

**O-522-15**

TRADE MARKS ACT 1994

IN THE MATTER OF AN APPLICATION

UNDER NO 84748 BY JALIL RAHMAN

TO RECTIFY THE REGISTER IN RESPECT OF

REGISTRATION NO 3011104

IN THE NAME OF ANGELO VAN MOL LIMITED

## Background

1. On 23 June 2013, Jalil Rahman applied for registration, under no 3011104, of the trade mark **ANGELOVANMOL** in respect of *clothing, footwear, headgear*. The mark was entered in the register on 27 September 2013.
2. On 10 July 2014, Mr Rahman filed an application to record the assignment of the registration to Angelo Van Mol Limited. With an effective date of 4 July 2014, the assignment was duly recorded.
3. On 15 September 2014, Mr Rahman filed an application to rectify the register. He notes that he had previously filed an application to record an assignment into the name of Angelo Van Mol Limited, a company of which he owns 50%. He states he did so because he had entered into negotiations with an investor. He now states that those negotiations broke down without an agreement being concluded and consequently he seeks to return the registration to his own name.
4. A counterstatement was filed. It was filed by Mr Angelo Van Mol who owns the other 50% of Angelo Van Mol Limited. Mr Van Mol states:

“I oppose the rectification or transfer back of ownership of the trademark to the applicant. He has fraudulently applied for a trademark of my name seeing that I have been using my name to design goods since 2008 when I started showcasing my work.”

He also states:

“I am now aware that the applicant trademarked my name and logo on the 23<sup>rd</sup> of June 2013...I am not aware that in July 2014 the applicant requested transfer of the trademark to a business of which he owns 50% following negotiations with an investor. This is because I never knew that my name was trademarked by the applicant in his own name. I never knew that he ‘owns’ the trademark. I however agree that although the applicant and I do not have a written agreement, we are equal shareholders of the company Angelo Van Mol Limited. However the applicant has been dealing with the company as though it were (sic) solely his.

...

I agree that the negotiations between the applicant and the investor broke down...I agree with the applicant’s admissions that the breakdown of negotiations (which I was not made a part of) with the investor was the reason why he applied to transfer the trademark back to himself. The applicant just wants to use my name to further his business so when I refused to sign the contract that allows the investor and the applicant vote me out as shareholder,

the applicant decided to ask that the trademark of my name is transferred back to him.

...

I object to the transfer or rectification of the register. I have 'sufficient interest' as Angelo Van Mol myself, and a Director of Angelo Van Mol Limited to seek that the register be rectified to have my name or that of the company as registered owner of the trademark. In any event, I believe that the IPO has erroneously accepted the applicant's application for the registration of the trademark. I am asking for the trademark to be invalidated. It should be removed from the IPO's register as if it had never been registered. Evidence that was used to obtain the trademark was false and was given in bad faith. It is obvious that the applicant has used my name to further his fraudulent practices and is now trying to get me voted out as a shareholder so that he can then use my already recognized name and goodwill to carry on his business...

In the alternative I ask that the trademark be left in the name of the Company."

5. Mr Van Mol filed evidence which I do not summarise but will refer to as necessary in this decision. Neither party sought a hearing and I therefore given this decision on the basis of the papers filed.

## **DECISION**

6. Rectification of the register is provided for by Section 64 of the Trade Marks Act 1994 which reads as follows:

**"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) ...

(5) ...”

7. Mr Van Mol has filed a witness statement which, essentially, reiterates what is said in the counterstatement. There is no dispute that both Mr Rahman and Mr Van Mol are equal shareholders in the company currently recorded as the registered proprietor. There is no dispute that Mr Rahman applied for registration of the trade mark in his own name, that registration of the mark was recorded in his own name and that he applied to record an assignment of the mark on the basis of an intention to enter into an agreement with a third party. There is also no dispute that agreement with the third party was not reached and that the registration was not, in fact, assigned. Whilst Mr Van Mol, on behalf of the registered proprietor, objects to the application to rectify the register to return the registration into the name of Mr Rahman, he does so on the basis that Mr Rahman had no right to register the mark in his own name in the first place. It is submitted that the registration is invalid because it was filed in bad faith. That is not an appropriate issue to be dealt with in rectification proceedings. Mr Rahman originally filed the application for registration and the mark was entered onto the register in his name. By its registration, it has a presumption of validity under the provisions of section 72 of the Act. If a party believes a mark is invalid, whether because it was filed in bad faith or for any other reason, it is open to it to launch invalidation proceedings. As far as I am aware, no application seeking to invalidate the registration has been filed.

8. In the circumstances, it appears to me that the basis of the application for rectification is not in dispute and, consequently, the application succeeds.

### **Summary**

9. The application succeeds and the register will be rectified to return the registration to the name of Jalil Rahman.

### **Costs**

10. Whilst Mr Rahman has succeeded in his application, his involvement in these proceedings has been limited to the filing of the Form TM26R seeking the rectification of the register. The information provided by Mr Rahman on that form is brief in the extreme and the form would not have taken any material effort or time to complete. The only reason Mr Rahman needed to file the form was because of his own actions rather than any action by the currently recorded registered proprietor (of which he is a 50% shareholder). The form does not attract a fee. In all the circumstances, I consider that each party should bear its own costs.

**Dated this 10th day of November 2015**

**Ann Corbett  
For the Registrar  
The Comptroller-General**