O/0720/25

TRADE MARKS ACT 1994

INTERIM DECISION

IN THE MATTER OF TRADE MARK REGISTRATION

UK00002551566

Les Cousins

IN THE NAME OF MARK PAVEY

AND

APPLICATION 508573

BY DIANA MATHEOU

FOR A DECLARATION THAT THE AFOREMENTIONED TRADE MARK REGISTRATION IS INVALID

Background and Pleadings

1. Trade mark number UK00002551566 ('the Contested Mark'), shown on the cover of this decision, stands registered in the name of Mark Pavey, the Registered Proprietor ('the RP'). The Contested Mark has a filing date of 29 June 2010, and its registration was completed on 1 October 2010. It is registered in respect of the following services:

Class 41: *Live Entertainment Services, Recording Services, Music Publishing, Video Production.*

2. On 4 March 2025, Diana Matheou, the Cancellation Applicant ('the CA') filed an application for a declaration of invalidity pursuant to section 47 of the Trade Marks Act 1994 ('the Act') by way of Form TM26(I).[1] The application was made with notice, the invalidation notification date being 9 September 2024. For reasons that will become apparent, it was not entirely clear as to which grounds altogether were being pleaded.

3. I consider it appropriate to note the following from this first version of the CA's Form TM26(I) ('the TM26(I)'):

    - On the second page of the TM26(I), the CA has indicated that its application is based on Section 3 of the Act; i.e. 'The trade mark is excluded from registration because it describes the goods/services, or is not distinctive, or consists of signs that are customary within the trade or the application has been made in bad faith.' Section D of the TM26(I) has subsequently been completed, as per the instruction on the form, in which the CA has indicated that it relies on a Section 3(6) ground; i.e. [the Contested Mark] is a trade mark which should not have been registered (for some or all of the goods and services in the application) as the application was made in bad faith'. This ground is directed

[1] Application to declare invalid a registration or a protected international trade mark (UK).

against the entirety of the RP's specification. The CA has detailed its claim under this ground thus:

> 'Mr Pavey has on a number of occasions publicly stated his knowing usurping of the club name "Les Cousins" – see attachment A6.4 Timeline Thus he incriminate himself by his decision to use [and] bad faith trademarking of the club name whilst having a clear foreknowledge [and] awareness of the pre-existing Matheou created music club business.
> At the time of his registering the trademark (2010) he had failed to undertake any of the due diligence to locate [and] contact the Matheou's [sic] to ask of them their necessary permissions for either the use of the name in it's [sic] music business context as a Live Entertainment Venue nor for the use of the Membership Card 'Logo' image as defined in & [sic] protected by VARA (Visual Arts Rights Act) [and]/or the Copyright, Designs [and] Patents Act 1988.
> In 2014, some 4 years after his trademarking Mr Pavey emailed Diana Matheou admitting his negligence in this matter – attachment A6.4 Timeline (item marked in red). Additional context [and] detail of this bad faith filing on all goods [and] services please see our answer to Q5 + [sic] the attached supporting information A1 – A5 [and] contextual attachment A6'.

- Details have been input to Section C of the TM26(I), which indicates that a claim for invalidation is based on Section 5(4)(a) of the Act (which is particularly relevant to the law of passing off). I note that the CA's apparent reliance on this ground has not been foreshadowed by ticking the required box on the second page of the form. This ground is directed against the entirety of the RP's specification. The CA has provided a representation of some earlier marks on a continuation sheet, which are claimed to have been used in the UK between 1964 and 1972. The CA has detailed its claim under this ground thus:

> 'Mr Pavey (MP) 'Les Cousins' trademark directly implies, by his choice of the name for use in the Class 41 IPO category [and] his subsequent use of this name in partnership with an equally unauthorized [sic] use of

a version of the club's original 1960's 'membership card' graphic image (the image most publicly recognized [sic] in relation to the original venture as his record label logo (attachment A1 & A2). Thus compounding the impression of a direct relationship with the original '60's Matheou family club – a connection which MP has never had, nor a permission he ever sort [sic].

MP cynically trademarked the name solely to enhance the asset value of his own business. Using this protection to suppose a false authenticity & [sic] control he then exploited to give his contemporary music business activities (primarily re-promoting artists previously associated to the original club's culture [and] his own artistic musical [and] music business career). He appropriated the original club's cultural connectivity, gravitas [and] authenticity by this unauthorized [sic] use of the club name [and] visual 'logo' recognition associated to the original "legendary" (attachment A3) 1964 to 1972 Matheou family created venture. His industry promotion of the trademark MP published (attachment A4 & A5) claims representing a "perpetuating of the ethos of the (original Les Cousins) club". Thus making it undeniable MP already had a clear knowledge of the existence [and] artistic scope of the original club business by his use of the club's name from 2005 onwards, well before his 2010 trademark filing. He chose to undertake no due diligence in finding the original owners.

Thus the filing was made both in bad faith via his previously considered awareness, [and] additionally he mimicked the visual as a deliberate 2 passing off" of his record label being connected to the original Matheou business'.

- Details have also been input to Section E of the TM26(I), which indicates that a claim for invalidation is based on 'any other grounds' (essentially, grounds other than those enumerated on the second page of the form). The CA has checked the box in Section E to indicate that it proposes to rely on Section 5(4)(b) of the Act; i.e. the CA has an earlier right by virtue of the law of copyright, or the law relating to industrial property rights. I note that the CA's apparent reliance on this ground has not been foreshadowed by ticking the required box

on the second page of the form. The CA has detailed its claim under this ground thus:

> 'The trademarked name is being used for 'Les Cousins Music', an entity operating as a record label as it's [sic] company logo. This logo has appeared on the artwork [and] disc labels of at least 17 professionally manufactured [and] distributed record releases as well as displayed in Music Industry Trade Association listings [and] events [and] other media including publication on the internet. The words 'Les Cousins' are being used combined with a crudely copied [and] alteration of the image owned [and] published by the Matheou's [sic] from 1965 – 1972 [and] thus infringing their copyright in said image. Namely an image commissioned by Andy Matheou in late 1965 specifically for the club [and] first published as the main cover artwork of the Club Membership Card issued 1966 – 1972 to some 60,000+ paid members (National [and] International).
>
> Our IPO claim is supported by the Visual Arts Rights Act 1988 which provides the right to claim an ownership of the copyright of a visual work authored or published by, [sic] and the right to prevent the distortion or modification of the work that would be prejudicial to the owners honor [sic] or reputation [and]/or the Copyright, Designs and Patents Act 1988 which we hereby quote;[2]
> "Copyright protects works and stops others from using artworks without your permission.
> You get copyright permission automatically – you don't have to apply or pay a fee. There isn't a register of copyright works in the UK. You automatically have copyright protection when you create or first publish the original artistic work, including illustration or photography. You can mark the work with the copyright symbol (©), a name and the year of creation. Whether you mark the work or not does not affect the level of protection you have.

[2] Despite the CA's use of parentheses, this is not a quote from the Copyright, Designs and Patents Act 1988.

Copyright prevents other people from; copying work, distributing copies of it, whether free of charge or for sale renting or lending copies of the work, performing, showing or playing the work in public, making an adaptation of the work, putting it on the internet. Written, dramatic, musical and artistic work are copyrighted for 70 years after the author's or owners [sic] death (Any Matheou RIP 2005 = 2027) or the date of it's [sic] first publication (1966 + 70 = 2026).

As with any copyright work, you also need to gain permission from any relevant known and locatable rights holders for the work in order to avoid copyright infringement.
If you cannot find the rights holders you cannot use the work".

Mark Pavey has breached all these fundamental rights due under law to the Matheou's [sic] – [and] it should be additionally noted that Mr Pavey as a contemporary singer-songwriter has copyrighted his own songs, proving the concept [and] responsibilities of copyright is [sic] in no way alien to him or outside his business inflected understanding.
He has continued to misrepresent his trademarking of the name [and] refused to meaningfully engage with our claims [and] concerns. He has consistently delayed [and] refused to provide any documentation in support of his defence posture therefore somewhat frustrating to date our ability to mount an even more extensive [and] even more detailed fact base claim. Our 3rd party research remains ongoing in further support of this claim'.

- A number of pages of what appears to be evidential material have been appended to the TM26(I).

4. On 18 March 2025, the Registry wrote to the CA: (i) requesting further information on the proposed claim under section 5(4)(b) of the Act; (ii) making a clarification on the matter of filing evidence; and (iii) requesting an amended TM26(I).

(i) Section 5(4)(b)

The Official letter included the following:

'You have claimed Section 5(4)(b), and in line with the Tribunal Practice Notice 1/2010 please provide the following information to support your claim:

- What the work relied on is, including a representation of it.
- Who created the work and when it was created.
- The nationality of the author (or if the author of the work is a corporate body where the corporate body is incorporated) at the time the work was created.
- If domicile/residence of the author is relied upon, where the author was domiciled/resident at the time the work was created.
- If the publication of the work is relied on, where the first publication of the work took place and when.
- Who the current owner of the work is and, if such a person is not the author, by what method was ownership transferred.'

(ii) Evidential material filed

The Official letter informed the CA that it was not appropriate to file evidential material at this stage and that such material would not be considered at this point in proceedings.

(iii) An amended TM26(I) was requested to be filed on or before 8 April 2025.

5. On 3 April 2025, following a request from the RP, dated 21 March 2025, for 'Without Prejudice' material to be removed from sheets appended to the TM26(I), the Registry wrote to the CA to request its removal. The deadline for the CA to file an amended TM26(I) was, therefore, moved from 8 April to 10 April 2025.

6. On 7 April 2025, the CA filed an amended TM26(I). I note that the main body of this iteration of the form is unchanged from the initial filing. Although the content of the appended pages has been altered, evidential material remains.

7. On 15 April 2025, the Registry wrote to the CA requesting further information to enable the TM26(I) to progress. This letter essentially repeats the requests set out in the earlier Official letter of 18 March 2025. In addition, the following paragraphs were included:

> '**Please file an amended TM26I and statement of grounds, on or before 29 April 2025**.
>
> If you choose not to amend the statement of grounds the registry may decide to strike out any grounds which are not adequately explained.
>
> A copy of this letter together with the statement of grounds has been sent to the registered proprietor but the period for the registered proprietor to file its counterstatement has not yet been set.'
>
> [Original emphasis]

8. On 22 April 2025, the CA filed an amended TM26(I). I note that the main body of this iteration of the TM26(I) is more-or-less unchanged. However, the content of the continuation sheets is altered. Much evidential material remains. In addition, however, the CA has provided details of its proposed section 5(4)(b) claim by way of a response to the official request, labelled 'ATTACHMENT A7'. I will not reproduce the entirety of the CA's response here. It will suffice to note the following:

- that the CA claims that the authorship of the artistic work in question is presently unknown;
  and
- the CA has stated the following: '[…] in the context of this IPO claim, [and] as previously outlined in our form section answer the Matheou's [sic] automatically had their own copyright protection from when they first published the work as prescribed under the Visual Arts Rights Act 1988'.[3]

[3] Form TM26(I) dated 22 April 2025, at 'Attachment A7'.

9. On 25 April 2025, the Registry wrote to CA in the following terms:

> 'I acknowledge receipt of the amended TM26(I) received on 22 April 2025.
>
> **Evidence**
> As mentioned in my previous letter dated 18 March 2025, it has been noted that you have submitted evidence with the TM26(I). These are not admissible at this stage of the proceedings and are not in the correct format, you will be given the opportunity to file evidence at a later stage in the proceedings.
>
> Please note that when you are submitting evidence the documents must be exhibited and introduced into proceedings via a witness statement with a signed statement of truth.
>
> Details on how to file evidence during tribunal proceedings can be found on our website at
> https://www.gov.uk/government/publications/filing-evidence-about-an-applicationor-in-tribunal-proceedings
>
> A copy of the form and accompanying statement of grounds has today been sent to the registered proprietor. In accordance with rule 41(6) of the Trade Marks Rules 2008, the registered proprietor must now file a TM8 and counterstatement at the Trade Marks Registry.
>
> The registered proprietor has been notified that the TM8 and counterstatement should be received on or before **25 June 2025**.'

10. On 28 April 2025, the RP sent email correspondence to the Registry inviting the Registrar to re-consider the CA's inclusion of the section 5(4)(b) ground in the TM26(I).

11. On 13 May 2025, the Registry wrote to the parties in the following terms:

> 'I acknowledge receipt of your email dated 28 April 2025 and a request to

reconsider the inclusion of the section 5(4)(b) ground in these proceedings.

The Registry has considered the notice of opposition and the preliminary view is that the section 5(4)(b) claim, as pleaded, is inadmissible because the Cancellation Applicant is seeking to rely upon a source of law that is not applicable in the UK. The 'Visual Arts Rights Act 1988' is US statute and cannot be relied upon in the UK.

Furthermore, and as previously mentioned, it appears that the form TM26I was filed with attachments which contain material by way of evidence. Please note, as the proceedings are currently at the pleadings stage evidence is not yet required. Parties will have the opportunity to file the evidence in the 'evidence rounds' at a later stage in the proceedings.

If either party disagrees with the preliminary view they should request a hearing within 14 days from the date of this letter, that is on or before **27 May 2025**.'

12. On 13 May 2025, the CA sent email correspondence to the Registry, the pertinent paragraphs of which are reproduced here:

'[…] we understand a word mark "does not stipulate anywhere that the use of the words trademarked are to be protected only in any particular script or typeface?
We would therefore submit the use of the two words must be considered in any [and] all written forms [and] thus include their use as the words appear in said 'logos', [and] which therefore must indeed be legitimately applied to the current circumstances of our claim". [sic]

We note [and] will of course abide by your reminder of our not to include further evidence until so requested, [and] the misunderstanding of our contextual reference of Visual Arts Right Act.

We admit to our keeness [sic] for [the RP's representative] [and] the Tribunal to understand the nature of our claim as it having being [sic] filed under 'Bad Faith'. As there is no definition of bad faith in UK legislation, we thought it would be useful to indicate early on of other laws in effect "as when the applicant's conduct falls short of honest standards of *acceptable commercial behaviour observed by reasonable and experienced persons in the particular field*.
We felt including VARA as a relevant reference point would help to underscore these particular rights.'

[Original emphasis]

13. On 15 May 2025, the CA again sent email correspondence to the Registry, the pertinent part of which is reproduced here:

'Our general filing is under 'bad faith'.
'Bad faith' as when the trademark applicant's conduct falls short of honest standards of acceptable commercial behaviour observed by reasonable and experienced persons in the particular field.

For clarity Mr Pavey's actual graphic-based copyright infringement is hereby acknowledged by us a separate matter.'

14. On 21 May 2025, the Registry wrote to the CA as follows:

'[…] the Hearing Officer has reviewed the latest iteration of the CA's Form TM26(I) ('the TM26(I)'), which was filed on 22 April 2025.

It is the view of the Registry that the TM26(I), as pleaded, is insufficiently particularised.

The CA's attention is drawn to the following defects:

(i) Re. The third page of the form headed '*Please tick on what grounds*

you are basing your application for invalidation of the trade mark and continue to the relevant sections(s)':

- The CA has omitted to check the box adjacent to *'Invalidation is based on Section 5(4)(a): Where the use of the registered owner's trade mark would be contrary to law, in particular, the law of passing off*.' However, it has proceeded to detail a claim pursuant to this provision at Section C.

- The CA has omitted to check the box adjacent to '*Invalidation is based on other grounds.'* However, it has proceeded to detail a claim pursuant to section 5(4)(b) at Section E.

(ii) The claims are drafted in an incoherent manner, as follows:

- Re. Section C, Q5:
  The CA appears to have conflated the grounds 'passing off' and 'Bad Faith'. Details provided at this section should be confined to 'Passing Off'.

- Re. Section D, the claim pursuant to section 3(6):
  The CA has cited The Visual Artists Rights Act 1990 ('the VARA'), a U.S. law with neither application nor relevance to the UK. Although the CA has mentioned the Copyright Designs and Patents Act 1988 ('the 1988 Act'), which is a UK law, and may, therefore, be a legal basis for appropriate claims, the CA has not cited which provision of the 1988 Act is [sic] seeks to rely upon.

- Re. Section E, details to support the application pursuant to section 5(4)(b):
  The CA has again referred to VARA, which is not a legal basis for a claim before a UK Tribunal. Although the CA has mentioned the 1988 Act, it has not specified which provision of the 1988 Act that it alleges has been breached.

(iii) The attachments appended to the TM26(I) include evidential material. Whilst it is acceptable for a party to attach continuation sheets where the boxes

within the proforma cannot accommodate their comments, any documents attached by way of evidence cannot be considered at this stage. Should the application for invalidation be examined, evidence rounds would be set in due course to provide both parties with the opportunity to file evidence.

In the light of the foregoing, it is the Preliminary View of the Registry that the most recent Form TM26(I) is insufficiently particularised to enable it to be admitted.
The Registry deems it appropriate to allow the Cancellation Applicant one further opportunity to file an admissible Form TM26(I) **on or before 5 June 2025**. In the absence of an admissible Form TM26(I), the Registry is minded to strike out the claim in its entirety.

This Revised Preliminary View supersedes the Preliminary View of 13 May 2025.

It is noted that Mr Smith-Bodden is recorded as the representative of the Cancellation Applicant in these proceedings, although it is not known whether he is engaged in the capacity of a legal professional. If appropriate, the Cancellation Applicant might wish to take the opportunity to seek professional legal advice on the matters outlined in this letter.'

[Original emphasis]

15. On 27 May 2025, the CA sent email correspondence to the Registry, the main points of which can be summarised as follows:

- that the CA is a widow in her advanced years without the financial resources to engage professional representation;

- that Mr Smith-Bodden was under the impression that the Registry could exercise some sort of leniency by virtue of a party being a litigant-in-person;

- clarification was sought as to whether the CA was required to remove the evidential material referred to by the Registry in its previous letters;

- the question was asked whether the Registry proposed to accept any of the CA's points made in its letter of 13 May 2025 (I presume the 'points' to refer to the CA's comments on the merits of the substantive claim);

  and

- it was stated that the CA was alarmed to receive the Registry's Preliminary View of 21 May 2025 for the reason that it imperilled the CA's case.

16. On 30 May 2025, the Registry wrote to the CA in the following terms:

'Further to our letter of 21 May 2025, and following the email correspondence of the Cancellation Applicant ('the CA'), dated 27 May 2025, it is requested that the following be noted:

- As explained in our letter of 21 May 2025, any evidential material appended to the Form TM26(I) will not be considered. The CA is, therefore, requested to omit such material from the Form TM26(I). Should a further Form TM26(I) be filed with evidential material included, that material with [sic] be disregarded.

- The Registry has no discretion to allow any party further time in which to lodge an application by virtue of the fact that they are without professional legal representation. Any party is entitled to elect to represent themselves or, alternatively, to engage a professional legal representative. The choice is a matter for that party.

- The Registry has no discretion to provide legal advice to any party, whether or not they are legally represented.

- When a party institutes a legal action against another party, the onus is on the party bringing the action to plead their claim with sufficient clarity to enable the other party to understand and respond to the case against it. The most recently filed Form TM26(I) is drafted in such a way that the claims are not particularised adequately. The defects present in the Form TM26(I) were outlined in our letter of 21 May 2025.

- The Registry has neither an obligation nor a discretion to advise any party as to what it should draft by way of a pleading. However, the CA is invited to note the following:

  i. Any party bringing a claim must state clearly and precisely what their claim is;

  and

  ii. The legal basis of the claim (that is to say, the piece of law, or legal principle, as the case may be, applicable to the UK, that is relied upon for the claim) must be made clear.

The parties are reminded that the Preliminary View of 21 May 2025, remains:

> The Registry deems it appropriate to allow the Cancellation Applicant one further opportunity to file an admissible Form TM26(I) **on or before 5 June 2025**. In the absence of an admissible Form TM26(I), the Registry is minded to strike out the claim in its entirety'

17. On 3 June 2025, the CA sent email correspondence to the Registry in which it requested an extension of time to the prescribed deadline of 5 June 2025 'in order to have further time to research and organise' its application.

18. No amended TM26(I) was filed by the CA on the prescribed deadline of 5 June 2025.

19. On 6 June 2025, the Registry wrote to the CA in the following terms:

> 'I acknowledge receipt of Cancellation Applicant's email dated 3 June 2025, requesting an extension of time to file an amended Form TM26I.
>
> The Registry has considered the request and it is the Registry's preliminary view that it would not be appropriate to allow the Cancellation Applicant further time in which to lodge a Form TM26(I), for the following reasons:
>
> - The Cancellation Applicant has already had four opportunities to file an adequately-pleaded Form TM26(I);
> - The fact that a party is without professional legal representation, without more, is not an adequate justification for the Registry to extend the deadline in question.
>
> In the absence of an adequately-pleaded Form TM26(I) by the deadline of 5 June 2025, the preliminary view of 21 May 2025 is confirmed and the Registry is minded to strike out the application.
>
> If you disagree with the preliminary view you should request a hearing within 14 days from the date of this letter that is on or before **20 June 2025.**'
>
> [Original emphasis]

20. On 11 June 2025, the CA sent email correspondence, which can be summarised thus:

> - The CA re-iterated that it had been upfront about its lack of experience and knowledge of legal procedures;
> - It expressed the view that to be allowed 'only one more attempt' to file a TM26(I) put the CA under 'pressure and stress' and imperilled its entire claim;

- The view was expressed that the prescribed deadline of 5 June 2025 to file an amended TM26(I) did not allow the CA adequate time to address the Official letter dated 6 June 2025 in which the request for the extension of time was refused;
- The CA argued that to allow the requested extension of time was necessary to ensure that the parties were 'on an equal footing' as referenced by the Civil Procedure Rules ('the CPR').

21. On 19 June 2025, a hearing was requested by the CA. A hearing was duly scheduled for 9 July 2025.

22. On 26 June 2025, the CA sent email correspondence to the Registry in the following terms:

> 'The hearing set below today was, we understood, in response to our 19th June request, to be on the subject of our inexperience with the IPO procedures, [and] our refused request for our case worker [name redacted] to extend [the] requested refiling deadline of our TM26 I.
>
> Correspondence on this matter has to date been between ourselves [and] [caseworker name redacted] [and] did not appear to involve the defence's lawyer Ms Ward.
>
> I see from yesterday's correspondence Ms Ward is now a participant in this 9th July hearing - is this the correct procedure to expose our shortcomings in this matter to our opposition?
>
> We did make a previous hearing request (dated 15th May) on the subject on the definition of 'written trademarks' which has yet to be scheduled to be heard.'

23. On 26 June 2025, following the CA's correspondence of the same date, the Registry wrote to the parties in the following terms:

‘Following the query from the Cancellation Applicant, the parties are invited to take note of the following:

It is a requirement that any written communication between a party and the Registry must be copied to the other side.
All letters from the Registry to either party are copied to the other side, as a matter of standard practice.

To clarify, the hearing scheduled for 9 July 2025 is concerned with the matter of the Registry’s refusal to allow the Cancellation Applicant more time in which to file a Form TM26(I). It is an opportunity for both parties to have equal opportunity to have their say on the subject.

The hearing is not on the subject of ‘inexperience with the IPO procedures’; it is simply an opportunity for each party to have its say on whether or not the Registry’s Preliminary View should be upheld.

The Registry wishes to make it clear that inexperience or unfamiliarity with legal procedures is, without more, not a sufficient reason for the Registry to extend a deadline.

The matter of the definition of written trademarks is not a matter upon which the Registry will grant a dedicated hearing. If any party wishes to institute any legal action against another party, the onus is on the instituting party to plead its case based on the relevant law and in a sufficiently clear manner to enable the other party to understand the case against it. The Registry has no discretion whatsoever to provide legal advice to any party. It is the responsibility of the party bringing the claim to know what its claim is and identify the legal basis of that claim.

The Hearing Officer conducting the hearing will, for the benefit of any unrepresented party, explain the purpose and format of the hearing. Both parties will have the opportunity to make oral submissions.

The parties are reminded that any written correspondence must be copied to the other side.'

THE HEARING

24. A hearing took place before me, by telephone conference, on Wednesday 9 July 2025. Both parties attended. The CA is unrepresented. Mr Paul Smith-Bodden attended to speak on behalf of the CA, albeit not in a professional capacity. I will, therefore, treat the CA as a litigant-in-person. The RP is represented by Indelible IP Limited; and Ms Michelle Ward, of the aforementioned firm, attended. There was no requirement for either party to file Skeleton Arguments in advance of the hearing.

25. Before inviting the parties to speak, I addressed the following matters, for the benefit of Mr Smith-Bodden as a litigant-in-person:

- I clarified the scope of the hearing. I explained that it was not an opportunity to discuss the substantive claim. I confirmed that the hearing was concerned only with the matter of the Preliminary View, of 21 May 2025, to strike out the CA's case in the absence of an adequately-pleaded claim being filed on or before 5 June 2025.

- I confirmed that the hearing was an opportunity for both parties to give their view on whether the Preliminary View should or should not be upheld.

- I explained the consequence that would follow, should the Registrar decide to confirm the Preliminary View; i.e. that the CA's claim would be struck out.

- I explained that, in the UK legal system, the onus is on the party bringing a legal claim against another party to: make clear precisely what their

complaint is; and make clear the legal basis of that claim by pointing to the relevant piece of law.

- I clarified that a party could only rely on law which has force within the UK. An American statute, for example, could not be relied upon in UK tribunals or courts.

- I explained that Hearing Officers are forbidden from giving legal advice to any party.

- I clarified that, whilst the Registrar must be particularly considerate where a case involves an unrepresented party (by, for example, taking extra care to explain things clearly) this does not extend to the moving of prescribed deadlines. Concessions in terms of extra time cannot be made purely because a party, for whatever reason, does not have a legal representative.

26. Mr Smith-Bodden's submissions, on behalf of the CA, can be summarised as follows:

- Mr Smith-Bodden submitted that the CA felt that it was being put under 'undue pressure' by being told that it had just one more chance to file a TM26(I). He stated that he had been unaware that there was a limit to the number of times that a TM26(I) could be filed.

- Mr Smith-Bodden suggested that the Official letter of 6 June 2025, (communicating the Registry's refusal to allow an extension of time) had left the CA without 'insufficient time' to file an amended TM26(I).

- It was submitted that the Registry's initial acceptance of the iteration of the TM26(I) filed on 22 April 2025 and subsequent rejection of it, on 13 May 2025, as inadmissible, was particularly confusing.

- Mr Smith-Bodden submitted that the Registrar ought to be lenient on a litigant-in-person in order to achieve a ‘level playing field’ where the other party is legally represented.

- It was argued that the Registry’s use of the word ‘incoherent’ to describe the CA’s pleading was ‘inflammatory’ and ‘rather unfair’ to a litigant-in-person. It was further argued that the Registry had not properly explained to the CA why the TM26(I) was defective.

- It was submitted that the CA had, in earlier correspondence, accepted that the CA ‘copyright’ claim could be a separate case.

- Mr Smith-Bodden submitted that he had consulted an intellectual property lawyer on the CA’s case, but that the cost to engage them was prohibitively expensive. Essentially, Mr Smith-Bodden submitted that financial constraint was the ‘deciding factor’ in the CA’s failure to progress its claim.

27. Ms Ward’s submissions can be summarised thus:

- Ms Ward submitted that legal professionals are accustomed to dealing with cases where the other party is unrepresented and that, in her professional experience, it is expected that there may be two or three attempts at filing an admissible claim. It was submitted that it was her practice in such cases to ‘sit back and wait’ for the claim to be accepted by the Registry, and that she would generally only interject where it was necessary to do so. Ms Ward submitted that two occasions where it was necessary for her to contact the Registry in the instant proceedings were: i. to request the removal of ‘without prejudice material’ from the CA’s claim; and ii. to question the acceptability of an invalidation based on section 5(4)(b) of the Act (copyright) where the contested mark is merely a word mark.

- It was submitted that the most recent iteration of the CA TM26(I) was insufficiently clear to enable the RP to formulate a defence.

- Ms Ward underlined the general argument that, in the interests of certainty and the avoidance of uncertain liabilities in costs, there must be a limit to the number of opportunities that a party is allowed to file any one claim.

DECISION

28. This decision has been written after careful consideration of the parties' oral submissions, as well as all of the case papers available to me.

The Registrar's discretion

29. The Trade Marks Rules 2008 ('the Rules') set out the broad case management powers of the Registrar at rule 62:

> '**General powers of registrar in relation to proceedings**
> 62. – (1) Except where the Act or these Rules otherwise provide, the registrar may give such directions as to the management of any proceedings as the registrar sees fit, and in particular may-
>
> […]'
>
> [My emphasis added]

30. Rule 62 enumerates a non-exhaustive list of requirements that the Registrar may direct the parties to fulfil. Whilst the Rules make no explicit mention of the power to strike out all or part of proceedings, this power is within the Registrar's inherent

jurisdiction (as underlined above at [29]).[4] This is part of the Registrar's inherent power to regulate its own procedures.[5]

31. The basis for striking out a claim is set out in Part 3 of the Civil Procedure Rules ('the CPR'). Although the Registrar is not bound by the CPR, they may be followed to the extent that the Rules are silent on, or do not explicitly address, an aspect of proceedings. Although the CPR make reference to the 'court', the Registry adopts the CPR in, inter alia, the matter of striking out. References to the court are, therefore, to be read as applicable to the Tribunal. Rule 3.4 of the CPR states:

> '**3.4 – Power to strike out a statement of case**
>
> **(1)** In this rule and rule 3.5, a reference to a statement of case includes reference to part of a statement of case.
>
> **(2)** The court may strike out a statement of case if it appears to the court-
>
> **(a)** that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> **(b)** that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;
>
> **(c)** that there has been a failure to comply with a rule, practice direction or court order;
>
> **[…]'**

32. The commentary accompanying rule 3.4 of the CPR includes the following guidance:[6]

> 'Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence. […]

[4] *Rhone Poulenc SA's Patent* [1989] RPC 570, at 573.
[5] *Pharmedica Gmbh's TM App* [2000] RPC 536, at 541.
[6] White Book 2025, Volume 1, Part 3, 3.4.1, unnumbered paragraphs 4, 5 and 11.

Ground (c) covers cases where the abuse lies not in the statement of case itself but in the way the claim of defence (as the case may be) has been conducted. The strike-out can be made even where there was nothing in the rule, practice direction or court order breached which specified that this might happen as a consequence of breach. In many circumstances such a strike-out would seem unduly harsh unless the party concerned was warned (possibly in writing by another party) of the risk of their statement of case being struck out if they did not comply with the rule, practice direction or court order in question.

[…]

The court may make an order under rule 3.4 of its own initiative'.

33. Examples of cases where the court (or Registrar) may conclude that particulars of claim disclose no reasonable grounds for bringing the claim include: 'those claims which set out no facts indicating what the claim is about; those claims which are incoherent and make no sense; and those claims which contain a coherent set of facts but those even if true, do not disclose any legally recognisable claim against the defendant'.[7]

34. I also note the following from relevant cases cited in relation to rule 3.4 of the CPR:

- An unreasonably vague and incoherent statement of case which is likely to obstruct the just disposal of the case is liable to be struck out: see *Ashraf v Dominic Lester Solicitors* [2023] EWHC 2800 Ch, per Smith J.[8]

- In *Towler v Wills* [2010] EWHC 1209 (Comm) at [18], Tear J. noted:

  'The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the

[7] White Book 2025, Volume 1, Part 3, 3.4.2, unnumbered paragraph 1.
[8] As above, unnumbered paragraph 4.

other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. If the case which is brought against him is vague or incoherent he will not, or may not, be able to do any of those things. Time and costs will, or may, be wasted if the defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies…'

The Registrar's obligations and considerations in relation to litigants-in-person

35. The Manual of Trade Marks Practice (the current version was updated February 2023) states the following in the 'Tribunal Section':

'**1.7.1 Litigants in person**

As stated at paragraph 1.7 above, the Tribunal must remain impartial at all times and are therefore unable to advise litigants. In *Barton v Wright Hassall* [2018] UKSC 12 Lord Sumpton stated:

"Their [i.e. LIPs] lack of representation will often justify making allowances in case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties […] The rules provide a framework within which to balance the interests of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any disadvantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side […] Unless the rules and practice

directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."[9]

Also, in *EDF Energy Customers Ltd v Re-Energized Ltd* [2018] EWHC 652 (Ch), HHJ Matthews summarised a number of earlier decisions relating to how a court should deal with litigants in person. This included an analysis of *Barton v Wright Hassall LLP* [2018] UKSC 12. It read as follows:

"1. There is a general duty on tribunals to assist litigants, depending on the circumstances, but it is for the tribunal to decide what this duty requires in any particular case and how best to fulfil it, whilst remaining impartial.

2. The fact that a litigant is acting in person is not in itself a reason to disapply procedural rules or orders or directions, or excuse non-compliance with them.

3. The granting of a special indulgence to a litigant in person may be justified where a rule is hard to find or it is difficult to understand, or it is ambiguous.

4. There may be some leeway given to a litigant in person at the margins when the court is considering relief from sanctions or promptness in applying to set aside an order."'

[My emphasis added]

36. Rule 1.1 of the CPR sets out the overriding objective as follows:

'**1.1- The overriding objective**

(1) These Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

(2) Dealing with a case justly and at proportionate cost includes, so far as practicable-

[9] This paragraph was quoted recently in case BL O/0559/25, a decision of the Appointed Person, Mr Phillip Johnson, at [14].

(a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;

(b) saving expense;

(c) dealing with the case in ways which are proportionate-

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases;

(f) promoting or using alternative dispute resolution;

(g) enforcing compliance with rules, practice directions and orders.'

[My emphasis added]

37. The commentary accompanying rule 1.1 of the CPR states that the CPR apply to all litigants, whether represented or unrepresented.[10] Furthermore, unrepresented litigants (or litigants-in-person) do not form a 'privileged' class of litigants for whom the rules are modified or disapplied.[11]

Considerations

38. The issue that I have to decide is whether the Preliminary View of the Registrar, given on 21 May 2025, according to which the CA's claim would be struck out, in

[10] White Book 2025, Volume 1, Part 1, 1.1.1 .

[11] As above; *Nata Lee Ltd v Abid* [2014] EWCA Civ 1652, CA at [53]; *Ogiehor v Belinfantie* [2018] EWCA Civ 2423; [2018] 6 Costs L.R. 1329, CA at [24]. The court, further to the overriding objective, can provide practical assistance to litigants, but must enforce the rules (see *Mole v Hunter* [2014] EWHC 658 (QB) at [107]).

its entirety, in the absence of an adequately-pleaded TM26(I) on or before 5 June 2025, should be confirmed.

39. The first iteration of the CA's TM26(I) was filed 4 March 2025. The third, and most recent, version was filed 22 April 2025. To date, the CA has not filed an amended TM26(I) following the official letter of 21 May 2025, in which the various defects to the CA's latest filing were identified. Between the Preliminary View being issued on 21 May 2025, and the hearing of the instant matter on 9 July 2025, Mr Smith-Bodden contacted the Registry by email on five occasions.

40. It is accepted that the Official letter of 22 April 2025, in which the Registry apparently allowed the most recently filed TM26(I) into the proceedings, was an administrative oversight. I appreciate that, in an ideal world, all of the ways in which the CA's pleading was defective, as eventually set out in the Official letter of 21 May 2025, would have been communicated to the CA earlier. However, for reasons that will become apparent, it is my view that, ultimately, nothing turns on this.

41. It is convenient to address the section 5(4)(b) aspect of the CA's proposed claim first, because it can be dealt with most swiftly. It is noted that the CA, in its correspondence of 15 May 2025, indicated that the 'copyright infringement' claim was a matter separate from the instant proceedings. Mr Smith-Bodden subsequently confirmed this 'concession' in his oral submissions. The parties are, therefore, in agreement that the s5(4)(b) claim is not appropriate for the instant proceedings. I, therefore, do not propose to consider this prospective claim any further.

42. The remaining defects listed in the Official letter of 21 May 2025 have, to date, not been corrected by the CA. Having reviewed the chain of correspondence between the CA and the Registry, in its entirety, I note the following:

    a. the CA was informed on three occasions that evidential material could not be included with the TM26(I);

b. the CA was informed on two occasions that an American statute cannot be relied upon in UK proceedings;

and

c. the CA was informed on three occasions that prescribed deadlines cannot be extended purely on the basis that a party is a litigant-in-person.

43. As noted above at [25], at the start of the hearing, I further reminded the CA that the Registrar could not move a deadline purely on the basis of a party being a litigant-in-person. However, Mr Bodden-Smith continued to argue that the CA ought to be entitled to leniency by virtue of its unrepresented status. The CA's submission, in essence, entailed an invitation for the Registrar to exercise leniency based purely on the facts that the CA was unrepresented and that to instruct a professional representative was prohibitively expensive.

44. The Registrar, in dealing with any case, has a duty to observe the Overriding Objective which entails, inter alia, managing cases expeditiously and proportionately. To allow the CA another opportunity to file an admissible TM26(I) would subject the RP to further delay and uncertainty. Mr Smith-Bodden has explicitly stated that the only obstacle to the CA progressing its case was financial constraint. It is, to my mind, difficult to see how the CA's predicament would change even if a further opportunity to file a TM26(I) were granted.

Conclusions

45. Whilst the Registry's oversight by way of the initial erroneous acceptance of the most recently-filed TM26(I) was unfortunate, my view is that it is difficult to see how this has had a substantial impact on the CA's position. The defects to which the CA was alerted before that point have, to date, still not been addressed. As can be seen from above, there have been repeated failures on the part of the CA to comply with requests made by the Registry with regard to its pleading. The most recently filed TM26(I) remains inadmissible. Putting the matter of the prospective 'copyright' claim aside, the CA has made no effort to address the remaining defects

enumerated in the Official letter of 21 May 2025. My view is that, aside from the oversight of the Registry in apparently accepting the TM26(I), the Registry has clearly identified the problems with the CA's pleading and given the CA ample opportunity to remedy them. Whether or not a party seeks professional representation or elects to represent itself is a matter for that party. It is clear from rule 1.1 of the CPR, noted above at [37], that litigants-in-person are not entitled to special treatment by virtue of their unrepresented status.

46. It is my view that the CA's past failures to address repeated requests from the Registry to remedy the defects in its pleading, combined with Mr Smith-Bodden's frank oral admission that to engage legal representation was prohibitively expensive, do not augur well for the filing of an adequately pleaded claim in the near future.

47. I have borne in mind that, as noted above at [35], the Registrar has some discretion to make allowances where 'a rule is hard to find or it is difficult to understand, or it is ambiguous'. However, I do not consider the relevant rules in the instant proceedings to be particularly difficult to find/understand, nor do I deem them to be ambiguous. The CA's past references to the Manual of Trade Marks Practice indicate that it is capable of locating information on trade mark law. Furthermore, I find that the Registry has taken particular care to write clear and comprehensive letters/emails to the CA on several occasions. At the start of the hearing, I explained, in very basic and general terms, inter alia, how the UK legal system works and the basic requirements of a justiciable claim (i.e. a clear statement of the complaint and citation of its legal basis such that the other side understands the case against it). I also informed the CA that there was much information on trade mark law on the IPO's own website. I further suggested that, in my own experience as an ordinary member of the public, organisations such as the Citizens Advice Bureau and law centres etc might be useful sources of information and advice.

48. I have carefully considered all of the papers available to me, and the oral submissions of both parties. I have borne in mind the scope of the discretion available to me, with regard to the Overriding Objective.

49. It remains the case that the CA's TM26(I) is inadmissible for the reasons set out in the Official letter of 21 May 2025. I find that the CA's prospective claims are incoherent and that they fall within rule 3.4(2)(a) of the CPR, i.e. they disclose no reasonable grounds for bringing a claim. I consider that the CA's claim, as pleaded, is insufficiently clear and coherent to enable the other party to understand precisely what is being complained of, and the legal basis for the complaint(s), with sufficient clarity to be able to mount a defence.

50. In the light of the foregoing, the Preliminary View of the Registry, dated 21 May 2025, is confirmed and the CA's claim is struck out in its entirety.

Costs

51. The RP has been successful and is entitled to a contribution towards its costs. Neither party has made submissions on costs and so I allow 14 days from the date of this interim decision for the parties to file submissions on costs. Upon either receipt or absence of such submissions by **14 August 2025**, I will issue a supplementary decision confirming any costs award, at which point the appeal period will be set.

Dated this 31st day of July 2025

N. R. Morris
For the Registrar,
the Comptroller-General