

BL O/1144/25

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK REGISTRATIONS
NO. UK00003695589



AND
NO. UK00003695588



(SERIES)
IN THE NAME OF
JIELI (UK) LIMITED

AND

IN THE MATTER OF
INVALIDITY APPLICATIONS NO.
CA000508442 AND CA000508443
BY
JINHUA WEIKE INDUSTRIAL & TRADING CO., LTD.

AND

IN THE MATTER OF APPEALS TO THE APPOINTED PERSON
BY
JIELI (UK) LIMITED
AGAINST UNDEFENDED DECISIONS
DATED 27th AUGUST AND 2nd SEPTEMBER 2025

DECISION

The Registered Proprietor represented itself through Mr Alex He.
The Invalidity Applicant did not appear but filed written submissions.

Introduction & Background

1. This Decision relates to two appeals by Jieli (UK) Ltd (“the Registered Proprietor”) against undefended decisions by the Registrar’s Hearing Officer, Mr R Colombo. Although these Appeals were originally scheduled to be heard independently but on the same day with the consent of Mr He, who appeared for the Registered Proprietor, I dealt with them together.
2. By two applications, both filed on 14th February 2025, Jinhua Weike Industrial & Trading Co., Ltd. (“the Invalidity Applicant”) applied for declarations of invalidity in respect of registrations UK00003695588 and UK00003695588 under the provisions of Section 47(2)(a)/ S. 3 (6) of the Trade Marks Act 1994.

3. The procedure for the initiation and defence of such applications is set out in Rule 41 of the Trade Mark Rules 2008 (“the Rules”). Rule 41 (6) states:

“(6) The proprietor shall, within two months of the date on which a copy of Form TM26(I)¹ and the statement was sent by the registrar, file a Form TM8², which shall include a counter-statement, otherwise the registrar may treat the proprietor as not opposing the application and registration of the mark shall, unless the registrar otherwise directs, be declared invalid.”

4. The Registrar therefore has a discretion to direct that a registration is not declared invalid. However, this discretion will only be exercised if the proprietor’s default is the result of “extenuating circumstances” (see, for example, BL O-035-11 *KIX* at [9] per Mr Geoffrey Hobbs KC – an opposition case but the principle applies equally to invalidity procedures).

5. It is not in dispute that:

- a) Both applications were sent by the Registrar to the Registered Proprietor’s recorded address for service on 31st March 2025 by email and Royal Mail special delivery, and that the latter were signed for on 2nd April 2025.
- b) The Registered Proprietor did not file a Form TM8 and counterstatement within the two months specified by Rule 41(6) of the Trade Mark Rules 2008 (“the Rules”).
- c) The Registrar sent letters dated 24th June 2025 by email and Royal Mail Special Delivery to the Registered Proprietor’s recorded address for service warning in each case that under R. 41 (6) of the Rules, in default of the filing of a Form TM8 and Counterstatement its preliminary view was that:

“The registry is minded to treat the proprietor as not opposing the application for invalidation and declare the registration as invalid as no defence has been filed within the prescribed period”.
- d) Those letters also gave the Registered Proprietor the opportunity to challenge that preliminary view.
- e) The Royal Mail records confirm that delivery of the “hard copy” of those letters was attempted with no answer on 28 June 2025 and the letters remained uncollected, at the date of the Decisions, from the Royal Mail’s nominated collection point.
- f) The Registered Proprietor did not respond to either letter.

¹ The official form by which an application for a declaration of invalidity is commenced.

² The official form by which the Registered Proprietor may submit a defence

6. It does appear from an email on file in case CA000508443 dated 17th March 2025 from Alex He of Jieli (UK) Ltd to the Registrar concerning the “*trademark cancellation request*” filed by the Invalidity Applicant that the Registered Proprietor was at least aware of the substance of that Invalidation Application, from which I infer it had received the Form TM26 (I) for that case at least. However, it appears it took no further steps to defend the matter.
7. On 27th August 2025 the Registrar’s Hearing Officer Mr R Colombo issued an undefended Decision in respect of Registration No. UK00003695588. Mr Colombo issued an undefended Decision in respect of Registration No. UK00003695589 on 2nd September 2025. Both Decisions were, in substantive terms, identical.
8. Mr Colombo noted in each case that:

“Under the provisions of (*Rule 41 (6)*), the Registrar can exercise discretion. In this case, no reasons have been given why I should exercise this discretion in favour of the proprietor, and I therefore decline to do so.

As the proprietor has not responded to the allegations made, I am prepared to infer from this that they are admitted.

Therefore, in accordance with Section 47(6) of the Act, the registration is declared invalid and deemed never to have been made.”

9. It would have been open to Jieli (UK) Ltd to avail itself of R. 43 of the Rules, which makes provision for undefended declarations of invalidity to be set aside with 6 months where it can be demonstrated to the reasonable satisfaction of the Registrar that the failure to file Form TM8 was due to a failure to receive Form TM26(I). In effect, this Rule allows for what is essentially a default judgment to be set aside, albeit in very limited circumstances. I take no position on whether such an application could have succeeded in either case and merely include this observation to note that no such step was taken.

The Appeals

10. Instead, on 7th September 2025 Jieli (UK) Ltd, acting through one Sijing He, filed appeals against both Decisions of Mr Colombo. The Grounds of Appeal were the same in each case:

The failure to respond within the prescribed period did not arise from a deliberate decision to ignore the proceedings. During the relevant window, I was out of the country on unplanned/urgent business travel, and the address was unattended during the period which I was away. As I returned to then country on the 23rd of August 2025, I've gone through all the relevant letters from IPO, hence filing for this notice of appeal.

We have enough evidence to present to the court and judges to appeal for this decision, as the opposition's request to cancel this trademark was unfair.

*Yours faithfully,
Sijing He*

The Standard of Review

11. The standard of appeal is well-known. It is limited to a review, not a re-hearing, and I should only interfere with the Hearing Officer's findings if the decision was wrong. Furthermore, the appeal concerned an exercise of the Registrar's discretion with which this tribunal should only interfere if satisfied that the Hearing Officer acted unreasonably (*A. J. and M. A. Levy's Trade Mark* [1999] RPC 291).

Merits of the Appeal

12. In its written submissions and at the Hearing before me, the Registered Proprietor reiterated and expanded upon the facts which led to its failure to file defences. It also gave details of its intended grounds of defence. The Invalidity Applicant filed written submissions seeking to uphold Mr Colombo's decisions, and I have taken those into account.

13. Alex He, for the Registered Proprietor, confirmed that the failure to file defences was not deliberate or intentional, but that the responsible officers had been travelling on business in China, that being a country from which access to their UK email accounts was restricted. Mr He acknowledged, however, that he had been aware of the existence of the cancellation actions (as per the email referred to in [5] above).

14. The difficulty for the Registered Proprietor in both cases is the same. It did not ask the Hearing Officer for the discretion under R. 41 (6) to be exercised at all. The first time any such request, or the reasons for it, were put forward was on these appeals. Regardless of any merit they may or may not have, I cannot consider those reasons or requests here for the first time, since that would subvert the role reserved to the first-instance tribunal. Similarly, the Registered Proprietor's submissions as to its purported defence to the applications for invalidity are not relevant to this Appeal.

15. Faced with a situation in which no reasons or request had been put forward to justify the exercise of the Registrar's discretion in the Registered Proprietor's favour, the Hearing Officer was entirely justified in declining to do so and in declaring both registrations invalid.

Conclusion

16. Both appeals are dismissed. Mr Colombo's Decisions declaring the registrations invalid are upheld.

Costs

17. The Applicant for Invalidation as the successful party is entitled to its costs on the Appeal using the standard scale of costs contained in Tribunal Practice Note 1/2023. The Applicant for Invalidation filed a single set of written submissions in response to the two appeals and did not appear at the Hearing. Taking a broad-brush approach I order JIELI (UK) LIMITED to pay to JINHUA WEIKE INDUSTRIAL & TRADING CO., LTD the sum of £350 payable within 21 days from the date of issue of this Decision.

Philip Harris
Appointed Person

8 December 2025