

O-221-11

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK REGISTRATION 2392109
IN THE NAME OF MOHAMMED ARIF YASIN IN RESPECT OF THE MARK**

RAJA

IN CLASS 43

**AND IN THE MATTER OF AN APPLICATION FOR RECTIFICATION
THERE TO UNDER NO 83899
BY RAJAS PIZZA BAR LTD**

AND

**IN THE MATTER OF TRADE MARK REGISTRATION 2524245 IN THE NAME
OF MOHAMMED ARIF YASIN IN RESPECT OF THE MARK**

RAJAS

IN CLASS 43

**AND IN THE MATTER OF AN APPLICATION FOR RECTIFICATION
THERE TO UNDER NO 83789 BY RAJAS PIZZA BAR LTD**

TRADE MARKS ACT 1994

**IN THE MATTER OF Trade Mark Registration No 2392109
In the name of Mohammed Arif Yasin in respect of the mark**

RAJA

In Class 43

**And in the matter of an application for rectification thereto under number
83899 by Rajas Pizza Bar Ltd**

And

**IN THE MATTER OF Trade Mark Registration No 2524245
In the name of Mohammed Arif Yasin in respect of the mark**

RAJAS

In Class 43

**And in the matter of an application for rectification thereto under number
83789 by Rajas Pizza Bar Ltd**

BACKGROUND

1. These proceedings concern two applications for rectification of the register under section 64 of the Trade Mark Act 1994 ("the Act"). The facts are similar if not exactly the same as in both cases an allegedly 'fraudulent' Form TM16 has been filed.
2. It may also be noted that there are related proceedings before the registry, being an opposition under number 100916, filed on 2nd September 2010 by the registered proprietor (Mr Yasin) in these proceedings against application 2539303, in the name of Rajas Pizza Bar Ltd (hereafter referred to as 'the company', unless the full title is used), which has been suspended pending conclusion of these proceedings.

Trade Mark registration 2524245 ('245) – RAJAS

3. This mark was filed on 20th August 2009 in the name of Rajas Pizza Bar Ltd. It was registered on 2nd April 2010. The statement, filed with the application for rectification by the company on 11th June 2010, says that Mr Bashir, who is the sole director and a shareholder of the company, did not request that the

application be filed nor was he notified of the application when it was filed. Mr Bashir and the company became aware of the application shortly after it was filed when the company's designers, Zas Design Contractors, who had been engaged to work on a new RAJAS logo, checked the IPO website. Assuming the application had been made by one of the managers of one of the company's premises, Mr Bashir took no further action in relation to this application at that stage.

4. However, towards the end of March 2010, the company's then solicitors, Platinum Partnership, informed Mr Bashir that the registration had been transferred to Mohammed Arif Yasin. The relevant Form TM16 had been filed with the registry in February 2010.
5. I should explain that Form TM16 is the official form used to notify the registry of a change of ownership and it must be signed by *both* the current applicant or proprietor (or on their behalf), as well as the new applicant or proprietor (or on their behalf). It is important to appreciate that, in itself, it not an assignment document and nor does it operate as proof of any assignment or transfer.
6. In this case, the Form indicated that the new proprietor, Mr Yasin, took over ownership on 26th November 2009. The Form was purportedly signed by Mohammed Bashir as, or representative of, the then current proprietor and Mohammed Arif Yasin as the new proprietor.
7. In its statement of case, the company says that, as at 26th November 2009, the only person within the company with the authority to dispose of or transfer any of its assets was Mr Bashir. He made no such assignment to Mr Yasin, nor to anyone else, either on 26th November 2009 or at all. On inspection of the Form TM16, it became clear to Mr Bashir that the signature on that document which purported to be his was a forgery. He had not signed the Form nor had he authorised anyone from the company to sign on his behalf.
8. Consequently, the company says that Form TM16 contains a forged signature and purports to register an assignment that never took place and asks that the register be rectified by the reversal of the recordal of the 'assignment' of the trade mark to Mr Yasin, so as to put the registered proprietorship back in the name of Rajas Pizza Bar Ltd.

Evidence of Mr Bashir


9. To support the statement of case, Mohammed Bashir has provided a witness statement dated 22nd October 2010. He says Raja Pizza Bar Ltd was incorporated on 3rd November 2004. It changed its name to Rajas Pizza Bar Ltd on 26th November 2004. Company House records are exhibited at MRB1. Mr Bashir says that he and his wife are the shareholders of the company and

he is the sole director. He has been a director since 4th November 2004. The principal business of the company is restaurants and takeaways, specialising in pizza and chicken. At the date of the witness statement the company owns and operates 10 outlets and these are all listed, including in Bradford, Birmingham, Halifax, Rochdale and Manchester. Copies of the company's website are also exhibited. Mr Bashir says the company did trade as a unincorporated business prior to 2004.

10. Mr Bashir explains how he came to learn of the filing of the application through his design contractors and how he assumed it had been made by one of the managers of his outlets. The address given on the Form TM3 was 258 Great Horton Road in Bradford, being the address of the company's flagship restaurant. Under the address for service details, the name of Craig Sozzard of 208 Edward Road, Balsall Heath, Birmingham, B12 9LY had been given. Mr Bashir explains he was not overly perturbed by the knowledge the application had been filed; his managers were astute business people, and by implication, had a degree of autonomy. Had the application been filed in any other name than Rajas Pizza Bar Ltd, he would have taken action.

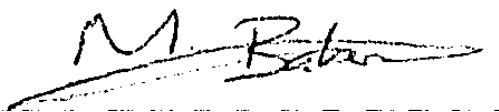
11. In fact, Mr Bashir goes further and says he was actually pleased the application had been made, given the comprehensive protection it would provide. However, he learned in March 2010 that the application, or rather registration by that time, had been transferred to Mr Yasin by virtue of the filing of a Form TM16. He says there has never been an assignment from the company to Mr Yasin. He has seen a copy of this Form and confirms that the signature which purports to be his is a forgery. Prior to being shown the Form in May 2010 he had not seen it before. I have reproduced below the signature which appears on Mr Bashir's witness statement and the signature which purports to be his on the Form TM16:

(1) Signature on Mr Bashir's witness statement:



A handwritten signature in black ink, appearing to read 'M. R. Bashir', written over a dotted horizontal line.

(2) Signature on Form TM16:



A handwritten signature in black ink, appearing to read 'M. R. Bashir', written over a dashed horizontal line.

Further facts and submissions

12. On 15th July 2010 the application for rectification, including the statement of case and evidence from Mr Bashir, were served on Mr Yasin, inviting him to submit evidence or submissions in accordance with rule 44(2)(b) of the Trade Marks Rules 2008. The period given was two months, up to 15th September 2010.
13. By letter dated 27th August 2010, Craig Sozzard of CS Trademarks wrote to the registry explaining that the original filing of the application had been the responsibility of his former business partner, Timothy Bradley, with whom he had fallen out during the week commencing 17th August 2009. Mr Sozzard says Mr Bradley had deliberately filed the application in the wrong name (ie Rajas Pizza Bar Ltd), when it should have been filed in the name of Mr Yasin. Mr Bradley's actions are described by Mr Sozzard as an act of 'revenge' as a consequence of their falling out. On discovering this, in mid November 2010, Mr Sozzard says he "filed a TM16 not knowing this was the incorrect way later, and transferred the pending application back into the rightful owner's name, Mr Mohammed Arif Yasin". He says he has no dealings with Rajas Pizza Bar Ltd; he was instructed to file the application by Mr Yasin and nobody else.
14. Accompanying the letter from Mr Sozzard, there is a letter from Mr Yasin dated 2nd September 2010. He says he is a legitimate business man and rejects the claim that Form TM16 is a forgery. The letter from Mr Sozzard explains the circumstances of the filing of both the application and subsequent Form TM16. As far as Mr Yasin is concerned, the '245 registration belongs to him, he paid for it and can, he says, prove it. Rajas Pizza Bar Ltd never owned the mark; it did not exist as far as they were concerned until they were notified of threatened opposition in relation to their own application. Mr Yasin asks the registrar to reject the application for rectification.
15. No further evidence or correspondence has been filed by either party. Mr Yasin has not filed a counter-application to rectify the register to render the registration into his name from its date of filing, despite his and Mr Sozzard's assertions.
16. Final submissions have been filed by the company in which they note, as regards Mr Sozzard's letter, that he says that Form TM16 was filed to rectify a deliberate act of revenge. Thus, there is *no* claim from Mr Sozzard that there has been any assignment from the company to Mr Yasin. They note further that Mr Sozzard says that, "I have had no dealings with Rajas Pizza Bar Ltd". As such, it cannot be the case that Mr Bashir (whose signature is purportedly

on Form TM16), nor any other authorised representative of the company can have had anything to do with the Form TM16 filed in November 2010.

17. Nothing further was filed by either party and nor did they ask to be heard.

Trade mark registration 2392109 ('109) – RAJA

18. This mark was filed on 17th May 2005 and registered on 23rd December 2005 in the name of Gresham Estates Ltd of 54 Birch Road, London W3 9SR (hereafter 'Gresham').

19. On 2nd November 2010, the applicant for rectification, being the company, filed an application to rectify the register. In its statement of case it says on 26th August 2008, Gresham (Company number 02071249) was dissolved by way of voluntary strike off. A notice of dissolution from Companies House records has been annexed to the statement and shows this to be the case. The Companies House record shows the same address for Gresham as appears on the original trade mark application form. There can be no doubt then, that it is one and the same company.

20. As a result of its dissolution, Gresham no longer exists as a legal entity. All of this company's assets, including any registered trade marks, says the company, transfer automatically to the Crown and become bona vacantia with effect from 26th August 2008.

21. On 21st May 2010, a Form TM16 was filed with the registry. It states that on 11th May 2010, the new proprietor, Mr Yasin, took over ownership of the mark. Mr Yasin has signed the Form TM16 as the new proprietor in relation to this mark. The form has been signed by another person, Mr Gary Taylor, described as an IP Manager of the then current applicant or proprietor, ie Gresham.

22. The company say that Gresham, still the registered proprietor as at 11th May 2010, was simply unable to sign the Form TM16 as it had been dissolved on 26th August 2008. Thus, according to the company, the signature on Form TM16 purporting to be a signature of Gresham must have been applied falsely. The company say that the Form TM16 has been used by Mr Yasin to enable him to become registered proprietor of the '109 mark to enable him to bring the opposition against the company's own mark. The Form TM16 is a fraudulent document, in that the person who prepared and filed it, and/or the person on whose behalf it was prepared and filed cannot have had any honest belief that there had been any assignment as claimed. The Form TM16 is not and cannot be an assignment itself and nor can it act to give Mr Yasin ownership of the mark. Gresham cannot, in any event, have assigned the mark on the date claimed as it had been dissolved.

23. As a consequence, the company say Form TM16 purports to register an assignment which never took place. There has been a clear error in the register and by the registry, which recorded that assignment and the company request that the register be rectified by the reversal of the recordal of the assignment of the trade mark to Mr Yasin, so as to put the registered proprietorship back in the name of Gresham.

24. The application to rectify or correct the register was served on Mr Yasin on 17th November 2010, giving him two months in which to file any evidence or submissions in response. Nothing was received from Mr Yasin within that period and neither party filed anything further, nor asked to be heard.

25. As neither party has asked to be heard this decision is taken after a careful reading of the papers.

DECISION

Section 64

26. Section 64 of the Act reads:

“**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. “

27. It is plain from my narrative this case concerns potentially serious allegations of wrongdoing, but my remit is quite a narrow one. In particular, I am not charged with resolving any *underlying* dispute as to ownership or to deal with matters of an allegedly criminal nature. I am only asked to rectify the register, in the event I conclude from the information and evidence before me there is an error or omission, subject only (as the Act stipulates) to such a rectification not affecting the validity of the trade mark application or registration.

28. I should however, firstly record that no issue has been taken as regards the company *not* having the required standing (ie locus or interest) to make the applications for rectification in accordance with the Act. Nor are there any pending proceedings before the Court as regards these registrations. I find then that the company is entitled to make the applications and that the registrar has the required jurisdiction in this matter.

Trade Mark registration 2392109 ('109) – RAJA

29. The fact of the dissolution of Gresham Estates Ltd in 2008 has not been disputed and, as I have said, has been proven by records from Companies House. On that basis there can have been no assignment to Mr Yasin on 11th May 2010.

30. In the circumstances, I order that the effects of the filing of Form TM16 filed on 21st May 2010 be reversed (this being the error being rectified), and that the register record be reverted to show, as a consequence, the name of the registered proprietor as it was originally, namely :

Gresham Estates Ltd
54 Birch Road,
London
W3 9SR

31. In accordance with section 64(3) the error shall be deemed never to have been made.

32. My order above is suspended pending the appeal period.

Trade Mark registration 2524245 ('245) - RAJAS

33. Mr Sozzard's letter of 27th August 2010 concedes that the filing of Form TM16 on 19th February 2010 was an "incorrect way" of transferring the pending application into the rightful owner's name (in his view, Mr Yasin), albeit that Mr Sozzard apparently did not realise this at the time.

34. Furthermore, there is no evidence of any assignment from the company to Mr Yasin having taken place in November 2009, or at all. Form TM16 is not, as the notes to the Form emphasise, and as I have already said at the outset, a substitute for or an actual assignment document, nor does it operate as proof of any transaction. No proof of any transaction has been made by Mr Yasin, and Mr Bashir has said that no such transaction exists, and that the signature on the Form TM16 which purports to be his is, in fact, not his at all.

35. In the circumstances, I order that the effects of the filing of Form TM16 filed on 19th February 2010 be reversed (this being the error being rectified) and the register record be reverted to show, as a consequence, the registered proprietor as it was originally, namely :

Rajas Pizza Bar Ltd
258 Great Horton Road
Bradford
West Yorkshire
BD7 1PU

36. In accordance with section 64(3) the error shall be deemed never to have been made.

37. My order above is suspended pending the appeal period.

Costs

38. Rajas Pizza Bar Ltd has been successful in both applications to rectify the register. Accordingly, it is entitled to a contribution towards its costs and neither party sought costs off the normal scale. In the circumstances I award Rajas Pizza Bar Ltd the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

1. Filing applications to rectify, including statements of case and evidence - £400
2. Filing final submissions - £ 300

Total £700

39. I order Mohammed Arif Yasin to pay Rajas Pizza Bar Ltd the sum of £700. The sum should 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 22nd day of June 2011

**Edward Smith
For the Registrar,
the Comptroller-General**