

O-022-13

IN THE MATTER OF AN APPLICATION UNDER NO 84493  
BY REBECCA HODGSON  
TO RECTIFY THE REGISTER IN RESPECT OF  
REGISTRATION NO 2597321  
STANDING IN THE NAME OF CLAIMS IN

## Background

1. Registration No 2597321 has a short, but regrettable, history. The application for registration was filed on 10 October 2011 and sought registration of the mark:

**CLAIMS IN**

2. The application was filed in the name of:

Claims In  
569 Didsbury Road  
Stockport  
Cheshire  
SK4 3AS

3. For completeness, I should explain that the application was filed under what is called the „Right Start’ system. In brief terms, under this system the application is filed electronically with just 50% of the requisite fee payable at this stage. The application is then examined to see whether or not it meets the requirements of the Act and an examination report is issued. If, having received that report, the applicant decides to proceed with the application, the remaining 50% of the fee must be paid.

4. The application form had been completed to show that Claims In was a company. I do not know what sort of company it might be but the name of the contacts were given as Lee Robson and Graham Attoh. The application went through the examination process and was published in the *Trade Marks Journal* on 2 December 2011 before achieving registration on 10 February 2012.

5. On 23 April 2012, a Form TM26(R) was filed by Rebecca Hodgson. By that form she sought to rectify the register so that she be recorded as the proprietor of the registration. She requested this on the basis that the original application for registration should have been made in her name but that as a result of a clerical error, it had been filed in the name of Claims In itself.

6. For reasons that are not clear to me, the Trade Marks Registry (“TMR”) did not contact the address for service recorded on the register to notify Claims In of the application for rectification. Instead, it simply accepted that a clerical error had been made when the application was originally filed and amended the registration accordingly. Mr Robson later became aware of the amendment and, again by way of a Form TM26(R), himself sought to rectify the registration so as to put it in his name. Nothing was heard from Mr Attoh or Claims In.

7. At this point, the TMR acknowledged that it had erred in changing the registered proprietor’s details from Claims In to Rebecca Hodgson and reversed the change putting things back to the position that existed before the error was made. The registration therefore currently stands in the name of Claims In.

8. This decision deals with the TM26(R) filed by Ms Hodgson. The TM26(R) filed by Mr Robson is not part of this decision.

## **The application to rectify the register**

9. Ms Hodgson puts her claim thus:

“The trade mark name is not the proprietor. The proprietor, who paid for the application is Rebecca Hodgson.”

## **The evidence**

10. Ms Hodgson has filed a witness statement dated 6 August 2012 along with a number of exhibits. From her evidence it seems that Ms Hodgson is married to Graham Attoh and they trade in partnership under the name Website Experts. Website Experts designs and builds websites and is involved in marketing through search engine optimisation.

11. Ms Hodgson states:

“ 3. I the Applicant and Respondent are parties to an Agreement concerning the ownership and the use of various domain names including the registered mark “Claims In”. A copy annexed and marked exhibit “C11” of an email dated 09/09/2011 shows Mr Robson’s eagerness to enter into legal relations.

4. Mr Robson also provided us with a draft Partnership Agreement dated 17/02/2012 which he asked us to sign which shows his intention to enter into legal relations with us, a copy of the said Agreement is annexed and marked exhibit “C12”

5. The action herein relates to:

a. The author/owner of the registered mark; and

b. The authorised use of the said mark.

c. Any infringement of the mark”; and

d. Any wrongdoing, i.e. the entering of the wrong particulars in bad faith.

6. I and my husband (Graham Attoh) whom is the other partner in Website Experts are the registrant of a number of domain names which end with the letters “IN”. The said domain names were purchased between approximately May 2011 and we continue to currently register similar names.

7. We initially intended and we currently use the domain name and trade mark “Claims In” for our purposes (claims management) and we intended the mark to be under our control were any joint venture entered into between any other body involved in personal injury or claims management. One such venture is a law firm called Beeleys and co (sic) who shown (sic) an interest in using the trading style i.e. the mark jointly with Website Experts.”

12. Ms Hodgson states that on about 5 September 2011, Mr Lee Robson visited Website Experts' premises seeking to have them design and build a website for his own company, Efficient Claims Ltd. She states:

"9. While consulting with Mr Robson we informed him that we had similar clients operating in the same business as Efficient Claims Ltd and we displayed some examples of our marketing strategies' and domain names. We proposed in line with some of our other names, the name in question "Claims In" which we said we would register (www. claimsin.com and claimsin.co.uk) after which it was also agreed by us and Mr Robson that Mr Robson was to transfer ownership of 50% of the shares of Efficient Claims Ltd (ECL) to Website Experts in return for us transferring 50% of various trading names (and respective domain names) including the name Claims In to ECL, a copy of email(s) from Mr Robson and response from us dated 10/01/2012, 11/01/2012, 31/01/2012 and 13/02/2012 verifying the above and showing our acceptance of his offer is annexed and marked exhibited "CI3". Unfortunately, due to a breakdown in negotiations and relationship between the parties either no contract was formed because no consideration was given by ECL and/or ECL is in breach of contract because ECL failed honor (sic) its part of the agreement.

10. Further, Mr Robson/ECL has paid no monies whatsoever for any goods or services provided by Website Experts"

13. She continues:

"11. It was decided after taking legal advice to register the name Claims In, we then took steps to register the said name with the IPO. Mr Robson volunteered to fill in the application form TM3 on behalf of me the applicant. Regrettably Mr Robson, without us knowing and unfortunately without us checking the form entered the incorrect name for the applicant and applicants address. Mr Robson incorrectly put Claims In as the person applying and also his own address which is the wrong address.

12. I paid the application fee(s) for registration of the Mark for me to be registered as the proprietor of which proof is exhibited and annexed and marked "CI4".

13. I have for the avoidance of doubt annexed proof of our registration of the "in" domain names exhibited and marked "CI5" before we ever met with Mr Robson. On balance this along with our other evidence shows it would be highly unlikely that Mr Robson's claims have any merit whatsoever".

14. The following exhibits are attached to Ms Hodgson's witness statement:

CI1: A copy of an email dated 9 September 2011 sent by Lee Robson (lee@efficientclaims.co.uk) to "Graham" (info@websiteexperts.co.uk). The message reads: "Hi Graham, If possible can you please find a template online for a Business partnership Agreement for us to go through"

CI2: The partnership agreement referred to by Ms Hodgson. It begins:

**“THIS PARTNERSHIP AGREEMENT** (the “Agreement”) made and entered into this 17<sup>th</sup> day of February, 2012 (the “Execution Date”),

BETWEEN

Mr Lee Robson of 569 Didsbury Road, Heaton Mersey, Stockport SK4 3AS, and Mr Graham Attoh/ Website Experts of 22 Vaudrey Drive Hazel Grove Cheshire SK7 5PB/ 4 Kennerley Road, Hazel Grove, Stockport SK5 (individually the “Partner” and collectively the “Partners”).”

The document does not make mention of Ms Hodgson. The document ends:

**“IN WITNESS WHEREOF** the parties have duly affixed their signatures under hand and seal on the 17<sup>th</sup> day of February, 2012.”

There then follows provision for the witnesses to the agreement to sign their names. Typewritten here are the names of Mr Robson and Mr Attoh. The document has not been signed by either of them and areas within the documents which require the addition of agreed figures (i.e. at para 51) have also not been completed.

- CI3: An exchange of email correspondence between Messrs Robson and Attoh. Dated between 10 January 2012 and 13 February 2012, the correspondence relates to, and appears to confirm, a previous (unspecified) verbal agreement relating to various domain name registrations on behalf of Mr Robson and Mr Attoh/Website Experts.
- CI4: Redacted copies of two bank statements. The first relates to an account held in the name of Website Experts. It shows that on 12 October 2011, a debit of £100 in favour of „The Patent Office’ was taken from the account. The second relates to an account in the name of Ms Hodgson. It shows that on 10 November 2011, a debit of £100 in favour of „The Patent Office’ was taken from the account.
- CI5: Various pages showing the “whois” records of various domain names giving details, *inter alia*, of the date the domain name was registered as well as the name of the registrant. The pages show:

Domain name	Registration date	Registrant
callsin.com	12.5.11	Graham Attoh (Registrant company Website Experts)
adsin.co.uk	29.6.11	Graham Attoh trading as Website Experts (sole trader)
appsin.co.uk	30.5.11	Website Experts (sole trader)
callsin.co.uk	12.5.11	Website Experts (sole trader)
carsin.co.uk	8.5.11	Website Experts (sole trader)
cleaningin.co.uk	15.8.11	Graham Attoh trading as Website Experts (sole trader)
fashionin.co.uk	15.5.11	Website Experts (sole trader)
fishingin.co.uk	12.5.11	Website Experts (sole trader)
holidayhomesin.co.uk	4.10.08	Letsholiday
injuryin.co.uk	13.6.11	Graham Attoh Ian McDonald (Individual non trading)

15. No further evidence was filed, however, I pause at this point to note that, having served a copy of the application for rectification by Ms Hodgson and the accompanying evidence outlined above on them, Claims In was allowed a period expiring 16 October 2012 to file any evidence or submissions that they wished to file in response. Nothing was received from Claims In by this date and consequently the TMR wrote to the parties (Claims In and Ms Hodgson) confirming this and notifying them that the case was ready for determination.

16. On 29 November 2012, Mr Robson sent an email to the TMR attaching a small number of documents. Acknowledging it had been filed after the period allowed, by way of an email dated 30 November 2012 he referred to this material as evidence and asked for it to be accepted into the proceedings. In response, and by way of a letter dated 5 December 2012, the TMR referred Mr Robson to section 69 of the Act and rule 64 of the associated rules as to how evidence before the TMR should be presented. It advised him that the material he had filed could not be admitted or taken into account as it was not in an acceptable format because it was not filed by way of a witness statement, affidavit or statutory declaration or any other form which would be admissible as evidence in proceedings before the court. The letter further advised him that the period for filing evidence had expired though it was possible to request an extension of that period by way of the filing of a Form TM9 giving full reasons for both the request itself and the delay in making it. He was advised that the form was subject to a fee of £100. On 10 December 2013, Mr Robson emailed the TMR again, asking if “there [was] any possible chance of waiving (sic) the fee please” and indicating that he would be unable to pay the fee himself in time due to “insufficient funds”. By way of a letter dated 18 December 2012, the request to waive the fee was turned down. Nothing further was received from him.

17. Nevertheless, given that the material filed by Mr Robson is headed “submissions”, I have reviewed the material. Having done so, I consider that the material does not amount to submission but is, more properly, evidential material. For the reasons given above, it has not been admitted as evidence and I do not

therefore take it into account. Had I done so, however, it would not have had any effect on the decision I reach in this case, given the basis of the application to rectify the register.

## Decision

18. Rectification of the register is provided for by 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.”

19. As the subject of the application for rectification relates to Ms Hodgson’s request to be recorded as the registered proprietor of the registration, I am satisfied she has a sufficient interest under the provisions of section 64(1) of the Act and that this is not a matter which affects the validity of the registration itself. I have no information to indicate there are any proceedings concerning the trade mark pending in the court nor do I consider this is a matter that should be referred to the court.

20. As indicated above, Ms Hodgson’s claim is that she is the proprietor of the trade mark and that she paid for the application.

21. Ms Hodgson has not filed any evidence which shows she is the proprietor of the trade mark. From the material exhibited by her, it is clear that Mr Robson and Mr Attoh, the two individuals named on the form by which the application for registration was made, have had a number of business dealings with each other. It is clear that Mr Attoh trades under the name Website Experts. Although there is nothing to support it, I have no reason to doubt Ms Hodgson’s claim that she is married to Mr

Attoh or that she is also a partner in Website Experts. This does not, however, assist her claim that she (personally) was intended to be the proprietor of the mark when the application was filed. The draft partnership agreement between Mr Attoh and Mr Robson dates from well after the date the application was filed. The email communications between them also dates from after this date. Nowhere in any of these documents is Ms Hodgson mentioned and this material does not support her claim that it was intended she be named as the applicant for registration in October 2011. Her claim that the application should have been in her name is also somewhat at odds with the claim in her witness statement that “we” would register Claims In as a trademark and that “we” took steps to register it.

22. In her witness statement Ms Hodgson states she paid the application fee. I accept that a payment for £100 was deducted from her personal bank account on 10 November 2011 (a payment which would accord with the payment of the second part of the fee due in cases, like the present, where applications are made under the Office’s ‘Right Start’ scheme). I also note, however, that the other bank statement she has exhibited, which also shows a deduction of £100 which would accord with the payment of the first part of the requisite fee, is that of the account of Website Experts not her personal account. On the face of it such evidence could equally support a claim that Website Experts was the intended applicant. No explanation is given as to why the respective payments came from different accounts, however, nothing rests on this in any event as merely paying all or part of the requisite fee when trade mark registration is being sought is not proof of ownership of the trade mark itself.

23. It is clear that Ms Hodgson, Mr Attoh and Mr Robson have had business dealings with each other which appear to have broken down. Whilst it is a matter for Ms Hodgson to determine what evidence to file to support her claim, it is, perhaps, somewhat surprising that no evidence has been filed by Mr Attoh.

24. Ms Hodgson has filed a number of documents relating to various domain name registrations. She states in her witness statement that she and Mr Attoh are the registrants of these. No explanation is given as to how the registration for ‘,holidayhomesin.co.uk’ which appears to have been registered by a different party altogether, is relevant to the case before me nor is any explanation given as to the relationship of the registrant of injuryin.co.uk with the current case. Nevertheless, whilst I accept that each of the remaining domain names listed were registered well before the date on which Ms Hodgson states Mr Robson first approached Website Experts seeking their services, ownership of a domain name gives no right of itself to ownership of a trade mark registration but, in any event, and contrary to her claim, the domain names listed make no mention of Ms Hodgson but are, in fact, registered to Mr Attoh and/or Website Experts. This material cannot support her claim that she owns the trade mark the subject of this decision.

25. In short, the only document in evidence that mentions Ms Hodgson, is her personal bank account statement which I have already firmly rejected as being proof of ownership of the trade mark. On the basis of the evidence before me, I am unable to find that Claims In was entered in error instead of Ms Hodgson as the applicant for registration or that the subsequent registration stands in the wrong name. The application for rectification of the register fails.



## **Summary**

26. The application for rectification, made under the provisions of section 64 of the Act, fails in its entirety.

## **Costs**

27. Ms Hodgson's application to rectify the registration has failed. Regardless of Mr Robson's unsuccessful attempt to file evidence, Claims In has taken no part in these proceedings. In all the circumstances, it seems to me that an award of costs is not appropriate in this case and I decline to make one.

**Dated this 16th day of January 2013**

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