

O/471/21

TRADE MARKS ACT 1994

**IN THE MATTER OF
REGISTRATION NO. 3466402
IN THE NAME OF LABEL XXVII LIMITED
FOR THE TRADE MARKS:**

SAUCEOUS

Sauceous

IN CLASSES 25 AND 41

AND

**AN APPLICATION FOR RECTIFICATION
UNDER NO. 84828
BY SAUCEOUS LTD**

BACKGROUND AND PLEADINGS

1. The trade marks shown on the cover page of this decision were applied for as a series of marks on 12 February 2020 by Sauceous Ltd under number 3466402. They were registered on 8 August 2020 in respect of “Clothing” in class 25 and “Leisure services” in class 41.

2. On 3 August 2020, a few days before the marks completed their registration process, an application to record a change of ownership of the trade marks was filed on Form TM16 by Sian Lewis. Both parties – the registered owner and the replacement owner – are required to provide their authorisation to change the register. Sian Lewis electronically signed on behalf of the old owner (Sauceous Ltd), and Label XXVII Limited electronically signed on behalf of the new owner. The assignment was duly recorded in the register on 24 September 2020 and the registration now stands in the name of Label XXVII Limited (“the proprietor”).

3. On 5 October 2020, an application to rectify the register was made on Form TM26(R) by Kaamil Quadri (“the applicant”). In the statement of case accompanying the application, the applicant stated that the assignment of the marks to the proprietor had been carried out fraudulently by someone known to him who was impersonating him. Moreover, the applicant stated that he is the sole director of Sauceous Ltd and that he did not give his permission for a change of ownership of the trade marks. It is further stated that although the trade marks were purchased by the applicant’s company on his behalf, he personally was never given the registration information/log in details;¹ only the person known to him had those details, enabling that person to subsequently record a change of ownership without the applicant’s knowledge. The applicant went on to explain that he was only made aware of the change of ownership on 3 October 2020 after coming across a social media page imitating his brand and claiming to own the trade marks.

¹ There is no suggestion that the registry erred in its official correspondence, which throughout the trade mark application and registration process was sent to Sauceous Ltd at its registered office address.

4. As the application for rectification was made by a person other than the registered proprietor, it was necessary to serve the application on the proprietor in accordance with rule 44(2) of the Trade Marks Rules 2008 (“the Rules”). Thus, on 3 December 2020, a copy of the application and the supporting statement was sent to the address for service of the proprietor. The accompanying letter outlined that the proprietor would be allowed two months in which to file a Form TM8 and counterstatement (until 3 February 2021). The proprietor failed to respond by the deadline, or at all, and, therefore, the application for rectification has not been contested. Nevertheless, I must still be satisfied that the register does stand in error before I can direct any rectification.

5. No corroborating evidence was filed to support the application for rectification.

DECISION

6. The 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.”

7. Rule 44 of the Rules is also relevant, which reads:

“44. – (1) An application for rectification of an error or omission in the register under section 64(1) shall be made on Form TM26(R) together with:

(a) a statement of the grounds on which the application is made; and

(b) any evidence to support those grounds.

(2) Where any application is made under paragraph (1) by a person other than the proprietor of the registered trade mark the registrar –

(a) shall send a copy of the application and the statement, together with any evidence filed, to the proprietor; and

(b) may give such direction with regard to the filing of subsequent evidence and upon such terms as the registrar thinks fit.”

8. The Form TM26(R) filed by the applicant included a signed statement of truth, under which he states that he is the sole director of Sauceous Ltd and Sauceous Ltd is the previous owner of the trade marks; I therefore consider that the applicant has sufficient interest to make the application for rectification. There do not appear to be any proceedings concerning the trade marks ongoing in the court.

9. An application to record a change of ownership is made by filing a Form TM16, as was done in this case. That form involves no statement of truth, but, as indicated above, does require signatures on behalf of both the registered owner and the replacement owner. 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.

10. It is evident from the filed Form TM16 that no handwritten signature was obtained as authorisation by Sauceous Ltd to the change of ownership. The signature "s.lewis" was typed into the relevant box, with the name "SIAN LEWIS" typed underneath. The applicant submits that Sauceous Ltd did not agree to the change of ownership and, since a defence has not been filed, I have no reason to challenge his version of events. Accordingly, to my mind, the assignment of the trade marks was made without authority.

11. In light of the foregoing, I am prepared to accept that the register does stand in error. That error was that the assignment was not made with the authorisation of the recorded owner. In my view, it is right that the error be corrected.

CONCLUSION

12. The application for rectification has succeeded. I therefore direct that the register be rectified: that the name of Label XXVII Limited shall be removed as proprietor and that Sauceous Ltd shall be substituted in its place. The effect of my decision is that the recordal of the change of ownership to Label XXVII Limited shall be deemed never to have been made.

COSTS

13. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. Since the applicant is unrepresented, he is entitled to receive 50% of the amount from the official

scale, in accordance with the Litigants in Person (Costs and Expenses) Act 1975. This decision has been taken from the papers without an oral hearing. The applicant filed no evidence in these proceedings. There was no official fee for the filing of the Form TM26(R). The applicant was not required to consider the other side's statement as no defence was filed. In the circumstances, I award the applicant the sum of **£50** as a contribution towards the cost of preparing a statement.

14. I therefore order Label XXVII Limited to pay Kaamil Quadri the sum of **£50**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 22nd day of June 2021

E VENABLES

For the Registrar