

O-365-13

**IN THE MATTER OF REGISTRATION NO. 2561952  
IN THE NAME OF BLINGKING WATCH & JEWELLERY.NEW ZEALAND  
OF THE TRADE MARK**



**IN CLASS 14**

**AND**

**AN APPLICATION FOR  
A DECLARATION OF INVALIDITY THERETO  
UNDER NO. 84407  
BY DANIEL LEFF**

## Background

1. The above trade mark stands in the name of “Blinking Watch & Jewellery.New Zealand” (“the registered proprietor”). The registration process was completed on 28 January 2011 and the mark is registered for watches and jewellery, in Class 14. The address for service recorded on the trade mark register is Cruce Largey, Money Penny, Freepost, Ellice Way, Wrexham, LL13 7ZZ. The registered proprietor’s address is in New Zealand.

2. On 1 May 2012, Daniel Leff (“the applicant”) filed an application for a declaration of invalidity of the registration under section 47(2) of the Trade Marks Act 1994 (“the Act”). Section 47(2) states:

“47.—

.....

(2) The registration of a trade mark may be declared invalid on the ground—

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

The applicant claims the registration should be declared invalid as it was registered in contravention of section 5(4)(a) of the Act, the applicant claiming goodwill since 2004 in the sign The Blink King, in relation to watches and jewellery.

3. The application for a declaration of invalidity was served upon the registered proprietor at its recorded UK address for service, set out in paragraph 1 of this decision, on 25 June 2012. The due date set for the registered proprietor to file its defence was given as being on or before 25 August 2012. The documents served were returned to the Intellectual Property Office as “addressee unknown” on 13 July 2012. On 18 July 2012, the application was re-served directly to the registered proprietor’s New Zealand address, under cover of a new letter, with the date remaining as 25 August 2012 for the filing of a defence. The letter warned that the consequence of failure to file a defence by 25 August 2012 may be that the proprietor would be treated as not opposing the application for a declaration of invalidity and that the registration would be declared invalid.

4. The letter of 18 July 2012 also contained the following paragraph:

“Please note that in accordance with Rule 11(1)(d) of the Trade Marks Rules 2008, the proprietor is directed to file an address for service within the EEA. The address for service would be required to submit a Form TM33 on or before 25 August 2012. Please note that in accordance with Rule 12(4)(d) of

the Trade Marks Rules 2008 that failure to file an address for service will result in the proprietor being deemed withdrawn from these proceedings”.

5. The registered proprietor filed a defence and counterstatement on Form TM8 which was received at the Intellectual Property Office before the due date, on 16 August 2012. The TM8 gave the name of the registered proprietor as Cruce Patric Largey. It also gave an address of 111 Edinburgh Street Pukekohe, Auckland, New Zealand (Pukeohe is the spelling on the trade mark register) and an email address: “care of BlingKing@gmail.com”. No address for service within the EEA was detailed.

6. On 8 August 2012, the Intellectual Property Office wrote to the email address detailed above, acknowledging receipt of an email enclosing the form TM8 (the said email is not on the official file). The letter stated that the official letter dated 18 July 2012 (the writer enclosed a copy) and an official email of 30 July 2012, also copied to the proprietor with the email of 8 August 2012, had directed that the proprietor must file an address for service within the EEA on or before 25 August 2012. The email repeated the warning regarding the consequences of failure to comply, enclosed a blank Form TM33, and set the date for compliance as 25 August 2012.

7. Mr Largey replied on 12 August 2012 from the BlingKing@gmail.com address. He said:

“As part of the Common Wealth’, I FEEL IT SHOULD NOT BE NECESSARY FOR ME TO HAVE AN ADDRESS in London’ UNDER THE I.P.O. New Zealand Agreement !!! Also i intend to release a Franchise BlingKing FACTORY SHOP, in London 2013 along with my world media for the worlds most expensive Dress Watch at 31,000,000 million dollars ‘, PLEASE’ check BlinkKing.co and BLINKING is the KINGS OF BLIING! BLIING HE WAS THE KIIING! YES THE MODERN FABERGE LABEL’, WILL BE A WORLD FRANCHISE! I CURRENTLY HAVE THE AMERICAN TRADEMARK GOING THROUGH! So very much a Special Jewellery Services’ Franchise Company! yours sincerely Cruce Largey, !”

8. A further email from Mr Largey was sent on 15 August 2012 which said:

“yes i will contact you regarding’, legality requesting mailbox when you sent tm8 forms to 111 edinburgh street pukekohe<sup>1</sup> Auckland this seems to be pathetic! As i we are part common wealth agreement for trademark’, i will need speak regarding this’, as well the straight audacity to excuses for a shit metal merchant who’s complaining about the kiings of bliing high end diamond Faberge art jeweller label of the century!”

Mr Largey sent another email on 17 August 2012 along similar lines, which stated he was making a formal complaint. This was replied to by the Intellectual Property Office on 20 August 2012, which drew attention to the contents of the letters from the Intellectual Property Office, which I have described above. The letter set out the

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<sup>1</sup> Although Mr Largey repeats the spelling he entered on the TM8, the official service of the application to the New Zealand address on 18 July 2012 used the spelling of Pukeohe, as recorded on the Trade Mark Register.

process which would be followed if the address for service direction was complied with and included an emboldened warning that failure to comply would result in the TM8 not being admitted to the proceedings, the consequences of which would be that the trade mark registration “may possibly be declared invalid and removed from the trade mark register”. The date for compliance remained at 25 August 2012.

9. On 22 August 2012, Mr Largey sent an email as follows:

“IT IS NOT TO HAVE A POSTAL ADDRESS! I WILL SPEAKING TO YOUR’ IF THIS HAS BEEN I WILL SUEING I.P.O. TRADEMARKS FOR NOT GIVEING THE INFORMATION TO REMOVE DANIAL TIME EMAILS’ IF THIS IS THE PITAFUL EXCUSE IT IS CRIMINAL! PLEASE GIVE ME’ COPY OF I.P.O. AND N.Z. TRADEMARKS AGREEMENT ILL POINT IT OUT!”

10. On 30 August 2012, a further email from Mr Largey said:

“HI THIS IS THE POST SERVICE IM USING. POST OFFICE CUSTOMER CARE PO BOX 740 BARNESLEY S73 0ZJ. THANK YOU CRUCE LARGEY.”

11. On 20 September 2012, the Intellectual Property Office issued a letter to the New Zealand address which stated that since the proprietor had not complied with the address for service directions by the due date, which was 25 August 2012 (the Post Office address being emailed on 30 August 2012), the registrar’s preliminary view was to treat the registered proprietor as having withdrawn from the proceedings, as per rule 12(2) and 12(3)(d), and that the registration would be declared invalid. The letter stated that if the registered proprietor wished to disagree then a hearing would be necessary, which should be requested by 20 October 2012.

12. Mr Largey responded by email on 24 September 2012:

“i don’t know exactly what your on about given you the postal address! I am now also the American trademark holder”

The Intellectual Property Office responded by email on 25 September 2012, reiterating the contents of the official letter of 20 September 2012. On 19 October 2012, Mr Largey responded:

“excuse me i will ring you! Thats criminal’, i also have the AMERICAN TRADEMARK, you no right to do anything i will appeal that!!!”

13. A minute after this email was sent, Mr Largey sent another which said:

“YOU HAVE BEEN GIVEN AN ADDRESS! ROYAL ADDRESS’, THIER ARE NO EXCUSES!”

14. Later that day, the Intellectual Property Office responded by email, drawing attention to previous correspondence and, in particular, the failure to provide an EEA address for service on Form TM33. The email repeated that any request for a hearing must be received by 20 October 2012 (the following day). On Saturday 20

October 2012, Mr Largey sent an email saying that he would ring on Monday. On 22 October 2012, Mr Largey emailed:

“THIS THE ROYAL MAIL ADDRESS’, THAT YOU WERE SENT ! on the 30 2012”

Mr Largey included his email of 30 August 2012 in which he had given the Post Office Customer Care PO box address.

15. The Intellectual Property Office responded by email on 23 October 2012, setting out a summary of all previous official communications and stating, in particular, that the failure to provide an EEA address for service on Form TM33 would result in the trade mark being declared invalid. The email also referred to the failure to request a hearing, to argue against this course of action, by 20 October 2012.

16. Mr Largey appeared to misunderstand the email because his subsequent email of 25 October 2012 said:

“excuse me! I will forward the atomic time dated email , with royal mails address in it!!!”

The Intellectual Property Office replied on 26 October 2012, informing Mr Largey that there was no dispute that he had provided an address for service within an email, but that it was required that the address be submitted on a Form TM33 and that this had been requested in numerous correspondence.

17. On 29 October 2012, Mr Largey sent an email which said:

“no that form has been returned, ill find it’ and forward the email’, thanks Cruce Laegey”

18. The Intellectual Property Office wrote to Mr Largey on 7 November 2012 at the Post Office address for service which he had given in his email of 30 August 2012 (in Barnsley) to say that the matter had been reviewed and that it had been decided to exercise the registrar’s discretion to accept the Barnsley address for service which had been provided by email, in accordance with rule 11(2) and 11(3) of the Trade Marks Rules 2008. The letter stated:

“As the Form TM8 and counterstatement was received on 16 August 2012, the trademark will therefore be deemed as correctly defended.”

A further letter was sent to the Barnsley address for service on 30 November 2012, setting the evidence timetable for both parties. In an email to the applicant dated 18 December 2012, the Intellectual Property Office provided the applicant with the registered proprietor’s Barnsley address for service.

19. Following some procedural issues over the applicant’s evidence, which are not relevant to this decision, a letter was issued on 4 March 2013 which gave the proprietor until 14 April 2013 to file any evidence or submissions. A further letter was

issued on 26 April 2013 stating that the evidence rounds were closed (because the proprietor had not filed any evidence) and that the next stage would be the decision. The parties were given until 10 May 2013 to request a hearing on the substantive issues or, alternatively, until 24 May 2013 to file written submissions in lieu of being heard. I note that the official file also contains an envelope which shows that the applicant sent its evidence to the Barnsley address by Royal Mail Special Delivery, but that delivery failed: "not known at this address". The delivery stamp says that the attempted delivery took place on 6 February 2013.

20. On 20 June 2013, the registrar's Hearings Clerk emailed Mr Largey to ask him to confirm that he had not intended to file written submissions. Mr Largey responded the following day:

"well i needing registration as im tradeing since 2007 on n.z 765756 with I.P.O. 2561952 I WILL HAVE FRANCHISE SHOP IN THE UK AVENTUALY', i have already sent a submission, thankyou Cruce Largey".

21. On 27 June 2013, the official letter dated 26 April 2013, sent to the Barnsley address for service, was returned to the Intellectual Property Office under cover of a Royal Mail compliments slip, which stated:

"The addressee of the attached letter is not known either by the Post Office Limited or by Royal Mail Group. We think there may be an error in your records. Please do not send further correspondence. Susie Evans, Senior Legal Advisor, Royal Mail Group."

Upon receipt of this information, the Intellectual Property Office wrote to Mr Largey by post to the Barnsley address and to his email address on 2 July 2013, repeating the information from the Royal Mail and stating:

"It is now the Registry's view that the address for service provided by you in your email of 30 August 2012 is no longer considered an effective address for service.

In accordance with Rule 11(1)(d) of the Trade Marks Rules 2008, the proprietor is directed to file an address for service within the EEA. The address for service should be provided on a Form TM33 (copy attached) on or before 2 August 2013. Please note in accordance with Rule 12(4)(d) of the Trade Marks Rules 2008 that failure to file an address for service will result in the proprietor being deemed withdrawn from these proceedings."

22. Mr Largey's emailed response, on 18 July 2013, was:

"ok no thiers no change in ownership of blingking' its Cruce Largeys' im wanting info on takeing other partys to courts or to stop them from tradeing with my mark' blingking UK 2561952 ' or NZ 765756."

23. The Intellectual Property Office responded the following day with a reminder as to its communication of 2 July 2013. Mr Largey emailed on 23 July 2013 (twice) to say that he had given a “royal mail” address ages ago and:

“thats post office customer care box 740 barnesley S73 0ZJ, or 108 Harris Rd Huntly, New Zealand”.

24. The Intellectual Property Office responded to Mr Largey’s email address on 23 July 2013, repeating the contents of the 2 July 2013 communication and repeating the deadline of 2 August 2013, and stating that the consequences of failure to provide an effective address for service by this date would be that the proprietor will have been deemed to have withdrawn from the proceedings.

25. On 2 August 2013, Mr Largey sent an email which simply stated:

“ok will contact Royal post ‘, to find out whats going on.”

## **Decision**

26. Rules 11 and 12 of The Trade Mark Rules 2008 state:

### **“Address for service**

11.—(1) For the purposes of any proceedings under the Act or these Rules, an address for service shall be filed by—

- (a) an applicant for the registration of a trade mark;
- (b) any person who opposes the registration of a trade mark in opposition proceedings;
- (c) any person who applies for revocation, a declaration of invalidity or rectification under the Act;
- (d) the proprietor of the registered trade mark who opposes such an application.

(2) The proprietor of a registered trade mark, or any person who has registered an interest in a registered trade mark, may file an address for service on Form TM33 or, in the case of an assignment of a registered trade mark, on Form TM16.

(3) Where a person has provided an address for service under paragraph (1) or (2), that person may substitute a new address for service by notifying the registrar on Form TM33.

(4) An address for service filed under paragraph (1)(a) or (2) shall be an address in the United Kingdom, another EEA State or the Channel Islands.

(5) An address for service filed under paragraph (1)(b) to (d) shall be an address in the United Kingdom, unless in a particular case the registrar otherwise directs.

## **Failure to provide an address for service**

12.—(1) Where—

(a) a person has failed to file an address for service under rule 11(1); and

(b) the registrar has sufficient information enabling the registrar to contact that person,

the registrar shall direct that person to file an address for service.

(2) Where a direction has been given under paragraph (1), the person directed shall, before the end of the period of one month beginning with the date of the direction, file an address for service.

(3) Paragraph (4) applies where—

(a) a direction was given under paragraph (1) and the period prescribed by paragraph (2) has expired; or

(b) the registrar had insufficient information to give a direction under paragraph (1),

and the person has failed to provide an address for service.

(4) Where this paragraph applies—

(a) in the case of an applicant for registration of a trade mark, the application shall be treated as withdrawn;

(b) in the case of a person opposing the registration of a trade mark, that person's opposition shall be treated as withdrawn;

(c) in the case of a person applying for revocation, a declaration of invalidity or rectification, that person's application shall be treated as withdrawn; and

(d) in the case of the proprietor opposing such an application, the proprietor shall be deemed to have withdrawn from the proceedings.

(5) In this rule an "address for service" means an address which complies with the requirements of rule 11(4) or (5).

27. The registered proprietor has failed to provide an address for service in the UK, or the EEA, which it was entitled to provide. It provided the customer care address details of the Royal Mail. This is not an address for service which it was entitled to use. Mr Largey, and the registered proprietor, failed to act upon the instructions given to them clearly and repeatedly by the Intellectual Property Office's staff. Despite this, the registrar's discretion was exercised and the Barnsley address for service was allowed without a Form TM33, and after the date for the filing of an address for service and the defence itself. The defence was therefore admitted. However, the address for service was not, and never had been, an effective address for service because it was not an address which the registered proprietor was entitled to use. The applicant's evidence was returned to it, having served it to that address. The senior legal adviser to Royal Mail requested that no more correspondence be sent to that address.



28. Having been informed that it was not an effective address for service, the registered proprietor, via Mr Largey, presented the Intellectual Property with the same information. The emails and correspondence took on a circular nature, incapable of resolution. The registered proprietor and Mr Largey have taken up a wholly disproportionate amount of the Tribunal's time and resources. This impacts upon the resources which the Tribunal can allocate to other cases. There has been a disregard for the legislation and the duty upon the registered proprietor to assist the Tribunal in dealing with the case justly and at proportionate cost. The registered proprietor has repeatedly failed to comply with the rules and directions made. There comes a point, and I consider that point was reached some time ago, when the reasonable amount of latitude given to a lay litigant, on account of unfamiliarity with legal proceedings, must end. The litigant must bear the responsibility of being a party to an action and take seriously, and diligently attend to, the directions made of it.

29. The registered proprietor has failed to provide an address for service in the UK, or the EEA, which it can use as an effective address for service. Under rule 12(4)(d), the registered proprietor is deemed to have withdrawn from the proceedings. The effect of this is that it has withdrawn its defence, which arguably was never filed because its admission to the proceedings depended upon the effectiveness of the address for service. As the registered proprietor has withdrawn its defence, **the application for a declaration of invalidity succeeds.**

#### **Outcome**

30. Under section 47(6) of the Act<sup>2</sup>, the registration is deemed never to have been made. **The registration is declared invalid.**

#### **Costs**

31. The applicant has been successful and is entitled to an award from the Registrar's published scale of costs<sup>3</sup>. The applicant has not been professionally represented in the proceedings so has not had the costs of legal representation. Consequently, save for the official application fee, the award will be half of the amount which would have been appropriate had a legal representative been engaged. The evidence filed consists of two pages, so the award will reflect that brevity. The breakdown of the award is as follows:

Filing the application and considering the counterstatement:	£100
Application fee	£200
Filing evidence:	£ 50
<b>Total:</b>	<b>£350</b>

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<sup>2</sup> "(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made."

<sup>3</sup> Tribunal Practice Notice 4/2007.

32. I order Blingking Watch & Jewellery.New Zealand to pay Daniel Leff the sum of £350. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 10th day of September 2013**

**Judi Pike  
For the Registrar,  
the Comptroller-General**