

**O/652/22**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
REGISTRATION NO. 3427982**

**IN THE NAME OF**

**NINGBO FREE TRADE ZONE  
ALBAYRAK ELECTRICAL  
APPLIANCE CO. LTD.**

**THE TRADE MARK:**

**Albayrak**

**IN CLASS 21**

**AND**

**AN APPLICATION FOR RECTIFICATION  
UNDER NO. 84850**

**BY**

**SHAH JEHAN**

## BACKGROUND

1. The trade mark “Albayrak” (UK 3427982) stands registered in the name of Ningbo Free Trade Zone Albayrak Electrical Appliance Co. Ltd (“the current proprietor”). It was applied for on 11 September 2019 by Shah Jehan, and completed its registration process on 29 November 2019, in respect of goods in class 21.
2. On 24 May 2021, a Form TM16, purportedly executed by Shah Jehan, was filed to record a change of ownership of the trade mark to Ningbo Free Trade Zone Albayrak Electrical Appliance Co Ltd. The effective date of assignment, as claimed on the Form TM16 is 15 May 2021.
3. The assignment was recorded in the register on 27 June 2021, displacing Shah Jehan as the registered proprietor.
4. On 29 December 2021, Shah Jehan filed an application (Form TM26(R)) to rectify the register in the following terms:

*“I’ve never requested trademark ownership for trademark number UK00003427982, and I never signed the documents to assign my trademark to anyone else other than myself. This is completely fake and it’s a scam.*

*Please take back the trademark from the fake assignee and reassign the trademark to my name “Shah Jehan” at the earliest.”*

5. As the application for rectification was made by a person other than the registered proprietor, it was necessary to notify the current proprietor in accordance with Rule 44(2) of the Trade Marks Rules 2008 (“the Rules”). This was done by letter dated 27 January 2022, sent by registered post to the address for service, being that of the current proprietor’s representative on record. The letter directed as follows:

*“The registered proprietor is now invited to submit a counter-statement together with evidence or submissions in accordance with Rule 44(2)(b) of the Trade Marks Rules 2008. Therefore, in accordance with Tribunal Practice Notice*

*3/2008 a period of two months from the date of this letter is allowed for this purpose.*

*The evidence or submissions should therefore be received on or before 28 March 2022 and in accordance with Rule 64(6) a copy must be sent to the other party.”*

6. On 27 April 2022, the deadline for filing a counterstatement having passed, and with no indication of one being filed, the Tribunal wrote to the current proprietor, at its recorded address for service, inter alia as follows:

*“As no counterstatement has been filed within the time period set, the Registry is minded to treat the proprietor as not opposing the application for rectification and will rectify the registration as no defence has been filed within the prescribed period.*

*In accordance with paragraph 10 of Tribunal Practice Notice 2/2011, if either party disagrees with the preliminary view they should request a hearing within 14 days from the date of this letter; that is on or before 11 May 2022.*

*If a hearing is not requested, the Registry will proceed to issue a decision rectifying the Register.”*

7. On 15 June 2022 an email was sent to the email address on record for the current proprietor, allowing them a further opportunity to *“file any comments you wish to make within 7 days from the date of this email, that is on or before 22 June 2022”*. This email correspondence also included (by way of attachments) the official letters dated 27 January 2022 and 27 April 2022, as well as a copy of the Form TM26R. The correspondence again advised that: *“If no response is received, the Registry will proceed to issue a decision rectifying the Register.”*

8. By letter dated 21 June 2022, Shah Jehan was directed to file a witness statement explaining the terms set out in the rectification application, together with any supporting information. A copy of this letter was also sent to the current proprietor.

9. In a witness statement dated 7 July 2022, Shah Jehan asserts as follows:

*“2. I’ve registered this trademark in IPO by myself under my own name ... (you can verify it from the records).*

*3. I authorised Ningbo Free Trade Zone Albayrak Electrical Appliance Co. Ltd to use my mark for selling their products on Amazon but I never ever allowed them to transfer the ownership of my mark onto their company name. But unfortunately, somehow, they’ve successfully transferred the ownership of the mark and the moment I got to know, I requested for the rectification of the mark.*

*4. I believe they’ve fraudulently amend or change the ownership of the mark, surprisingly, IPO never brought this development into my knowledge and I never got an email or mail on my address from IPO prior to this development took place.*

*5. I’m requested you to please reassign the mark on my name (initial owner) and take appropriate actions against Ningbo Free Trade Zone Albayrak Electrical Appliance Co. Ltd.”*

10. On 11 July 2022 the Registry issued a letter to the Shah Jehan, a copy of which was also sent to the current proprietor. The letter stated:

*“I acknowledge receipt of the witness statement of Shah Jehan, filed on 7 July 2022.*

*The Registry will proceed to issue a decision rectifying the Register.”*

11. No counterstatement, nor reply was received from the current proprietor.

## **DECISION**

12. Rectification of the register is governed by section 64 of the Trade Marks Act 1994 (“the 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**

13. An applicant for rectification must have sufficient interest to apply for rectification. It is clear from the documentation on record that Shah Jehan is original proprietor of the trade mark in question. In the circumstances, I am satisfied that the applicant for rectification has sufficient interest to make this application.

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

14. Section 64(1) deals with errors or omissions in the register and is interpreted more broadly than rectifying simple clerical errors. It can, and has been used to rescind erroneous assignments and deal with issues of disputed ownership.<sup>1</sup>

15. Section 72 of the Act states:

“72. In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.”

16. Section 24 deals with assignments and reads:

“24. (1) A registered trade mark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property. It is so transmissible either in connection with the goodwill of a business or independently.

...

(3) An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or

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<sup>1</sup> See for example *BL O/040/05* and *BL O/408/11*

on behalf of the assignor or, as the case may be, a personal representative.

### **Should rectification of the register follow?**

17. An application to record a change of ownership is made by filing a Form TM16, as the current proprietor appears to have done through its representative. The information provided on the form is taken at face value and the registrar does not investigate or otherwise seek to establish the legality of the claim to change of ownership unless, as in this case, the recordal of the change of ownership is subsequently challenged.

18. As the current proprietor has not filed evidence nor responded to any of the Registry's correspondence, I must treat the application for rectification as being uncontested. Although Shah Jehan appears to have signed the Form TM16 filed by the current proprietor, he says in his witness statement that he had not authorised the change of ownership from himself to the current proprietor; he had authorised them to use the mark in limited circumstances only. He argues that the assignment was done fraudulently. Based upon the papers before me, Shah Jehan's assertion that the trade mark was transferred fraudulently, or at least in error, has not been disputed. Taking all of this into account, I find that the change of ownership of the trade mark was made without authority.

19. In light of the above, recording Ningbo Free Trade Zone Albayrak Electrical Appliance Co. Ltd as the proprietor of the trade mark was an error, and the register should be rectified.

20. The outcome of the above results in the reversion of the recorded ownership to Shah Jehan.

### **Conclusion**

21. The application for rectification has succeeded. I, therefore, direct that the register be rectified; that the name of Ningbo Free Trade Zone Albayrak Electrical Appliance Co. Ltd shall be removed as the proprietor and that Shah Jehan shall be substituted in its place. The effect of my decision is that the recordal of the change of ownership to

Ningbo Free Trade Zone Albayrak Electrical Appliance Co. Ltd shall be deemed never to have been made.

**Costs**

22. No request for costs has been made and I make no order in this regard.

**Dated this 2<sup>nd</sup> day of August 2022**

**Denzil Johnson  
For the Registrar**