs Clarke states that Mr Giles agreed to this assignment in February 2012.

13. The Form TM16 signed by her in her capacity of Director of VPW Ltd was filed by Mrs Clarke on 23 February 2012 and indicates that the change of ownership took place on 1 February 2012. Mr Giles’ application for rectification was dated 2 March 2012 and was received by the TMR on 5 March 2012. The trade mark’s registration process was completed on 9 March 2012 and the change of ownership was published on 16 March 2012. Mr Giles resigned from VPW Ltd on 23 April 2012. Mrs Clarke’s evidence, filed in July 2012, has not been challenged by Mr Giles.

### **Decision**

14. Mr Giles’ application seeks rectification of the register so as to correct an error therein, however, on the basis of the material before me, I am unable to see that such an error exists. Even if the evidence given by Mrs Clarke in her witness statement, to the effect that Mr Giles agreed to the assignment of the mark to Mr Turner in February, was for some reason, inaccurate, I cannot see that there is any error in the register. Mrs Clarke has been the sole director and shareholder in VPW Ltd since Mr Giles’ resignation on 23 April 2012 and she has confirmed in her witness statement that Mr Turner has her full consent to retain the proprietorship of the trade mark registration following the earlier assignment of the mark which she applied to record. Mr Giles has filed no evidence of any error or any evidence to contradict Mrs Clarke’s own evidence and absent any such evidence, the application must fail.

### **Summary**

15. The application for rectification fails.

### **Costs**

16. The application has failed. Mr Turner was not professionally represented in these proceedings and therefore any award made to him, as a successful party, would be reduced by 50% in the normal course of events. In these proceedings, the only evidence filed by Mr Turner was Mrs Clarke’s witness statement. That consisted of a single sheet of paper containing very limited information spread over just fourteen lines of text and which is unlikely to have taken much cost, time or effort to prepare.

17. In all the circumstances it seems to me that an award of costs is not appropriate in this case. Each party shall bear its own costs.

**Dated this 16th day of October 2012**

**Ann Corbett  
For the Registrar  
The Comptroller-General**