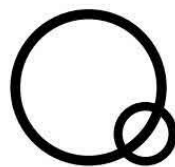


O/0897/24

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3582352
IN THE NAME OF BERTRAM NURSERY GROUP LIMITED
FOR A SERIES OF TWO TRADE MARKS**



Thrive Childcare
and Education

IN CLASS 43

AND

**THE OPPOSITION THERETO UNDER NUMBER 425054
BY FRONTING THE CHALLENGE PROJECTS LIMITED**

FINAL DECISION

1. On 24 August 2022, I issued a preliminary decision in which I found that the opposition against application number 3582352, brought by Fronting the Challenge Projects Limited, partially succeeded under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹

2. The decision was provisional because the opposition was based upon a single earlier trade mark registration, 3122374, which was itself the subject of an application for invalidation under section 47(1) and two applications for revocation under sections 46(1)(a) and (b) of the Act, and sections 46(1)(c) and (d) of the Act. The Tribunal had given a preliminary view, on 7 July 2022, that the decision should be provisional pending the outcome of the cancellation proceedings.²

3. The invalidation and revocation proceedings have now concluded, being the subject of the registrar’s decision BL O/0674/24, dated 16 July 2024. No appeal was filed by the deadline for doing so (13 August 2024). The outcome of the invalidation application was that it succeeded in full against registration 3122374. This means that the registration of 3122374 is deemed never to have been made under section 47(6) of the Act.

4. Since the only earlier mark pleaded in the opposition is invalid, and cannot be relied upon to found the grounds of the opposition, it follows that the opposition fails. Application 3582352 may proceed to registration.

Costs

5. The applicant has been successful and is entitled to a contribution to the costs of defending its application against the opposition, based upon the scale published in Tribunal Practice Notice 2/2016. The breakdown is as follows:

¹ Case BL O/715/22. The section 5(3) ground failed.

² It was conceded by the applicant that the section 46(1)(a) and (b) grounds would have no effect upon the opposition, and I said in my preliminary decision that that might also be the case for the section 46(1)(c) and (d) grounds.

Considering the notice of opposition and filing a counterstatement	£300
Preparing evidence and considering and commenting on the opponent's evidence	£1000
Preparation of submissions in lieu of a hearing	£400
Total	£1700

6. I order Fronting the Challenge Projects Limited to pay to Bertram Nursery Group Limited the sum of £1700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful. The appeal period for both this decision and the preliminary decision starts from the date shown below.

Dated this 16th day of September 2024

Judi Pike
For the Registrar