

**O/0904/24**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**REGISTRATION NO.**

**UK00003046682**

**IN THE NAME OF**

**KENSINGTON PROPERTY (UK) LIMITED**

**FOR THE TRADE MARK**

**Lingard Bell Ltd**

**IN CLASS 36**

**AND**

**AN APPLICATION FOR RECTIFICATION**

**UNDER NO. 84904**

**BY**

**LINGARD BELL LIMITED**

## Background

1. The trade mark below, UK00003046682, stands registered in the name of Kensington Property (UK) Limited (“the registered proprietor”). It was applied for on 13 March 2014 and completed its registration process on 13 June 2014, respect of Class 36.

## Lingard Bell Ltd

2. On 4 July 2023, Lingard Bell Limited (“the rectification applicant”) filed a Form TM26R with a declaration by Carol Rowley, described as “Director and Company Secretary” of the rectification applicant in the covering email to the form.
3. At section 5 of the Form TM26R, Ms Rowley states the following:

“It would appear that the trademark (Lingard Bell Ltd) belonging to Lingard Bell Limited has been incorrectly marked as being owned by Kensington Property Limited of 10 High Street, Burnham on Crouch CM0 8AA. According to the events log, a change in owner took place on the 17<sup>th</sup> December 2015 and then on the 4<sup>th</sup> January 2016 the trademark was surrendered. Both these requests took place without my knowledge and should not have been allowed to occur.

Trademark UK00003046682 (Lingard Bell Ltd) belongs to Lingard Bell Limited (Company Number 09533498) with a registered address at 21 The Drive, Adel, Leeds LS16 6BG.

Kensington Property Limited is Company Number 00719409 with a registered address at 10 High Street, Burnham on Crouch CM0 8AA. The case details you sent me on the 27 August 2015 has the correct company number 09533498 detailed on them so I am unsure as to

how company number 00719409 was allowed to make these changes.”

4. In a subsequent email of 2 August 2023, Ms Rowley states that:

“I am anxious to have this issue resolved as soon as possible as the information currently showing on your website is incorrect and misleading to anyone who carries out a check on us.

I was unaware of the issue until I was forwarded a notification of a pending renewal, which I have since paid and received a receipt for from Goldman Rosenstain & Partners.”

5. As the application for rectification was made by a person other than the registered proprietor, it was necessary to notify it in accordance with Rule 44(2) of the Trade Marks Rules 2008 (“the Rules”). This was done by letter to the registered proprietor’s representatives dated 20 November 2023 and sent to the email address on file. The letter directed as follows:

“The registered proprietor is now invited to submit a counterstatement together with evidence or submissions in accordance with Rule 44(2)(b) of the Trade Marks Rules 2008. Therefore, in accordance with Tribunal Practice Notice 3/2008 a period of two months from the date of this letter is allowed for this purpose.

The evidence or submissions should therefore be received on or before **22 January 2024** and in accordance with Rule 64(6) a copy must be sent to the other party.”

6. On 27 February 2024, having heard nothing from the registered proprietor, and the deadline for filing a response to the Form TM26R having lapsed, the Tribunal wrote to both parties at their respective email addresses to say that the parties would be notified of the next steps in due course. There was then a delay, after which the Tribunal wrote to the parties on 18 June 2024 as follows:

“Further to the application for rectification filed by Lingard Bell Limited, no counterstatement has been filed by the Registered Proprietor. The case is now ready for a decision.

As Rule 44 makes no specific provision either for filing a counterstatement or the consequences of a failure to file a counterstatement, the application will not automatically be treated as undefended. The Hearing Officer is required to make an assessment of the merits of the claim, as well as deciding whether the applicant has sufficient interest to make the application. If the facts asserted by the rectification applicant are not denied, this can be a factor in the decision. In view of there being no counterstatement or evidence from the Registered Proprietor, the case will now be passed to a Hearing Officer who will decide if the application can be upheld based on the TM26R form.”

7. Again, no response was received from the registered proprietor.

## **DECISION**

8. Rectification of the register is governed by section 64 of the Trade Marks Act 1994 (“the Act”) which states that:

“(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.”

### **Sufficient interest**

9. An applicant for rectification must have a sufficient interest to apply for rectification.

10. The information supplied shows that the rectification applicant considers itself to be the rightful owner of the mark. It was the previous owner of the mark, and the rectification applicant’s director and company secretary states that the requests to change the ownership of the mark and to surrender the mark “took place without my knowledge and should not have been allowed to occur.”

11. I am satisfied that the rectification applicant has a sufficient interest in this matter.<sup>1</sup>

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<sup>1</sup> Indeed, Kerly's *Law of Trade Marks and Trade Names* (17th Ed, Chapter 5, section 5, paras 37-38) says that a person having a sufficient interest equates to a “person aggrieved” under the 1938 Act and that “anyone in the trade concerned had sufficient locus to apply”. Kerly’s considers it “likely that a similar standard will be applied under s.64”.

## Are the claimed errors capable of correction?

12. The reference in section 64(1) to errors or omissions in the register is to be interpreted more broadly than the putting right of simple clerical errors and can extend to questions of ownership.
13. This approach of rectifying errors or omissions over and above those that are clerical in nature has been adopted and maintained in a number of Tribunal decisions.<sup>2</sup>
14. There are questions in this case as to the validity of the paperwork that was filed to effect the change of name and whether the person that completed the paperwork was authorized to surrender the mark. As such, the matter at hand is not just a question of a purely clerical error, but I am content that the errors in question would be capable of correction through the rectification process if I was to accept the rectification application.

## Key actions

15. On 6 November 2015, the Registry received a Form TM22, Notice to surrender a registered trade mark, signed by Mr Geoffrey Mark Bell of Kensington Property (UK) Ltd.
16. On 17 November 2015, the Registry wrote to Mr Bell as follows:

“On our register, trademark 3046682 is owned by Lingard Bell Limited and not Kensington Property (UK) Ltd. If there has been a change of name to Kensignton [sic] Property (UK) Ltd you need to submit a form TM21(A) before we can record the surrender.”

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<sup>2</sup> In the *Bendy Toys Limited* case (BL O-336-01), paras 17-22, the Hearing Officer analysed the question of jurisdiction in the context of section 64(1) and found it should be broadly interpreted, particularly in cases where there is no other means of redress (such as via section 46 or section 47 of the Act). The Tribunal continued to take the approach of correcting errors or omissions over and above clerical mistakes in subsequent cases, for example BL O/283/02, BL O/284/02, BL O/040/05 and BL O/408/11.

17. On 2 December 2015, the Registry received a reply from Mr Bell which included a completed Form TM21A. The covering letter included the following important paragraph:

“I have also enclosed proof of change of name for company number 00719409, from Lingard Bell Limited to Leeds Student Accommodation Limited on 22/6/15 and then from Leeds Student Accommodation Limited to Kensington Property (UK) Limited on 29/6/15.”

18. The proof that was enclosed were the relevant certificates of incorporation on change of name for company number **719409** which were perfectly in order.

19. Although the owner of the trade mark when it was first registered was “Lingard Bell Limited”, company number **719409**, the ownership of the trade mark was transferred to “Lingard Bell Holdings Limited”, company number **9533498**, as a result of an assignment document held on file by the Registry with an effective date of 27 May 2015 and recorded on the register on 15 June 2015. An extract from the assignment document is copied below.

**THIS AGREEMENT** is dated 27<sup>th</sup> May 2015

**BETWEEN**

- (1) **LINGARD BELL LIMITED** incorporated and registered with company number 00719409 whose registered office is at 21 The Drive, Adel, Leeds, West Yorkshire, LS16 6BG (the “**Assignor**”); and
- (2) **LINGARD BELL HOLDINGS LIMITED** incorporated and registered with company number 09533498 whose registered office is at 21 The Drive, Adel, Leeds, West Yorkshire, LS16 6BG (the “**Assignee**”).

**BACKGROUND**

- (A) The Assignor is the proprietor of the UK registered trade mark “Lingard Bell Ltd” with registered number UK00003046682 (the “**Trade Mark**”).
- (B) The Assignor has agreed to assign the Trade Mark to the Assignee on the terms set out in this agreement.

20. “Lingard Bell Holdings Limited”, company number **9533498**, then changed its name to “Lingard Bell Limited” via a Form TM21A received by the Registry on 1 July 2015 and signed by Ms Rowley. An enclosed Companies House extract showed the name change as having taken effect on 22 June 2015. The change of name was recorded on the register on 10 July 2015.
21. The upshot of this sequence of events is that there were two different “Lingard Bell Limited” entities that owned the trade mark at different points in time. At the point when Mr Bell filed his surrender and change of name paperwork, the formerly-named “Lingard Bell Limited”, company number **719409**, no longer owned the trade mark.
22. Consequently, the Registry was in error in actioning the forms from “Lingard Bell Limited”, company number **719409**. It should not have updated the register to show a change of name as at 17 December 2015 and a surrender of the trade mark as at 4 January 2016.
23. The last valid entry on the register was as follows:

**“Date**

10 July 2015

**Type**

Recordal registration. Recordal type: Change owner details

**Text**

Change of owner details has been recorded due to recordal RC000041207 received on date 01/07/2015; owner Lingard Bell Holdings Limited (id: 408080) has been updated to owner Lingard Bell Limited (id: 353909)”

**Should rectification of the register follow?**

24. I consider that the register was updated as to the name of the registered proprietor in error and that the mark was surrendered in error.

25. Noting that section 64(3) of the Act allows for the register to be rectified such that “the error or omission in question shall be deemed never to have been made”, I find that the register should be rectified so that the owner of the trade mark is shown as Lingard Bell Limited and that the status of the trade mark is changed from “surrendered” to “registered”.

## **Conclusion**

26. Subject to appeal, the application for rectification has succeeded.

27. I direct that the register be amended such that it shows the mark at issue, UK00003046682, as registered to Lingard Bell Limited as per the entry on the register dated 10 July 2015. The subsequent entries on the register are to be deleted.

28. The status of the trade mark is to be changed from “surrendered” to “registered”.

29. The renewal date of the trade mark is currently shown as 13 March 2024. I note that in her email of 2 August 2023 Ms Rowley said that she paid for the renewal of the trade mark and received a receipt from Goldman Rosenstain & Partners. On 25 March 2024, Ms Rowley further emailed, enclosing a copy of a payment confirmation from Goldman Rosenstain & Partners, dated 23 July 2023. Ms Rowley should contact the Registry with a view to the renewal payment being traced and the register being updated to show the trade mark renewal date as 13 March 2034.

## **Costs**

30. No request for costs has been received and I make no costs award.

**Dated this 17<sup>th</sup> day of September 2024**

**John Williams**

**For the Registrar**