

**O-147-16**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF AN APPLICATION  
UNDER 84754 BY BLACK JACKAL DESIGN LTD  
TO RECTIFY THE REGISTER IN RESPECT OF  
TRADE MARK REGISTRATIONS NUMBERS 3043370 & 3004693  
IN THE NAME OF MR YU HANG SIMON MO &  
MR GLEN CULLUM WADE ROYD-TAYLOR**

## BACKGROUND

1) This dispute relates to the following two trade mark registrations (“the registrations”), both in the name of Mr Yu Hang Simon Mo & Mr Glen Cullum Wade Royd-Taylor (“the proprietors”).

**Mark (series of three):** Two Become One

TWO BECOME ONE  
JEWELLERY

TWO  
BECOME  
ONE

**Number:** 3043370  
**Filing date:** 20 February 2014  
**Date of entry in register:** 8 August 2014  
**Goods:** Class 14

Dogstone  
LONDON

**Mark:**  
**Number:** 3004693  
**Filing date:** 3 May 2013  
**Date of entry in register:** 25 August 2013  
**Goods:** Classes 14, 18 and 25

### Pleadings and evidence

2) On 1 July 2015, Black Jackal Designs Limited (“the applicant”) filed an application to rectify the register. In essence, Mr Royd-Taylor claims that the registrations were incorrectly filed by his ex-business partner under the names of Mr Mo and Mr Royd-Taylor rather than the applicant. Accordingly, Mr Royd-Taylor requests that the register is amended accordingly.

*Witness statement of Mr Glen Cullum Wade Royd-Taylor*

3) In support of the application for rectification, Mr Royd-Taylor submitted a witness statement stating that he is the sole director and owner of Black Jackal Designs Ltd trading as Two Become One Jewellery and Dogstone London.

4) He states that Mr Mo and Mr Royd-Taylor were partners in the company Black Jackal Designs Ltd. Mr Mo was the IT director until he was “removed” on 16 April 2015. Attached to Mr Royd-Taylor’s witness statement is a Business Current Account Statement for Black Jackal Designs Limited (“Limited Company”). The statement shows two payments made to The Patent Office,<sup>1</sup> one being on 21 February 2014 for

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<sup>1</sup> The Intellectual Property Office, which includes the Trade Marks Registry, is the trading name of the Patent Office

£150 and the other on 26 April 2014 for £100. The Patent Office accounts reflect that these payments relate to trade mark application no. 3043370. The accounts also show that "Fee Sheet acknowledgements" were also sent to the same party in relation to trade mark application number 3004693. On the balance of probabilities, these payments were also made by the Limited Company's Business Current Account. Therefore, I accept that the payments made for the trade mark applications were made by the Limited Company and it was the intention that they would be the intended owner.

5) Mr Royd-Taylor also provided details of instances whereby Mr Mo registered domain names in his name rather than the Limited Company. He states that he has since changed the owner of the domain names but this has taken considerable time and effort in his part. He also states that due to certain allegations against Mr Mo the Police have started an investigation against him which has resulted in some company information being seized. However, these allegations are not relevant to the claim for rectification.

6) A copy of the rectification claim had been sent to Mr Mo but no response has been received. Mr Royd-Taylor claims that despite trying to contact Mr Mo, he has not submitted a counterstatement, submissions or any correspondence relating to these proceedings. Therefore, Mr Royd-Taylor claims that being the sole owner of the Ltd Company and the lack of response from Mr Mo means that the UK trade marks register should be rectified.

## **Legislation**

7) Rectification of the register is provided for under section 64 of the Trade Marks Act which 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.

### **Sufficient interest?**

8) In order for an application for rectification to be considered, the applicant must have sufficient interest. In this instance, the applicant is the Limited Company who Mr Royd-Taylor and Mr Mo were both directors and in Mr Royd-Taylor's opinion is the rightful owner of the trade mark registrations. In view of this, I accept that the Limited Company has a sufficient interest to bring these proceedings.

### **Is the claimed error capable of correction?**

9) It is noted from the official register extracts that the Limited Company appears in the address line and the company registration details were also entered in the application form. I consider this, Mr Royd-Taylor's witness and evidence that payments made by the company account of the Limited Company to the Patent Office, as being *prima facie* evidence that an error upon filing occurred. The Registry sent the application for rectification to Mr Mo in order for him to submit a counterstatement together with evidence or submissions (the official letter dated 30 July 2015 refers) but no response was received.

10) Having found that the applicant has provided *prima facie* evidence, and in the absence of a response from Mr Mo, I am satisfied that this constitutes an error capable of rectification and the Registry shall rectify the register.

### **Outcome**

11) I direct, subject to appeal, that the owners of trade mark registration numbers 3043370 and 3004693 shall be changed to Black Jackal Designs Ltd.

### **Costs**

12) Since there is no official fee for filing an application for rectification, the applicant was not professionally represented and the evidential burden placed on the applicant was light, I do not consider an award of costs to be necessary.

**Dated this 18<sup>th</sup> day of March 2016**

**MARK KING  
For the Registrar,  
the Comptroller-General**