

O/0252/26

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00002654656
IN THE NAME OF ENDACOTT LIMITED FOR THE TRADE MARKS:



(SERIES OF TWO)

IN CLASSES 35 & 41

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY
UNDER NO. 506828

AND

AN APPLICATION FOR REVOCATION ON THE GROUNDS
OF NON-USE UNDER NO. 506829

BOTH BY

THE ESTATE OF MICHAEL STEPHEN ERNEST RIVERS

BACKGROUND AND PLEADINGS

1. Endacott Limited (“the proprietor”) is the registered proprietor of the series of two UK trade marks shown on the cover page of this decision (“the contested registration”). The contested registration was filed on 1 March 2013 and was granted registration on 21 June 2013. It stands registered for the following services:

Class 35: Advertising, marketing, merchandising, and general business services.

Class 41: Entertainment services.

2. On 21 December 2023, the contested registration was subject to both an application for invalidation and an application for revocation on grounds of non-use brought by Michael Stephen Ernest Rivers (“the original applicant”). The application for invalidity is brought under section 47 of the Trade Marks Act 1994 (“the Act”) and is reliant upon section 3(6) of the Act. The application for revocation is based on section 46(1)(b) of the Act.
3. On 7 May 2024, the Tribunal was informed by the proprietor that the original applicant had passed away. This was confirmed by the original applicant’s legal representative on 21 May 2024. After an extension of time to determine whether the estate would continue with the present proceedings, it was confirmed to the Tribunal on 26 June 2024 that the Estate of Michael Stephen Ernest Rivers (“the applicant”) would take the place of the original applicant. The applicant filed amended application forms in its own name and also confirmed via correspondence dated 19 July 2024 that it (1) had sight of all the forms in these proceedings, (2) that it stood by the pleaded claims in the initial claim forms and (3) was aware, and accepting, of its liability for the costs of the whole proceedings.
4. Under the section 3(6) ground of the invalidation, the applicant’s claim covers approximately seven pages of pleadings. In short, I note that the applicant’s claim is based on points three to twelve of paragraph 67 of *Sky Limited & Ors v Skykick*,

UK Ltd & Ors, [2021] EWCA Civ 1121. I will address the applicant's pleaded claim and my interpretation of the same in further detail below.

5. As for the section 46(1)(b) ground of the revocation, the applicant is seeking to revoke the contested registration on the basis that it has not been used over a five year period. The five year period for which non-use is claimed is 21 December 2018 to 20 December 2023 ("the relevant period"). The applicant seeks an effective revocation date of 21 December 2023, being the date of the revocation application.
6. The proprietor filed counterstatements wherein it denied that the contested registration was applied for in bad faith and that it had genuinely used its registration throughout the relevant period.
7. Upon the filing of the counterstatements in each of the applications, the Tribunal consolidated the proceedings in accordance with the powers vested in it by Rule 62 of the Trade Marks Rules 2008. This was communicated to the parties on 5 April 2024.
8. The applicant is represented by Baron Warren Redfern LLP, who was also the representative of the original applicant. The proprietor is unrepresented. Both parties filed evidence in chief with both parties also filing written submissions in reply.¹ No hearing was requested and both parties filed written submissions in lieu of the same. This decision is taken following a careful perusal of the papers.
9. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

¹ Both parties were permitted with the option to file submissions in reply. This is because invalidation proceedings bestow the right of reply to an applicant whereas revocation proceedings bestow that right on a proprietor.

EVIDENCE

10. The applicant's evidence came in the form of the witness statement of Mr Martin Rivers dated 5 September 2024. Mr Rivers is the son of the original applicant and is also the duly appointed representative of the applicant. Mr Rivers's statement is accompanied by 16 exhibits, being those labelled MR1 to MR16 and was adduced in order to demonstrate the proprietor acted in bad faith in filing for the contested registration.

11. The proprietor's evidence came in the form of the witness statement of Mr Paul Endacott dated 9 September 2024. Mr Endacott is the director of the proprietor, a position he had held since 1994. Mr Endacott's evidence is accompanied by 19 exhibits, being those labelled CC1, CC2A to CCA2D, CC3 to CC5, CC6A to CC6B, CC8A to CC8B, CC10, CC11A to CC11B and CC12 to CC15,² and was adduced in order to demonstrate genuine use of the contested registration and to defend the position regarding the bad faith allegations. In respect of Mr Endacott, it was brought to the Tribunal's attention on 15 January 2026 that he had passed away. Whilst Mr Endacott was a director of the proprietor, he was not technically a party to these proceedings meaning that, despite his passing, these proceedings continue.

12. I will refer to points from the evidence or submissions where necessary.

DECISION

THE APPLICATION FOR INVALIDATION

13. Section 3(6) of the Act has application in invalidation proceedings by virtue of section 47(1) of the Act, which states as follows:

² It is noted that the proprietor's evidence included links to view Facebook videos for exhibits CC7 and CC9. The proprietor was informed by the Tribunal on 24 September 2024 that if it wished to rely on the videos, it needed to re-file the evidence via a suitable physical media format. By way of an email dated 4 November 2024, the proprietor elected not to re-file such evidence so any reference to website links and exhibits CC7 and CC9 were removed.

“47(1). The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

[...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

Section 3(6)

14. Section 3(6) of the Act states:

“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

15. As set out above, the applicant’s pleadings relate to the principles of bad faith that were set out in paragraph 67 of the Court of Appeal’s decision of *SkyKick*. Those principles have been superseded by those set out in paragraph 240 of Lord Kitchin’s judgment in the Supreme Court case of *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36. These are as follows:

“(i) [...]

(ii) The date for assessing whether an application to register [a] trade mark was made in bad faith is the date the application for registration was made (*Lindt*, para 35).

(iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation [...], and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 ([*Malaysia Dairy Industries Pte Ltd v Ankenævnet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 (“*Malaysia Dairy*”)], para 29; [*Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 (“*Sky CJEU*”), para 73).

(iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the [...] law of trade marks, namely the establishment and functioning of [...] a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; [*Koton Mağazacılık Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 (“*Koton*”)], para 45).

(v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky CJEU*, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case (*[Hasbro Inc v EUIPO, Kreativni Dogaaji d.o.o. (intervening)* (Case T-663/19) EU:T:2021:211 (“*Hasbro*”)], paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky CJEU*, para 76; [*AS v Deutsches Patent-und Markenamt* (C-541/18) EU:C:2019:725], para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (*Sky CJEU*, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive

right for purposes other than those falling within the functions of a trade mark (*Sky CJEU*, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a *bona fide* intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky CJEU*, paras 86 and 87).”

16. An allegation of bad faith is a serious one which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which

are as consistent with good faith as bad faith: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch).

17. It is necessary to ascertain what the proprietor knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

18. According to *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

- (a) What, in concrete terms, was the objective that the proprietor has been accused of pursuing?
- (b) Was that an objective for the purposes of which the contested application could not be properly filed? and
- (c) Was it established that the contested application was filed in pursuit of that objective?

19. Dealing with these questions in turn, I will first go over the basis of the applicant's claim. As set out above, the applicant's pleaded case is extensive. I do not intend to go over each point raised as some of them simply cover issues such as the relevant date for assessing bad faith and the fact that it is for the party alleging bad faith to prove it, being points 5 and 6 of paragraph 67 of the Court of Appeal's judgment in *SkyKick*, respectively. Having considered the content of the applicant's pleadings, I consider that its claims under the present ground can be boiled down to the following:

- a. That the proprietor applied for the contested registration in the full knowledge that the original applicant was already using the 'CRAWDADDY CLUB' sign for

entertainment services. It is alleged that the proprietor used this knowledge to exploit the mark in parallel with the original applicant whilst having the intention to create confusion amongst the consumer base. Alternatively, it is claimed that in applying for the contested registration, the proprietor was seeking to use it for the purpose of coercing the applicant into entering into a joint business with the proprietor.

- b. That the proprietor had commercial dealings with the original applicant and applied for the contested registration without informing him, with the intention to then approach him to propose a joint business venture.
- c. That the proprietor had no intention to use the contested registration in respect of the class 35 services.
- d. That the proprietor applied for the registration with the intention of targeting the interest of third parties (including the original applicant) for the purposes other than those falling within the function of a trade mark.
- e. That the applicant's use of the CRAWDADDY CLUB sign, as at the relevant date, enjoyed a reputation, albeit geographically limited. However, the proprietor's intention was to use the contested registration at a nearby venue in the same town as the applicant. As such, there was no justification for seeking wider protection in the UK at large.

20. Turning to the second question set out above in *Alexander Trade Mark*, I am of the view that the claims summarised at a. to d. above are, if proven, objectives that would mean that the contested registration could not have been properly filed. As for point e., I see no merit in this claim. I say this because a party's initial intention to operate out of one venue does not mean that it does not one day intend to expand that business operation in the event it garnered a sufficient degree of success. Registering a UK-wide trade mark registration in the name of a localised business is entirely justified, regardless of whether the success of that business is such to warrant a national expansion or not.

21. I turn now to consider whether the applicant has established that the proprietor applied for the contested registration in line with the objectives set out above. To do so, I will consider the evidence filed.

Evidence summary

22. The evidence sets out that the 'Crawdaddy Club' is the name of a live music entertainment event which began in Richmond, Surrey in 1963. It was hosted, initially, at the Station Hotel (which is now a pub called One Kew Road). The event then moved to the larger Richmond Athletic Ground. The event became well known due to appearances from musical acts such as The Rolling Stones, Led Zeppelin and Elton John. The event subsequently shut down in the 1970s.

23. The applicant's evidence sets out that while the original applicant did not have any claim to the historical rights of the Crawdaddy Club, it is alleged that he began to accrue such rights in 2011 when he registered the domain name www.crawdaddyclubrichmond.com and began planning and promoting a relaunch of the event.³ The original applicant's event became operational in March 2012. Various items of evidence are provided seeking to prove the existence of an event at this time.⁴ This includes a flyer for the Crawdaddy Club's 50th Anniversary which was advertised to take place on 2 March 2012 at the Richmond Athletic Ground, a website showing ticket availability and an email relating to the printing of physical tickets for the event. In terms of evidence demonstrating that the event actually took place, I note that this same exhibit includes a picture dated 2 March 2012 showing a musical act performing at the Richmond Athletic Ground and a printout from 'WeGotTickets.com' confirming the advance sale of 57 tickets for the event. In respect of the ticket sales, I appreciate that they represent a low level of sales. However, the printout provided only shows that 200 total tickets were available.

³ Evidence showing the creation date for this website is provided at MR1

⁴ MR2

24. Review articles from the event are provided.⁵ The narrative evidence of Mr Rivers is that there was a lot of local and national publicity but the evidence only shows seven articles from local publications which discuss the event. The only coverage stemming from national publications comes via one article from The Guardian, which appears to be focused primarily on the origins of the Rolling Stones. Whilst The Crawdaddy Club is mentioned, this relates to the initial run of the event in the 1960s, as opposed to the original applicant's use of the branding.

25. The evidence goes on to discuss additional events throughout 2012 and 2013. An invoice from a ticket printing company is provided, dated 17 July 2012, that shows the order of 100 physical 'guitar' tickets.⁶ Additionally, Mr Rivers discusses the aforementioned WeGotTickets printout which also shows seven archived events for various dates in 2012 and 2013.⁷ Of the pre-booked ticket sales shown, I note that these events pre-sold 102 tickets. Additional sales documents are shown in evidence relating to an event on 8 February 2013.⁸ The documents are shown in a photograph of them laid out on the floor and show printed documents with hand written notes on them. Due to the nature of the photograph, the documents themselves are not particularly clear but I note that they are confirmed as being pre-sale documents and I can see that there is reference to 'cash sales' being made at the door of the venue. Of the cash sales, I can make out a tally of 55 sales.

26. Another photograph is provided of what appears to be bundles of documents within various poly-pockets.⁹ It is confirmed that each bundle includes printouts of the guestlists, ticket sales figures and other articles such as flyers and tickets. The actual contents of these bundles are not shown, only the front page which appears to be an obscured list of names under the header 'CRAWDADDY'.

27. The evidence then turns to the discussions between Mr Endacott and the original applicant prior to, and around the time that the contested registration was applied

⁵ MR3 and MR7

⁶ MR4

⁷ While nine listings are shown, one is for the aforementioned event on 2 March 2012 and another does not appear to be at a Crawdaddy Club event.

⁸ MR5

⁹ MR6

for. The evidence sets out that Mr Endacott met with the original applicant in August 2012 where it was agreed that they would discuss the revival of the Crawdaddy Club. Evidence of various emails between them are shown in evidence.¹⁰ The first exchange comes via emails from between 13 and 14 August 2012,¹¹ under the subject line of 'Crawdaddy Club'. The emails allude to a meeting that is scheduled for 15 August 2012. While the Crawdaddy Club is the subject of the emails, the emails themselves do not go beyond the arranging of a meeting.

28. The next correspondence between these individuals is an email from the original applicant to Mr Endacott dated 28 August 2012.¹² The email refers to a further meeting that took place that afternoon. The content of this email discusses the Crawdaddy Club in more detail, namely the original applicant's comments that he had no problem with Mr Endacott approaching the owners of One Kew Road regarding the Crawdaddy Club. However, the original applicant does set out that he would like to be involved in any meetings relating to the running of the club and that he would want to retain full control of the club, and its income.

29. Further correspondence is provided from September and October 2012.¹³ The initial email is from Mr Endacott which discusses the production of a poster promoting the Crawdaddy Club.¹⁴ That same email includes some well-wishes from Mr Endacott in that he hopes that the original applicant's gig bookings are going well.

30. The subsequent emails in this chain simply discuss the history of the club. Within this same exhibit is an email chain in October 2012 which discusses the costs of a window graphic, seemingly for some joint event they were planning. In this chain, Mr Endacott is asking the original applicant to pay the £70 costs associated with this poster.¹⁵ In discussing the nature of this poster, there appears to be some disagreement from Mr Endacott to the original applicant's request that the

¹⁰ MR8

¹¹ See MR8 at pages 49 and 50

¹² See MR8 at page 51

¹³ MR9

¹⁴ See MR9 at page 54

¹⁵ See MR9 at page 67

'Crawdaddy Club' logo be included as it would compromise the generic flavour of the poster and would be unfair to the main sponsor of the event.¹⁶ That being said, Mr Endacott does appear to agree to the inclusion of a reference to the website address of the original applicant's Facebook account for the Crawdaddy Club on the poster. Other emails from September and October 2012 are provided but they are the simple forwarding of various photographs pertaining to the club (for the purpose of potentially being included on a poster) or the arrangement of meetings. The eventual poster that was sent for printing is not provided.

31. There are further emails provided from October and November 2012 that discuss Richmond's musical heritage and demonstrate efforts from Mr Endacott and the original applicant to secure funding as well as permission to use One Kew Road.¹⁷ It appears that this eventually led to Mr Endacott putting together a business proposal for 'Mitchell and Butlers' (being the owner of the proposed venue at One Kew Road). This proposal is provided in evidence and features the first mark in the contested registration.¹⁸ There is an additional email chain where the proposal is discussed. In this chain, Mr Endacott expresses excitement at the prospect of promoting the Crawdaddy Club to a larger UK and international audience.¹⁹ However, the original applicant expresses the following reservations:²⁰

"I am also not entirely happy about a mention of a 'Crawdaddy Club Festival'. This is something I have been working on under a different name for the past three years and already have a partner who I am very happy with.

While I am willing to consider getting involved in organising the music at 1 Kew Road, I believe the projections are highly optimistic despite your research. Very few small venues can get away with charging more than £10.00/£12.00 and I would be amazed to get 100 people in the upstairs area of 1 Kew Road."

¹⁶ See MR9 at page 64

¹⁷ MR10

¹⁸ MR12

¹⁹ See MR13 at page 89

²⁰ See MR13 at page 88

32. There is some back and forth between the two following the above email.²¹ In these emails, Mr Endacott reminds the original applicant that he would be a director and shareholder of the potential 'Crawdaddy Club Ltd' company. In that email, Mr Endacott insists that the original applicant will retain control of the music and management promotions. In response, the original applicant sets out that he does not wish to become fully involved as a company director, implying that he has done this before in some other capacity. Further, he suggests the colour of the 'Crawdaddy Club' logo in the proposal be changed.

33. The evidence confirms that correspondence between the two went silent until November 2015, being when the original applicant became aware of Mr Endacott having registered the contested registration.²² There is a heated email exchange between the two on this point. The initial contact came from the original applicant where he expressed disappointment in Mr Endacott having registered the 'Crawdaddy' name behind his back.²³ In response, Mr Endacott stated the following:²⁴

"As previously mentioned to you, I registered the Crawdaddy Club name to secure our position whilst in discussions with the management of Mitchells & Butlers, owners of One Kew Road."

34. In response, the original applicant confirms that he only found out about the registration via a third party.²⁵ In this email, he alleges that Mr Endacott registered the contested registration without him, without the courtesy of contacting him about it and that Mr Endacott is being disingenuous to claim that he had been upfront about it.

35. In addition to the above, the applicant has provided a further email exchange between the original applicant and Mr Endacott from 2017. As with the emails from 2015, this exchange is heated and includes personal accusations. I see no reason

²¹ See MR13 at page 87

²² MR14

²³ See MR14 at page 96

²⁴ See MR14 at pages 93 and 94

²⁵ See MR14 at page 94

to reproduce the content of these emails here as they, essentially, become simply one person's word against another's and are not particularly helpful in proving the accusation of bad faith in actually applying for the contested registration.

36. In defence of the present ground, I note that Mr Endacott's evidence includes some points that are necessary to discuss here. Firstly, he provides notes from his meeting with the original applicant on 8 February 2013.²⁶ One of the points referred to in his notes is:

“WE HAVE EXPERTISE AND THE NAME (REGISTER NAME/DOMAIN).”

37. Mr Endacott then claims that in the discussions that took place in the weeks after this meeting, he had concerns over the original applicant's request for unilateral control over the bands that would be performing, which was something Mr Endacott was not prepared to do. With this in mind, Mr Endacott explains that prior to the presentation being made to Mitchell and Butlers, he discovered that the Crawdaddy Club trade mark registration had still not been secured. He claims that this led to him making an application for the contested registration on 1 March 2013.

38. Seemingly in order to excuse the fact that the original applicant was not included on the registration, Mr Endacott explains that his negative approach to Mr Endacott's ticket sales and prices made it clear that he did not share his vision. In discussing this point, Mr Endacott provided a copy of the email exchange from 12 April 2013 where the original applicant expressed reservations regarding the draft proposal to Mitchell and Butlers and his disinterest in being a company director. This is the same email that I have discussed at paragraph 31 above.

39. Mr Endacott explains that the registration allowed him to seek investors for his business plan. He has provided evidence of his music heritage tours which includes one page which discusses the Crawdaddy Club.²⁷ I note that it also features the first mark in the contested registration.

²⁶ CC12

²⁷ CC14

40. There is a discussion surrounding the two meetings in order to 'bury the hatchet' in 2021. While the relationship appeared somewhat amicable at that point, the evidence discusses a further disagreement between them in 2023 regarding the nature of social media posts made by the original applicant. I see no reason to go into this here as it does not relate to the present ground but simply demonstrates an escalation of their personal disagreement.

Assessment of the evidence

41. Before proceeding, I consider it necessary to set out that the evidence pertains to the actions of Mr Endacott as opposed to the actual proprietor in these proceedings, being Endacott Limited. The evidence of Mr Endacott confirms that he is the director of this company so it can be said that he has control over the proprietor. On this point, I refer to the case of *Joseph Yu v Liaoning Light Industrial Products Import and Export Corporation*, BL O/013/05, wherein Professor Ruth Annand as the Appointed Person held that:

“22. [A] claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application.”

42. In accordance with the above case law, it follows that if I am satisfied that Mr Endacott's personal actions were in bad faith, such a finding can be applied to the proprietor.

43. Having considered the evidence, I am of the view that while the attendee figures were low, the original applicant was operating 'Crowdaddy Club' branded events prior to, and around, the relevant date. Further, it is clear from the evidence I have discussed above that Mr Endacott was aware of this. Further, I am satisfied that the original applicant made it clear to Mr Endacott that he was interested in the brand as he wished to retain control of the Crowdaddy Club throughout any proposed joint venture. In his narrative evidence, Mr Endacott expressed that he

was not pleased with this but there is nothing before me wherein he communicated his displeasure to the original applicant. For example, I note that Mr Endacott did not provide any response to the original applicant's email of 28 August 2012 (discussed at paragraph 28 above) wherein he expressed his intent to retain control of the club. If he was not pleased with this approach, then I consider it reasonable for there to be some direct objection to the same via written correspondence, especially given that this seems to be the primary method of communication between the two.

44. Turning to the issue of whether Mr Endacott made the original applicant aware of his intention to register the contested registration or not, I accept that this was mentioned in Mr Endacott's meeting notes from February 2013.²⁸ However, the problem with Mr Endacott's evidence is that there is nothing before me regarding the actual nature of this discussion and, as set out at paragraph 36 above, the notes simply contain a reference to registering the domain and 'the name'. This is relatively vague as 'the name' could mean the name of the company and it does not automatically equate to the registration of a trade mark. Even if this note was a reference to the need to file a trade mark, it does not speak to any agreement as to ownership of that mark and neither does it suggest that there was any acceptance on the part of the original applicant that the proprietor (or his company) was entitled to apply for a mark to the exclusion of the original applicant.

45. Additionally, I remind myself that upon finding out about the registration, the emails from the original applicant express a clear degree of surprise. I appreciate that Mr Endacott's response says that he did mention it to the original applicant around the time they were discussing a proposal with Mitchells and Butlers. However, there is nothing proving this point in evidence and the only discussions surrounding this in the emails relate to the potential name of the company, being 'Crawdaddy Club Ltd'. On this point, I would expect that if the option to register a trade mark was discussed, it would appear in one of the emails provided.

²⁸ At paragraph 6.4 of its submissions in reply, the applicant denied that this meeting took place. However, the denial comes via written submissions from the applicant's representative as opposed to evidence of fact. Therefore, I am unable to attribute it any weight.

46. Given the original applicant's insistence of retaining control of the club, I do not consider it reasonable to suggest that he would have agreed to the registration being made in the sole name of Mr Endacott's company. As such, I have some scepticism surrounding Mr Endacott's position on this point and, in light of the nature of his responses upon finding out about the trade mark, I am of the view that the original applicant was not aware of these events.

47. I also wish to discuss Mr Endacott's stated belief that he applied for the contested registration in the name of the proprietor because the original applicant did not share his vision. He claims that the original applicant's lack of interest in the 'Crawdaddy Club' meant that he was entitled to register it himself. In light of everything before me, I consider his stated belief to be entirely unreasonable in the circumstances. Firstly, the emails Mr Endacott relies on in respect of this claim are dated April 2013, being over a month after the contested registration was applied for. I have to question why his assumption that the original applicant was not interested in the venture at that time was a valid reason as to why he applied for the contested registration over a month prior on 1 March 2013. Secondly, I am entirely unconvinced that the original applicant's comments are an indication that he was not interested in the 'Crawdaddy Club' name. I understand that he may not have wished to engage in the responsibility of being a director of a company but, in my view, the evidence on the whole is quite clear in that it clearly shows that the original applicant was still very much interested in the Crawdaddy Club name.

48. Lastly, I appreciate that there is no signed agreement between the original applicant and Mr Endacott. However, the correspondence provided in evidence clearly indicates that the parties were working together on an informal basis with the proposal to enter into a joint venture that included putting on events under the 'Crawdaddy Club' branding. In further support of this point, I remind myself that the email (from Mr Endacott to the original applicant) that I have reproduced at paragraph 33 above sets out that Mr Endacott applied for the contested registration to protect 'our' position. To me, this appears that there was an acknowledgement on the part of Mr Endacott that there was some form of joint venture in place

between the two. In my view, this email contradicts Mr Endacott's later stance that *he* was entitled to apply for the contested registration due to the original applicant's apparent lack of interest.

49. In the present case, I find that the applicant has raised a strong *prima facie* case that the proprietor acted in bad faith. I see no logical reason as to why Mr Endacott applied for the contested registration, in the name of his company, during a time when he was in discussions with the original applicant regarding a potential joint venture. I say this even whilst acknowledging that no formal agreement was ever reached between the two. The evidence shows that the original applicant was interested in the name and was even using it prior to any discussions with Mr Endacott. The evidence of Mr Endacott does not offer anything that rebuts this *prima facie* case. As explained above, I do not accept Mr Endacott's rationale for believing the original applicant was no longer interested in the name to be a logical conclusion that a reasonable business person would reach.²⁹ Ultimately, I fail to see how an application for the contested registration could, in such circumstances, be anything other than a deliberate attempt to undermine the interests of a third party, namely the applicant.

50. Having taken all of the evidence filed into account, I am satisfied that the proprietor, in applying for the contested registration, sought to gain an exclusive right in a manner inconsistent with honest business practices. As a result, I find that the present ground succeeds in its entirety. For the avoidance of doubt, as I have found in favour of the applicant on this basis, I do not need to consider the other pleaded aspects of the bad faith ground.

51. The consequence of my decision in respect of the application for invalidation is such that the contested registration will be cancelled and deemed as if it was never granted registration. However, for the sake of completeness, it remains necessary for me to proceed to consider the application for revocation.

²⁹ On this point, I remind myself of the proprietor's contradiction in his email (at paragraph 33) that he was protecting 'our' position.

THE APPLICATION FOR REVOCATION

Section 46(1)

52. Section 46 of the Act states:

“46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

(a) [...]

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) [...]

(d) [...]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before

the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) [...]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date”.

53. Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

54. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and*

Designs) [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft 'Feldmarschall Radetsky* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising

campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial

justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

55. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services protected by the mark”³⁰ is not, therefore, genuine use.

56. I remind myself that the relevant period for the present application is 21 December 2018 to 20 December 2023.

Evidence of use

57. The evidence of the proprietor includes a range of posters advertising various events taking place at ‘The Crawdaddy Club at One Kew Road’.³¹ The posters are undated but the narrative evidence of Mr Endacott sets out that the dates of the events were between 25 September 2016 and 3 December 2017. These are not relevant to the present case because as above, the relevant period did not commence until 21 December 2018.

58. In respect of any use during the actual relevant period, Mr Endacott set out that he contacted One Kew Road regarding his intentions to use the venue in 2019.³² However, he claims that he was informed that the venue was to undergo a refurbishment so would not be available to him. As such, Mr Endacott decided to postpone the proprietor’s schedule of events. Instead, the proprietor decided to focus on sightseeing tours bringing inbound tourists to the original Crawdaddy Club

³⁰ *Jumpman*, Case BL O/222/16

³¹ CC2A, CC2B, CC2C and CC2D

³² CC4

venue. A poster showing an advert for the tour is provided but makes no reference to the contested registration.³³

59. Mr Endacott goes on to explain that the COVID-19 lockdown in March 2020 to June 2020 and January 2021 to July 2021 had an impact on his ability to promote the proprietor's tours. As a result of the lockdowns, the proprietor shifted focus to online livestreams under the name 'Crawdaddy Club Online'. An advert looking for performers for the livestreams is provided in evidence.³⁴ The advert refers to the fact that the organiser, seemingly 'Music Heritage London' had over 2.5 million international followers across its three Facebook pages. While I appreciate this is a significant number of followers, social media evidence is commonly international in nature and, in the present case, there is nothing to suggest how many of the followers are UK-based. Further, and perhaps more importantly, the advert does not confirm what Facebook pages the figures cover. For example, there is nothing to suggest whether any of these pages relate to the Crawdaddy Club brand or are simple variations of the 'Music Heritage London' brand.

60. In terms of the first livestream, it is confirmed as having been broadcast on 26 February 2021.³⁵ While I accept that the broadcast was provided under brandings covered by the contested registration, there are no figures provided for how many consumers in the UK viewed this event. All I have before me is a vague statement that it had engagement from music fans all around the world. It is, therefore, not possible for me to determine the level of use associated with this live stream event. For the avoidance of doubt, there is no further evidence regarding any additional livestreams that took place during the lockdowns.

61. After the lifting of the COVID-19 lockdowns, the proprietor reintroduced the Crawdaddy Club shows at One Kew Road. The first show was a Karen Carpenter tribute act on 6 February 2022.³⁶ However, as was a similar issue with the livestream discussed above, there is no evidence confirming how many tickets

³³ CC5

³⁴ CC6A

³⁵ CC6B

³⁶ CC8A and CC8B

were sold for the event or how many people were in attendance. There is evidence relating to another event put on after the lifting of the lockdowns, being a show that was part of the 'Richmond Arts and & Ideas Festival'.³⁷ This event was on 25 June 2023 but, again, no attendance or sales figures are provided.

Assessment of the evidence

62. I wish to begin my assessment of the evidence by discussing the fact that the evidence sets out that the proprietor's business was hampered by the decision of the venue at One Kew Road to renovate in 2019 as well as the COVID-19 pandemic in 2020. While these were outside of the control of the proprietor, it does not appear that, in discussing these events, it seeks to rely on them as proper reasons for non-use so it is not necessary to consider the position in that regard any further. However, what I will say in respect of this point is that question 8 of the counterstatement clearly sets out, in bold, that if the proprietor wishes to rely on a defence of "proper reasons for non-use", it should be clearly set out in the counterstatement. This was not done meaning that even if the proprietor were to have raised these points in support of an argument that it had proper reasons for non-use, the defence was not adequately pleaded so it would not have been relevant anyway. In any event, I note that the proprietor, upon being faced with these challenges, continued to attempt to use its registration in other ways so it cannot, therefore, be said that the continued use in light of the renovations or the COVID-19 lockdowns was unreasonable.³⁸ On the contrary, it seems that continued use was entirely reasonable.

63. The totality of the evidence before me sets out that the proprietor put on two in-person events and just one livestream during the five-year relevant period. Clearly, this is very limited evidence as to genuine use. This issue is further compounded by the fact that the proprietor has provided no information as to how many people were in attendance at these events or how many viewed the livestream. In addition,

³⁷ CC10

³⁸ As per paragraphs 53 and 54 of *Armin Häupl v Lidl Stiftung & Co. KG*, Case C-246/05, continued use of a mark being considered unreasonable in the circumstances is a factor in favour of there being proper reasons for non-use.

I note that any reference to the proprietor's tours provided after the venue was confirmed to be undergoing renovations does not show any actual use of the relevant branding, being 'The Crawdaddy Club'. Even if it did, there is nothing to suggest the level of use associated with such services.

64. While I appreciate that use does not need to be quantitatively significant in order for it to be deemed genuine, the level of use shown by the proprietor falls far short of the relevant threshold for proving that it has made a genuine effort to preserve or create a market share in the UK under the contested registration. In addition, I consider that the evidence is insufficiently solid so as to allow me to pin any actual use on the services the proprietor claims to have offered.³⁹ As a result, I find that the proprietor has failed to prove that it has genuinely used the contested registration in the UK during the relevant period. The contested registration is, therefore, revoked in its entirety with effect from 21 December 2023.

CONCLUSION

65. While both of the applications have succeeded in full, their impacts differ. The revocation action results in the revocation of the contested registration in its entirety with effect from 21 December 2023. This means that there are certain scenarios where the contested registration may remain a series of earlier marks in proceedings before the Tribunal.⁴⁰ However, the outcome of the invalidation action results in the contested registration being declared invalid, meaning that it will be treated as if it was never registered in the first place.

66. In the present case, the success of the invalidation takes precedence over the revocation and, as such, the overall outcome of my decision is that the contested registration is declared invalid and, as above, is to be treated as if it was never registered.

³⁹ For guidance of the nature and standard for proof of use claims, see paragraphs 22 and 28 of *Awareness Limited v Plymouth City Council*, Case BL O/236/13

⁴⁰ Where the relevant date for those proceedings was between 1 March 2013 and 21 December 2023.

COSTS

67. As the applicant has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of £1,850 as a contribution towards its costs. The sum is calculated as follows:

Preparing an application for invalidation and considering the counterstatement:	£250
Preparing an application for revocation and considering the counterstatement:	£250
Preparing and considering evidence:	£600
Preparing written submissions in lieu:	£350
Official fees for the invalidation:	£200
Official fees for the revocation:	£200
Total:	£1,850

68. I hereby order Endacott Limited to pay the Estate of Michael Stephen Ernest Rivers the sum of £1,850. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 24th day of March 2026

A COOPER

For the Registrar