

# The Big Yellow Van v Rayner

Intellectual Property Enterprise Court

27 May 2014

## Case Analysis

### Where Reported

Unreported

### Case Digest

**Subject:** Intellectual property **Other related subjects:** Civil procedure

**Keywords:** Default judgments; Delay; Passing off; Setting aside

**Summary:** An application to set aside judgment in default was not granted where the application had been made 102 days after service of the order and no grounds were put forward to show that there was a defence to a company's claims for passing off and infringement of trademarks and copyright.

**Abstract:** The applicant (R) applied to set aside a judgment in default obtained by the respondent company (B). The business and goodwill of a household removal venture, that had been operated as a partnership between R and his business partner (T), had been assigned to a newly incorporated company (X) which was then dissolved. X's successor company, B, claimed the ownership of the goodwill in its predecessor and the copyright of logos displaying "The Big Yellow Van Company" and "The Yellow Van Company". T was a named director of B whilst R had declined to take shares and worked there as a shadow or de facto director. R later resigned and set up a competing company trading as "Big Yellow Vans" and "Urban Fetch", registering domains including "thebigyellowvan.biz". B issued claims for passing off and infringement of its trademarks and copyright, and obtained judgment in default when R failed to acknowledge service. Fourteen weeks later, R issued the instant application. R submitted that he had: always been partners with T; an email from B's solicitors which stated that certain actions should be directed to R, which supported his case that he was T's partner; a statement from an employee showing that R was a

controlling partner; a press release in which T referred to R as his business partner, and a drivers' manual which stated that T and R were owners of the company.

Application refused. R's case was consistent with B's particulars of claim. The email from B's solicitors related to a request from another company, Big Yellow Group Plc, which concerned a domain name that R owned and it was unsurprising that the request had therefore been referred to him. None of the material undermined B's case that it owned the business and goodwill. There had been 102 days between service of the order upon R and his application to set aside, which was a very long delay and was not prompt within the meaning of [CPR r.13.3\(2\)](#). None of R's grounds seemed compelling in raising the possibility that he had a good defence and there was no other reason for the judgment to be set aside.

**Judge:** Judge Hacon

## Significant Legislation Cited

[Civil Procedure Rules 1998 \(SI 1998/3132\) r.13.3\(2\)](#)

## Legislation Cited

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