

BL O/0124/24

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO UK00003675576 IN THE NAME OF MAHMOUD GHAREDAGHI

AND IN THE MATTER OF OPPOSITION NO 430808 THERETO BY NEW HOME PIZZA LIMITED

AND IN THE MATTER OF TRADE MARK REGISTRATION NO UK00003444526 IN THE NAME OF NEW HOME PIZZA LIMITED

AND AN INVALIDITY APPLICATION NO 504175 THERETO BY MAHMOUD GHAREDAGHI

DECISION

Introduction

1. This is an appeal against a Decision of Ms S Wilson, acting on behalf of the Registrar of Trade Marks, dated 10 May 2023 (O-0434-23) (“*the Decision*”). In the Decision the Hearing Officer dismissed the application for invalidity against UK registered trade mark No UK00003444526 in full; and allowed the opposition against UK trade mark application No UK00003675576 in full and therefore refused the application.
2. That is to say New Home Pizza Limited (“*NHP*”) was the successful party in the consolidated proceedings. Accordingly, the Hearing Officer went on to order that Mahmoud Gharedaghi (“*MG*”) pay to NHP the sum of £2, 250 by way of a contribution towards its costs.
3. On 30 July 2021, MG applied to registered the trade mark **HOME PIZZA** with respect to ‘*delivery services*’ in class 39; and ‘*Services for providing food and drink; restaurant services; take-away food and drink services; catering services; information, advisory and consultancy services relating to all the aforementioned*’ in class 43 (“*the application*”).
4. On 3 February 2022 NHP opposed the application on the grounds of sections 5(1), 5(3), 5(4)(a) and section 3(6) of the Trade Marks Act 1994 (“*the 1994 Act*”).
5. For the purposes of the section 5(1) and 5(3) of the grounds NHP relied upon UK registered trade mark No UK00003444526 for the trade mark **HOME PIZZA** (“*the registration*”). The registration was applied for on 15 November 2019 and registered on 7 August 2020 with respect to ‘*Pizza delivery service; food delivery services*’ in class 39; and ‘*Restaurant and carry out food services pertaining to the baking of hot pizza for consumption on or off premises; catering services for the provision of food*’

and drink; providing of food and drink via a mobile truck; take away services' in class 43.

6. Under section 5(4)(a) of the 1994 Act NHP claimed to have been using and to be the successor in title to a business using the sign **HOME PIZZA** in Watford since 1997 in relation to '*Delivery services; services for providing food and drink; restaurant services; takeaway food and drink services; catering services*' and on that basis NHP claimed that the use of MG's mark would be contrary to the law of passing off.

7. Under section 3(6) of the 1994 Act NHP relied upon the following:

The trade mark should not be registered for all of the goods and services in the Application as the Application was filed in bad faith. The business, trade mark and other assets and goodwill in the name HOME PIZZA was sold by [MG] and the sale price was duly paid. Proof of the sale, transfer of assets and payment will be provided. Therefore, to set up an identical business using the identical trade mark can not (sic) be considered as reasonable behaviour and should be considered contrary to normally acceptable standards of honest conduct.

8. MG filed a counterstatement in which:

(1) He admitted that he and his predecessor used the **HOME PIZZA** sign from 1997 onwards for the services in the application and a substantial goodwill had been acquired, but denied that the business was sold (and, consequently, denied that NHP is the owner of the goodwill claimed).

(2) Denied that MG's application was contrary to the law of passing off.

(3) Admitted that the marks the subject of the registration and the application were identical and were registered/applied for in relation to identical services but averring that the registration was invalid.

(4) On this basis denied all grounds of opposition.

9. On 27 September 2021 MG applied to invalidate the registration pursuant to section 47 of the 1994 Act on the basis of section 5(4)(a) of the 1994 Act. For this purpose, MG claimed to have used the sign **HOME PIZZA** throughout Watford since 1997 in relation to '*provision of food and drink; restaurant services; take-away services; food delivery services*' and on that basis claimed that use of NHP's mark would be contrary to the law of passing off.

10. NHP filed a counterstatement in which all the grounds of invalidity were denied and claiming ownership of the goodwill under the sign **HOME PIZZA** by virtue of the fact that it was sold to the owner and director of NHP on 26 April 2018.

11. Both parties filed evidence in chief and in reply. NHP filed additional evidence. Neither party requested a hearing, but both filed written submissions in lieu. The

Hearing Officer accordingly made the Decision on the basis of the papers that had been filed.

12. NHP was represented by Inbrandgible Ltd; and MB by Dolleymores.

The Hearing Officer's Decision

13. I turn to the Hearing Officer's Decision in so far as it is relevant for the purposes of the present appeal that is to say the question of whether NHP is or is not the proprietor of the relevant goodwill in the business conducted under the sign **HOME PIZZA**.
14. The findings with this regard are set out in a section of the Decision headed '*PRELIMINARY FINDINGS*'.
15. Having noted at paragraph [24] of the Decision that '*Both parties agree that an individual, who I shall refer to as "AT", started operating a pizza takeaway restaurant in Watford in around 1998. It is not disputed that the business benefitted from a substantial goodwill and that the business traded under the sign HOME PIZZA*' the Hearing Officer went on to set out a brief overview of the history of the business as follows (footnotes excluded).

25. It does not appear to be in dispute between the parties that MG's involvement with the business commenced in August 2002. This is evidenced by an assignment between AT (as the assignor) and AT and MG (as the assignees). The assignment confirms that a lease was granted by Watford Borough Council to AT in 1997 and that, since that time, AT has been "carrying on the business of a Pizza restaurant under the style or title of Home Pizza on the ground floor shop premises" of 51 The Brow. The assignment continues:

"The Assignor has agreed with the Assignees for the sale to them of the said leasehold Premises and the Goodwill of the business of a Pizza restaurant and the Fixtures Fittings and Equipment therein (the same having been delivered by the Assignor to the Assignee) at the total price of THIRTY FIVE THOUSAND POUNDS (£35,000.00)."

It appears to me, based upon this evidence, that AT began the business as a sole trader, but subsequently started trading as a partnership with MG. The parties appear to be in agreement on this point.

26. The evidence is unclear as to what happened to the running of the business in 2010. MG gives narrative evidence that, at that time, AT sold his interest in the business to AT's wife and was (shortly after) declared bankrupt. MG states AT's wife had no involvement in the business (despite being sold her

husband's share) and that MG essentially continued to run the business on his own. I find this evidence somewhat contradictory. However, nothing turns on it. Clearly, by 2010, MG was the only person running the business under the sign HOME PIZZA and AT was not involved in the business (the partnership of which he was a part would have been dissolved when he was declared bankrupt, as noted by MG). This is reinforced by a Partnership Agreement that was entered into by AT and MG on 1 April 2015, which states as follows:

- “1. [MG] is the proprietor of business carried on in the premises known as HOME PIZZA (hereinafter called “the business”).
2. [MG] has agreed to grant a licence to [AT] to join as a partner to improve and jointly run and operate the business with [MG].
3. [MG] has agreed to grant this licence for a period of one year from the date above.
4. [MG] will agree to extent (sic) this agreement subject to be satisfied the way [AT] has improved and run the Home Pizza.
5. [MG] has agreed to share all COSTS and PROFITS with [AT] on the base of 50/50 for this purpose.
6. If [AT] will terminate the agreement for any reason, [AT] need to give [MG] six months written notice.
7. [MG] agreed to pay all expenses in relation to repairs and maintenance of premises, the business equipments and fittings for a period of 30 days after the date of this contract.”

27. Clearly, there are issues with the drafting of this document. However, it appears clear from the face of it that, at that time, MG was a sole trader. It also appears that it was the intention of AT and MG that they would conduct the HOME PIZZA business as a partnership for a period of 1 year, with the option to extend that term. MG gives narrative evidence that the term of this agreement was not extended past the initial term of 1 year. I note that there is no clause in the partnership agreement to prevent one partner from binding the firm, nor has MG suggested that any such clause existed.

28. Whether or not AT remained a partner in the business after the expiry of the 1 year term is crucial to the dispute between the parties. This is because on 20 April 2018, AT purportedly sold the business to NHP. An agreement was executed between them (with Mr Bavandi signing on the company's behalf), transferring the assets of the HOME PIZZA business (at that time operating at 92 Queens Road, but previously having operated at 51 The Brow), including the goodwill, to NHP. Only the first page and the signature page have been provided.

There is no suggestion that MG was a signatory to that agreement, although the agreement does state that the business is owned by AT and MG.

29. MG states that AT did not have the authority to enter into the agreement and, consequently, it is not valid.

30. By contrast, NHP claims that, by virtue of this agreement, any goodwill in the business was transferred to it in 2018. NHP's arguments in this regard appear to be that AT was a partner in the business and, as a result he had the power to bind the firm (including MG), and, in any event, MG had knowledge of, and was in agreement with, the sale. I accept MG's position that some of the evidence put forward by NHP in support of this claim is inconclusive. For example, if AT did not have authority to sell the business, and had attempted to do so without the consent or knowledge of the rightful owner, the fact that he also transferred a domain name to NHP does not make either action valid. However, I note the following from NHP's evidence:

a) Mr Bavandi gives evidence that part of the consideration for the purchase of the business was paid directly to MG. Further, Mr Bavandi has filed evidence to show that a cheque (allegedly for part of the consideration) in the sum of £1,854 was made out to MG on 7 July 2018 and that the amount was deducted from his account. Two further payments were made (to different unnamed accounts) in the sums of £2,537 and £7,500).

MG was given an opportunity to file evidence in response to NHP's evidence of a cheque being made out to MG. No evidence was filed. However, MG did file written submissions commenting upon NHP's evidence. The submissions do not make any comment upon whether or not MG received the cheque in question. However, they state:

“MG has openly admitted, in paragraph 10 of his first witness statement, that there was a transaction between him and [Mr Bavandi] at this time for the purchase of equipment. MG also states that this was not a purchase of the business or the goodwill attached to the business. MG's first witness statement was provided prior to MG having sight of the evidence filed by HB. As such, it is unsurprising that a cheque made out to MG exists as a transaction to purchase equipment occurred.”

I note that MG gives evidence that he was approached by Mr Bavandi to purchase some of his equipment during the time that he was not trading, which MG agreed to. However, MG claims

that this approach took place some time between the beginning of 2019 and June 2020. Given that the cheque referred to above was dated 7 July 2018, this timing would not fit. In the absence of any convincing explanation from MG or an explicit denial that he received the cheque in question at the time it appears to have been signed, I see no reason to doubt Mr Bavandi's evidence.

b) An email from Just Eat on 20 April 2018 was sent to MG acknowledging a request to change the name on the account to NHP and requesting further documentation in order to be able to process this request. I accept MG's submission that this provides no evidence that he contacted Just Eat to request the change himself. However, MG has not denied receiving this email communication. The request was, at some point, processed because a later screenshot of a communication from Just Eat lists Mr Bavandi as the holder of the account (with the same account number).

As noted above, MG claims that he stopped trading at the beginning of 2019. However, this was after the email from Just Eat acknowledging receipt of a request to change the name on the HOME PIZZA account. Further, the explanation provided by MG as to why he stopped trading (i.e. because he wanted to move premises and because of unstated 'personal circumstances') is rather vague. It seems to me, more likely that he stopped trading because the business had been sold.

16. The Hearing Officer then went on to find as follows:

31. There are clearly gaps in the evidence from both parties. However, on balance, I think it more likely than not that AT was a partner in the business at the time of the sale to NHP. This is because I cannot believe that MG would have paid a cheque into his account (in relation to which I have no plausible explanation other than that it was consideration for the business sale) or allowed his Just Eat account to be transferred to NHP if he had not had full knowledge of the sale and if AT did not have the authority to enter into the transaction that he did. I recognise that there is no evidence that the 2015 partnership agreement was extended. However, in order for AT to have entered into the agreement to sell the business that he did, he would have had to either be acting fraudulently (in the knowledge that he had no interest in the business that he was selling) or he believed that he was a partner and was entitled to sell the business. In my view, the latter is far more likely in these circumstances (whether because the 2015 agreement was extended or because they had entered into a subsequent partnership at will). This is particularly the case given that the business could not have been transferred to NHP without MG's

knowledge and yet he took no action at the time to prevent it. Consequently, it is my finding that the goodwill in the business, of which the sign HOME PIZZA was distinctive, was transferred to NHP on 20 April 2018.

32. I am fortified in this finding by MG's lack of action regarding NHP trading in Watford under the sign HOME PIZZA since 2018. Mr Bavandi's unchallenged evidence is that the business has continued trading and, indeed, has since opened a new branch in March 2020. It seems to me that if MG had not known about, or had not consented to, the sale of the business to NHP, that he would have taken steps to prevent them from trading under an identical sign in such close proximity, particularly given that he claims to have always had an intention to recommence trade himself even when he was not trading (which he did in 2020).

17. On the basis of this determination the Hearing Officer then went on to make findings in the consolidated proceedings. There does not appear to be any dispute that the approach the Hearing Officer took in reaching those conclusions were open to her given her findings as to the ownership of the relevant goodwill.

The Appeal

18. On 6 June 2023 a form TM55P together with a Continuation Sheet containing a statement for Reasons for Appeal were filed on behalf of MG.
19. The basis for the appeal was conveniently summarised in the Appellant's Written Submissions filed on behalf of MG as being that the Hearing Officer made the following errors:
 - (1) That AT had a valid proprietary right to sell the goodwill in the HOME PIZZA mark to NHP.
 - (2) That MG sold the goodwill in the HOME PIZZA mark to NHP.
 - (3) That lack of legal action by MG against NHP's use of the HOME PIZZA trade mark is evidence that he sold the goodwill to NHP.
20. On 28 June 2023, a Respondent's Notice was filed on behalf of NHP.
21. Neither party wished to be heard. Written submissions were filed on behalf of MG but not NHP. I have therefore been left to decide the appeal on the basis of the papers before me.
22. As was the position before the Hearing Officer, MB was represented by Dolleymores and NHP was represented by Inbrandgible Ltd.

The Standard of Review on Appeal

23. An appeal against decisions taken by the Registrar is by way of review. Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffice to justify interference in this sort of appeal. Before that is warranted, it is necessary for me to be satisfied that there was a distinct and material error of principle in the decision in question or that the Hearing Officer was wrong. See Reef Trade Mark [2003] RPC 5; and Actavis Group PTC v. ICOS Corporation [2019] UKSC 1671 at [78] to [81].
25. Sir Anthony Mann in Stitch Editing Limited v. TikTok Information Technologies Ltd [2023] EWHC 1167 (Ch) conveniently summarised the approach in cases such as the present at paragraph [6]:
6. The correct approach to appeals such as this has recently been confirmed in the decision of Richards J in Instagram LLC v Meta 404 Ltd [2023] EWHC 436 (Ch) . In that case (which was another trade marks appeal case) the judge followed the guidance to be applied in appeals generally and set out in Volpi v Volpi [2022] EWCA Civ 464
- “i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
- ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
- iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
- iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
- v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
- vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a

judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

26. I have kept these principles firmly in mind in considering the issues before me.

Decision

23. As noted above the gravamen of the present appeal is whether the Hearing Office was wrong to find that there had been a sale of the business including the goodwill in the HOME PIZZA sign to NHP.
24. Three grounds are put forward in support of this contention. The first two overlap to a degree and the third is a freestanding ground.
25. Before turning to the issues that have been raised before me on this appeal it is important to have firmly in mind in cases such as the present the observations of Geoffrey Hobbs QC sitting as the Appointed Person in CLUB SAIL Trade Mark [2010] RPC 32 where he said as follows:

21. I think it is necessary to begin by emphasising that a decision taker should not resort to the burden of proof for the purpose of determining the rights of the parties in civil proceedings unless he or she cannot reasonably make a finding in relation to the disputed issue or issues on the basis of the available evidence, notwithstanding that he or she has striven to do so: *Stephens v Cannon* [2005] EWCA Civ. 222 (14 March 2005).

22. The parties' evidence certainly was contradictory with regard to the existence of the agreement by virtue of which the applicant claimed to have become entitled to exploit the goodwill and trade marks of Club Sail Limited (Company No. 02217578). However, that did not relieve the hearing officer of his duty to assess the evidence with a view to determining whether the opponents were precluded by agreement from objecting to the applicant's activities as alleged in the witness statement of Andrew Williams. Although the hearing officer was required to give due weight to the fact that none of the witnesses had been cross-examined on their witness statements, that did not prevent him from deriving such assistance as he properly could from admitted or undisputed facts when considering the quality of evidence which either contradicted or was contradicted by other evidence.

...

36. In this case (as in too many other proceedings in the Registry where the conflict between the written evidence of the parties leads unavoidably to the conclusion that they cannot both be giving a truthful account of events) there was, as I have said, no cross-examination of any of the witnesses on their witness statements. Cross-examination might well have provided the hearing officer with the benefit of a better understanding of the reliability of the witness statements. So might a focused order for disclosure of financial records (see para.31 above). Although the parties must be taken to have accepted the consequences of proceeding without cross-examination or disclosure, it remains to be specified what those consequences are for the purposes of the present appeal.

37. Firstly, the contested objections to registration cannot be rejected automatically upon the basis that the witness who sought to refute them was not cross-examined upon his witness statement. It would be unjudicial to adopt such a mechanical approach to the evidence on file. It would also be incongruous to do so in circumstances where the absence of cross-examination is an established or even inescapable feature of proceedings for the determination of objections to registration under the Trade Marks Directive and the Community Trade mark Regulation elsewhere in the European Union.

38. Secondly, it is not obligatory to regard the written evidence of any particular witness as sufficient, in the absence of cross-examination, to establish the fact or matter (s)he was seeking to establish. That is brought out by the following observations of Mann J. in *Matsushita Electric Industrial Co. v Comptroller-General of Patents* [2008] EWHC 2071, [2008] R.P.C. 35 (Pat).

24. As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to

what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

39. Thirdly, when assessing the evidence in the witness statements it is appropriate to do so from the perspective identified by Lord Bingham of Cornhill in *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22; [2003] 1 AC 32 (HL) at para.[13]:

“... And I think it is salutary to bear in mind Lord Mansfield's aphorism in *Blatch v Archer* (1774) 1 Cowp 63 at 65, 98 ER 969 at 970 quoted with approval by the Supreme Court of Canada in *Snell v Farrell* :

‘It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted’”

40. Fourthly, by proceeding as they did the parties effectively required the decision taker to consider the plausibility of the positions they had adopted in the context of the evidence as a whole and thus accepted that the evidence of one witness might be found to have been disproved or displaced by the evidence of another, even though neither of the witnesses concerned were cross-examined on their witness statements. As happened in *DAAWAT Trade Mark* [2003] R.P.C. 11 (see paras.30 to 32 and 60 to 69).

41. Fifthly, the veracity of the evidence in the witness statements could not be taken to have been challenged on the basis of any contention which the witness had not had a fair opportunity to consider and address as best (s)he could: *Pan World Brands Ltd v Tripp Ltd (EXTREME Trade Mark)* [2008] R.P.C. 2 at paras.[33] to [37] (Appointed Person, Mr. Richard Arnold Q.C.).

26. Against that background I turn to consider the contentions put forward before me in the present appeal.
27. In my view the first two grounds of appeal fall to be considered together. In essence what is said by MG is that:
- (1) MG's evidence was that the partnership agreement between himself and AT was not extended beyond the one year period.

- (2) That the burden of proof was on NHP to establish that AT was a partner at the time that the sale of the business relied upon.
 - (3) That there was no evidence that MG was aware of or a party to the agreement for the sale of the business.
28. NHP's position was as recorded by the Hearing Officer in paragraph [30] of the Decision as appearing to be that *'AT was a partner in the business and, as a result he had the power to bind the firm including (MG), and, in any event, MG had knowledge of, and was in agree with, the sale'* (paragraph [30] of the Decision).
 29. Starting with the question of evidence relating to the partnership agreement. First, it is clear that the Hearing Officer was aware that the evidence from MG was that the partnership agreement was not extended beyond one year. That that is the case is clear from the explicit reference to the same in paragraph [27] of the Decision. It is also clear that the Hearing Officer understood that MG's position was that *'AT did not have authority to enter into the agreement and, consequently it is not valid'* (see paragraph [29] of the Decision).
 30. Second, it is apparent that the Hearing Officer appreciated that (1) it was not in dispute that MG was not a signatory to the relevant agreement (paragraph [28] of the Decision); and that some of the evidence put forward by NHP in support of its claim was *'inconclusive'* (paragraph [30] of the Decision). Moreover, the Hearing Officer recognised that *'if AT did not have authority to sell the business, and had attempted to do so without the consent of knowledge of the rightful owner, the fact that he also transferred a domain name to NHP does not make either action valid'* (paragraph [30] of the Decision).
 31. Third, the Hearing Officer set out in paragraph [30] of the Decision evidence, including in particular unchallenged evidence regarding (1) a cheque made out to MG that was said to be part of the consideration of the sale of the business; (2) the change of name on the Just Eat account to NHP; and (3) the vagueness of the evidence given by MG as to why he stopped trading that the Hearing Officer took the view that it had been established that MG was aware that the business had been sold.
 32. Fourth, it is also clear that the Hearing Officer considered that there were *'clearly gaps in the evidence from both parties. However, on balance, I think it more likely than not that AT was a partner in the business at the time of the sale to NHP'* (paragraph [31] of the Decision).
 33. Fifth, against the background of that finding whilst the Hearing Office also recognised that there was *'no evidence that the 2015 partnership was extended'* she went on to find that AT *'believed he was a partner and was entitled to sell the business . . . (whether because the 2015 agreement was extended or because they had entered into a subsequent partnership at will). This is particularly the case given that the business*

could not have been transferred to NHP without MG's knowledge' by way of further explanation of her finding that AT was a partner in the business (see paragraph [31] of the Decision).

34. On this basis it is my view, the Hearing Officer was approaching the matter before her consistently with the approach set out above in the CLUB SAIL Trade Mark case (above).

35. It also seems to me that the points raised by MG with respect to the Hearing Officer's assessment of the evidence before her are such that if considered afresh by me then as stated by Geoffrey Hobbs QC sitting as the Appointed Person in NICO LONDON Trade Mark (O-338-20) at paragraph [36]:

. . . the Decision would end up being re-taken by this Tribunal under the guise of reviewing it for error. However, it is necessary in order to maintain the required distance between the role of decision taker at first instance and the role of decision taker on appeal for this Tribunal to proceed on the basis that the Decision below should stand unless the matters on which the Opponent relies are by force of what they reveal sufficient to establish that the Decision is vitiated by error.

36. I have reviewed the Decision in the light of the alternative view of the evidence put forward by the MG on this appeal. Having done so I am satisfied that none of the points relied upon reveal any errors on the part of the Hearing Officer which taken either individually or together establish that the conclusion she reached is one that is vitiated by error. Rather it is one that it seems to me that it was open to the Hearing Officer to reach for the reasons that she gave.

37. Lastly, there is a suggestion in the written submissions that the Hearing Officer ignored the legal principles for a contract of sale to exist. However, this was in the context of the proposition that there was a *'lack of any evidence showing MG's intent to enter into and be bound by a contract of sale'*. That was not an issue that the Hearing Officer was required to grapple with given her findings with respect to the position of AT and in that connection the knowledge of MG as to the position with regards to NHP.

38. In the premises, I dismiss the first two grounds of appeal.

39. Turning to the third ground of appeal which is that the Hearing Officer was wrong to regard the lack of legal action by MG against NHP's use of the HOME PIZZA trade mark as evidence that MG had sold the goodwill to NHP.

40. There are a number of points to be made with respect to this ground of appeal. First, it is not challenged that it was open to the Hearing Officer to find on the evidence that MG has not at any stage taken any action to prevent the use by NHP of the sign HOME PIZZA since 2018. That is unsurprising given Mr Bavandi's unchallenged

evidence on this issue (see paragraph [32] of the Decision). Second the Hearing Officer did not refer to the absence of ‘*legal proceedings*’ but to the ‘*lack of action*’ i.e., it is not limited to legal proceedings but to any other step, for example correspondence between the parties in which an objection was raised. Third, in any event, the finding at paragraph [32] of the Decision in this regard was not determinative of the issue as between the parties but rather provided further confirmation of the view which the Hearing Officer had already reached.

41. In the circumstances, it seems to me that the Hearing Officer made no or no material error in adopting the approach that she did to the ‘*lack of action*’ ground of appeal and therefore I dismiss this ground of appeal.

Conclusion

42. For the reasons set out above it does not seem to me that MG has identified any error of principle or material error in the Hearing Officer’s Decision. Moreover, it is not in my view appropriate to interfere with the evaluations that the Hearing Officer made in reaching the decision that she did. In the result the appeal fails and is dismissed.
43. As the appeal has been dismissed NHP is entitled to a contribution towards its costs of the appeal. Whilst NHP chose not to attend the hearing of the appeal or to provide written submissions in lieu it did nonetheless provide a Respondent’s Notice which contained points in support of the findings that had been made by the Hearing Officer. It therefore seems to me that MG should pay a contribution of £500 to NHP’s costs on the appeal.
44. The Hearing Officer ordered Mahmoud Gharedaghi to pay New Home Pizza Ltd a contribution of £2,250 with respect to its costs at first instance. In those circumstances I order that Mahmoud Gharedaghi to pay New Home Pizza Ltd the total sum of £2,750 on or before 4 pm on 13 March 2024.

Emma Himsworth KC

Appointed Person

14 February 2024