

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION N° 10102
BY DESIGNVILLE LIMITED FOR
RECTIFICATION OF THE ENTRY ON THE REGISTER
IN RESPECT OF TRADE MARK N° 2103373, STANDING
IN THE NAME OF THE 20/20 OPTICAL STORE

TRADE MARKS ACT 1994

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rectification of the entry on the Register
in respect of Trade Mark N° 2103373, standing
10 in the name of THE 20/20 OPTICAL STORE

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BACKGROUND

The trade mark, THE 20/20 OPTICAL STORE, was registered on 17 October 1997 under N° 2103373 in respect of goods and services in Classes 9 and 42.

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The registered proprietor shown on the form of application and subsequently on the Register is The 20/20 Optical Store. By an application dated 28 April 1998, Designville Limited, “the applicants”, applied for the rectification of the Register under Section 64 of the Act in respect of the trade mark registration, by the correction of the name of the proprietor to that of the applicants.

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No formal statement of grounds was received with the form TM26, but evidence in the form of a Statutory Declaration sworn by Mr Howard Ross, Executive General Manager of the applicants, was filed. From this it can be taken that the grounds of rectification are that the application was made in error in the trading name of the applicants rather than their actual name.

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In his Statutory Declaration, dated 27 April 1998, Mr Ross states that the trade mark application was filed on 21 June 1996 showing the applicants name as The 20/20 Optical Store of 217-218 Tottenham Court Road, London, W1P 9AF, and it was subsequently registered in that name on 17 October 1997; he exhibits a certified copy of the registration certificate. He goes on to state that The 20/20 Optical Store is the trading name of the applicants and exhibits a letterhead that states at the bottom that the proprietors of The 20/20 Optical Store are Designville Limited, the applicants. He further states that The 20/20 Optical Store is not a legal entity and should not therefore have been registered as the proprietor of the trade mark and he exhibits a copy of the Certificate of Incorporation of the applicants.

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In part, Mr Ross states the error occurred because the application for registration of the trade mark was prepared by his company, not by trade mark agents or solicitors, and by virtue of a clerical error they listed The 20/20 Optical Store as the proprietor on the form TM3 rather than the applicants. He was not aware of the importance of the error until it was brought to his attention by his solicitors, whom he immediately instructed to take steps to correct it. Mr Ross says, to the best of his knowledge, there are no other parties with an interest in the trade mark.

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DECISION

I now turn to consider the grounds of rectification under Section 64 of the Act, which states:

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64(1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

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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.

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(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.

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(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.

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(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.

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(5) The registrar may remove from the register matter appearing to him to have ceased to have effect.

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I am satisfied that the applicants have the qualifying status demanded by Section 64 of the Act; that is that they have a sufficient interest in the registration. I am also satisfied that this is not a request that must be made to the Court. It is appropriate therefore for me to consider the request.

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In as far as the error is concerned I am satisfied that it occurred as a result of an oversight on the part of the applicants and that they filed the application for registration showing their trading name rather than the name of the legal entity which owned the trade mark. The consequence is that the registration stands in the wrong name. In all of the circumstances and in the exercise of the discretion conferred upon me by Section 64 of the Trade marks Act 1994, I direct that the Register be rectified by the deletion of the name and address shown against the registered proprietor in respect of trade mark registration N° 2103373 and replaced with the name Designville Limited, at the following address Auerbach Hope, 58-60 Berners Street, London, W1 4JS.

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In accordance with Section 64(5) I deem that the error was never made.

5 Dated this 7 day of October 1998

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M KNIGHT

20 Acting for the Registrar
The Comptroller General