

O-030-08

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO 2425671  
IN THE NAME OF BARBARA M CAMPBELL  
OF THE TRADE MARK:**

**Women's** THE OFFICIAL GUIDE TO INTERNATIONAL  
MONTH

**IN CLASS 16**

**AND**

**THE APPLICATION FOR A DECLARATION  
OF INVALIDITY THERETO  
UNDER NO 82754  
BY  
SUGAR MEDIA LTD**

1) An application to register the trade mark:



was made on 28 June 2006 by Barbara M Campbell. The registration process was completed on 15 December 2006. The trade mark is registered for *printed material: magazines*. On 24 January 2007 Sugar Media Ltd (Sugar) made an application for the invalidation of the registration. Sugar relies upon two parts of the Trade Marks Act 1994 (the Act).

2) Under section 5(42)(b) of the Act Sugar claims that the trade mark is neither original nor used solely by Ms Campbell. Sugar claims that the trade mark was designed by its in-house designer, John-Paul Daley (in the statement of case Mr Daley is referred to as Jon Paul but in the evidence as John-Paul), in February 2006. It states that the trade mark was designed whilst Sugar was in a co-operative venture with Ms Campbell. Sugar claims ownership of the design. Sugar claims that it originated the magazine title and that the copyright in the logo belongs to "JP Daly/Sugar Media Ltd". It states that neither party was advised of Ms Campbell's intention to trade mark the logo.

3) Sugar claims that it has a history of producing magazines entitled *The Official Guide to International Women's Month* and *Sugar Media's Guide to International Women's Month*. Sugar states that it still produces *The Official Guide to International Women's Month*.

4) Consequent upon the above, Sugar claims that the application was made in bad faith and so registration of the trade mark was contrary to section 3(6) of the Act.

5) In her counterstatement Ms Campbell claims that through her company, Barb Wire Enterprises (Barb Wire), she entered into an agreement with Sugar to work on her existing magazine title *International Women's Month*, which began life in 2002 in another of her titles, *Live Listings*. Ms Campbell claims that she took the former publication out of *Live Listings* in 2003 so that it would be a stand-alone title. Ms Campbell claims that Sugar, which has long been a rival of Barb Wire, published its own magazine using the same title in 2005. Ms Campbell claims that this brought the two undertakings into conflict. Ms Campbell goes on to claim that in January 2006 Sugar "proposed a truce" with Barb Wire; in order to strengthen this truce there was a proposal for Sugar to collaborate on Barb Wire's *International Women's Month* magazine, with Sugar acting in the capacity of sales agents. Ms Campbell claims that Barb Wire decided to go ahead with that proposal. Ms Campbell informed Isabel Appio, the co-director of Sugar, that she had changed the name of the publication to *The Official Guide to International Women's Month* and that she was in the process of deciding upon a logo. Ms Campbell claims that she had used the aforesaid title from December 2005 in various

communications and correspondence with the public. In November 2005 she had begun speaking to the webmaster of her website about creating a website for *The Official Guide to International Women's Month* for 2006. Ms Campbell claims that she has proof of the above by way of e-mails, media packs and a Quark document that she took to Mr Daly in late January 2006, when the agreement became valid.

6) Ms Campbell states she did not consider that she needed to seek permission to make an application for the trade mark the subject of this application (the trade mark).

7) Ms Campbell claims that Sugar produced one publication in 1999 entitled *The Official Guide to Black History Month* and only in 2006 started to use *The Official Guide to...* in relation to other publications. Ms Campbell claims that when Sugar "first did their IWM magazine they called it Sugar Media's Guide to.... International Women's Month".

8) Ms Campbell claims that Mr Daly's only contribution to her trade mark was to move the word month under the n of women, under instruction from her, and to change the font of the title to the one she wanted but to which she did not have immediate access because she uses a PC rather than an Apple Mac.

9) Ms Campbell and Mr McBray have furnished evidence for Ms Campbell; Mr McBray is acting as Ms Campbell's trade mark representative. The statement of Mr McBray contains no evidence of fact; what has been filed as evidence is in fact submission. I take on board the submissions made by Mr McBray in his statement. Ian Thomas and Isabel Appio, founders of Sugar, have furnished evidence for Sugar; although there is only one signature on the witness statement that has been furnished. (The witness statement is not in the most conventional form but there has been no challenge to it being taken into consideration.)

10) Mr Thomas and Ms Appio agree that Sugar and Barb Wire compete in the same areas. They state that Barb Wire publishes *Black Heritage Today* magazine and that Sugar has published *BHM The Official Guide to Black History Month* since 2002, prior to that, the publication was published from 1999 by Soho Publishing Ltd. Mr Thomas and Ms Appio state that *The Official Guide...* has a long history with Sugar in relation to its publication titles and was not used in Ms Campbell's publications prior to their joint venture; when the name was suggested by Sugar to match its other publications. Copies of *BHM The Official Guide to Black History Month* for October 2004, 2005 and 2006 have been supplied. A copy of the cover of *BHM The Official Guide to Black History Month* for October 2003 has also been supplied. In all of these publications Sugar is identified as the publisher.

11) A screen shot from Barb Wire's website, taken on 23 May 2007, is exhibited. This shows *International Women's Month Magazine*; 'Women's' is the dominant element of the title, it is written in highly cursive script. 'International' appears in block capitals over 'en's' and 'month magazine' appears in block capitals under 'en's'. Pictures of covers for *International Women's Month Magazine* for 2005 and *International Women's Month* magazine are exhibited. In both cases 'women's' is the dominant element and is

written in cursive script. In the 2005 magazine 'international' appears in block capitals over 'en's' and 'month magazine' appears in block capitals under 'en's'. In the 2004 publication 'international' appears in block capitals over 'men's' and 'month' appears below 'n's'. Mr Thomas and Ms Appio exhibit proposals for a logo that Ms Campbell presented to Mr Daly in 2006. Mr Daly is a full time staff member of Sugar. Also exhibited are what Mr Thomas and Ms Appio describe as proposals for the logo as developed by Mr Daly. The trade mark is one of the proposals of Mr Daly. Mr Thomas and Ms Appio "dispute strongly the statement from Barbara Campbell that "John Paul's only contribution to the look of Barbara's IWM logo was to move the word MONTH under the N of Women" and that this was done under instruction from Barbara Campbell". They state that the logo was not solely the result of the creative or historical input of Ms Campbell but far more a combination of Sugar's application of its *Official Guide*... publication names used for years in advance of the joint project and Mr Daly's creative input into the joint title's logo. Ms Campbell in her evidence states that she designed the layout and positioning of the words of the trade mark and decided upon the prominence to be accorded to the word 'women's'. She states that the contribution of Sugar was to letting her choose a particular font from those available on its Apple Mac computer and to re-positioning the word 'month' from under the letter 's' of the word women's to under the letter 'n'.

12) A copy of *Sugar Media's Guide to International Women's Month* for March 2005 is exhibited. Also exhibited is a copy of *The Official Guide to International Women's Month* for March – April 2006. The publication is a joint venture between Barb Wire and Sugar. Ms Campbell is identified as the editor, Jon-Paul (sic) Daly is credited as being the designer of the magazine.

13) Ms Campbell is the editor and publisher of *Live Listings Magazine* and *Black Heritage Today*. She also states that she is the editor and publisher of *The Official Guide to International Women's Month*. In 2002 she created a new supplement to be inserted in the March April issue of *Live Listings Magazine*, she chose the name *International Women's Month* for the supplement. Ms Campbell states that the *International Women's Month* section appeared in subsequent issues of *Live Listings Magazine*. It is not clear if the supplement was included in every issue of *Live Listings Magazine* or whether it only appeared annually; as might be inferred from the title of the magazine and taking into account the rest of Ms Campbell's evidence, the latter seems the more probable. In 2004 Ms Campbell took *International Women's Month* out of *Live Listings Magazine* and published it as a stand-alone magazine. A copy of the cover of the inaugural issue of March/April 2004 is exhibited. This shows 'women's' in cursive script, 'international' in block capitals over 'men's' and month in title case under 'n's'. Ms Campbell states that on 4 March 2005 the second issue of *International Women's Month Magazine* was launched; no copy of the cover of this magazine has been exhibited. Ms Campbell states that prior to the launch an advertiser contacted her to state that Sugar was asking it to advertise in "the first and only International Women's Month magazine" which was being produced by Sugar. Ms Campbell states that she decided to distinguish her publication to that of Sugar by changing the title to *The Official Guide to International Women's Month*. Ms Campbell spoke to several designers about creating a new trade

mark for the magazine title and eventually engaged Chiduve Ameke who in January 2006 designed several versions of the full title as well as designs for the acronym version of IWM.

14) Ms Campbell states that at about the same time she received a telephone call from Sugar proposing a “truce”. Ms Campbell considered that this was a sensible idea. She states that Sugar also indicated that it wished to buy into Barb Wire, in order to corner the mark where Black History Month was concerned. During the time that it took to draw up a contract between the parties Ms Campbell states that she continued to work on *The Official Guide to International Women’s Month*. Ms Campbell states that in late January 2006 Ms Appio contacted her to suggest that *The Official Guide to International Women’s Month* be included in the co-operation proposal. Ms Campbell states that she told Ms Appio that she would only agree to the proposal if the name *The Official Guide to International Women’s Month* was used for the joint publication. Ms Campbell states that her agreement was dependent on it being made absolutely clear that whilst a joint enterprise was being considered *The Official Guide to International Women’s Month* was her magazine and she would continue in her rôle as editor. Ms Campbell states that Sugar agreed to this as its primary interest in the joint venture was to make money and it would concentrate on the advertising perspective. (In the copy of the magazine exhibited the names of Mr Thomas and Ms Appio appear under the heading ‘advertising’.) Ms Campbell states that it was agreed that she would be responsible for the majority of the content, the only exceptions being sections which Sugar had committed to cover on the basis that they included contributions from potential advertisers. Ms Campbell states that she was required to reduce some of her content to accommodate Sugar, which she used on her website. Ms Campbell states that the draft contract included a clause that indicated that the co-operation between the parties was to be a trial. If the trial was successful, the two parties would “go public” and confirm that they had participated in the 2006 production of *The Official Guide to International Women’s Month* and were in partners in respect of their main titles. The draft contract has not been exhibited, by either side, and there is no indication that it was signed and became an actual contract. The fact that *The Official Guide to International Women’s Month* was a joint undertaking was hardly a secret as inside the magazine it is stated that it is a joint venture between Barb Wire and Sugar. Ms Campbell states that the identification of Sugar in the magazine was done without either her knowledge or consent.

15) Ms Campbell states that she began working on the design of *The Official Guide to International Women’s Month* in early February 2006. She was not satisfied with the designs of Mr Ameke for the new logo and decided to work on some designs herself. Ms Campbell states that it was agreed that Sugar’s designer, Mr Daly, would become involved in working on *The Official Guide to International Women’s Month*. Ms Campbell states that she told Mr Daly that she was still working on the final design of the logo for the magazine title. She states that Mr Daly told her that he had done some design work in relation to this; Ms Campbell states that she was not happy with the designs that he had prepared.

16) Ms Campbell states that on 20 February 2006 she made a copy of her final designs for *The Official Guide to International Women's Month* as a Quark document; these included versions in different formats: Book Antiqua/Ariel (sic), Garamond/Lucinda (sic) sans, Garamond/Ariel (sic). Ms Campbell exhibits a copy of the designs printed from the Quark document that she states that she gave to Mr Daly on disc. This evidence is in direct conflict to that of Mr Thomas and Ms Appio. The designs that they state that Ms Campbell brought are very different to those exhibited by Ms Campbell. The designs exhibited by Ms Campbell are very much closer to the final design chosen and one of the designs which originated from Mr Daly, according to Mr Thomas and Ms Appio. Ms Campbell states that she asked Mr Daly to show her the fonts that were available on Sugar's Apple Mac computer, as she was not entirely happy with the fonts on her own computer. Ms Campbell states that as Mr Daly scrolled through the various fonts she saw the one for which she had been searching. Ms Campbell states that she asked Mr Daly to change the font of her design to that which she had identified on the Apple Mac computer. Ms Campbell states that, therefore, Mr Daly's contribution was to change the font from her choice of Garamond to the new font and he also suggested that the word 'month' be moved from beneath the letter 's' to beneath the letter 'n' of 'women's'. Ms Campbell states that on 21 February 2006 she sent the final design of the logo to her webmaster and asked him to put the word 'magazine' besides the word 'month'.

17) Both sides refer to a dispute about payment of costs for the production of the magazine in 2006. I cannot see that this has a bearing upon the issues before me. Ms Campbell makes further references to the contract between the parties. This contract has not been brought into the proceedings and so I cannot make any decision to reflect what might be its terms and the effects of those terms.

**Breach of copyright – section 5(4)(b) of the Act**

18) Section 5(4)(b) of the Act states:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) -----

(b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

Sugar is relying upon the law of copyright.

19) It is necessary to decide whether copyright exists in the trade mark. The law of copyright in the United Kingdom is governed by the Copyright, Designs and Patents Act

1988 (CDPA). Works in which copyright can subsist are defined by section 1(1) of the CDPA:

“(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work –

- (a) original literary, dramatic, musical or artistic works,
- (b) sound recordings, films [or broadcasts], and
- (c) the typographical arrangement of published editions.

(2) In this Part "copyright work" means a work of any of those descriptions in which copyright subsists.

(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 153 and the provisions referred to there).”

20) The only potential categories within which the trade mark could fall are those of original literary or artistic works. It seems to me the trade mark cannot be considered to be a literary work as its creation does not imply sufficient literary skill or labour<sup>i</sup>. As with the title of a book, the protection of the words themselves lies in the law of passing-off<sup>ii</sup>. It does not seem to me, anyway, that the parties in this case are arguing that copyright lies in the words themselves but in the form in which they are presented, so effectively one is potentially looking at an artistic work. Does the trade mark qualify as an artistic work?

21) Section 4 of the CDPA defines the nature of an artistic work:

“(1) In this Part "artistic work" means –

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or
- (c) a work of artistic craftsmanship.

(2) In this Part –

"building" includes any fixed structure, and a part of a building or fixed structure;

"graphic work" includes –

- (a) any painting, drawing, diagram, map, chart or plan, and
- (b) any engraving, etching, lithograph, woodcut or similar work;

"photograph" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

"sculpture" includes a cast or model made for purposes of sculpture.”

The definition of graphic work is not exhaustive, “it includes” the types of work listed.

22) An artistic work must be original, however, under United Kingdom law the standard of originality is low. Originality of thought is not required to sustain a claim to copyright.

“Under copyright ideas are not protected, only the skill and labour needed to give any given idea some particular material form, for it is the form in which the work is presented that is protected by copyright. That need only be original in the sense that it is all the author's own work.<sup>iii</sup>”

In *Bookmakers' Afternoon Greyhound Services Ltd and Others v Wilf Gilbert (Staffs) Limited and Others* [1994] FSR 723, Aldous J stated:

“It is settled law that the word "original" does not require original or inventive thought, but only that the work should not be copied and should originate from the author, *Ladbroke (Football) Ltd v. William Hill (Football) Ltd* [1964] 1 W.L.R. 273 at 291.

It is also settled law that to acquire copyright the author must have expended a sufficient amount of labour, judgment, literary skill or other such quality. What will be sufficient in any particular case is a question of degree and will depend upon the work produced and all the circumstances of the case.”

23) My first reaction to the trade mark was that it did not appear to satisfy the low requirement under United Kingdom law to qualify as an artistic work. However, this view was taken without the aid of a context to consider the trade mark. That context has been supplied by the various potential ways of presenting the words that have been shown in the evidence. In considering these it becomes clear that in deciding upon the configuration and type face of the words that form the trade mark that labour and judgment were involved. I have come to the conclusion, therefore, that the trade mark is a work that could be protected by copyright.

24) There is a dispute in relation to the genesis and creation of the trade mark, however, there is no dispute that the trade mark was first fixed in the United Kingdom and that the copyright has not expired; it is not more than seventy years old. So the trade mark satisfies the final requirements to be able to be protected by the law of copyright.

25) This leaves the dispute as to who is the author. The evidence is clearly in conflict in relation to this matter. If the evidence of Sugar is correct in relation to what was brought to Mr Daly and how he transformed it, then the author would not be Ms Campbell. If Ms Campbell's version of events is correct than what Mr Daly brought to the creation of the trade mark is so trivial that she must be considered to be the author of the work.

26) The parties have not requested a hearing and so there has been no cross-examination to test the evidence of Ms Campbell. Ms Campbell's statement was before Sugar and it had the opportunity to file evidence in reply. Taking into account the nature of Ms Campbell's evidence it seems to me that the logical course for Sugar to have followed

would have been to file evidence from Mr Daly, who rather surprisingly has not given evidence. Taking into account that Sugar had the opportunity to counter Ms Campbell's evidence and to adduce the direct testimony of Mr Daly, I have decided that I should accept the evidence of Ms Campbell, and so she is the author of the work and the owner of the copyright. (On the basis of the evidence before me there is nothing upon which I could base a conclusion that although she is the author of the work she might not be the owner of the copyright in law and/or equity.) I do this with misgivings as there are far more similarities in the trade mark to the get-up of the title to *Sugar Media's Guide to International Women's Month*, which had nothing to do with Ms Campbell, than there are to the get-up of the title to *International Women's Month*, Ms Campbell's earlier magazine. In making this decision I am between Scylla and Charybdis but the decision making process means that I have to choose to which one I steer the closer. (Even if I had not decided that the copyright is owned by Ms Campbell, Sugar has not established that it is owned by it and/or Mr Daly in law and/or equity and so to all intents and purposes there would be the same effect in relation to the grounds of invalidation under section 5(4)(b) of the Act.) **The grounds of invalidation under section 5(4)(b) of the Act must be dismissed.**

#### **Bad faith –section 3(6) of the Act**

27) Section 3(6) of the Act states that “a trade mark shall not be registered if or to the extent that the application was made in bad faith”.

28) Bad faith includes dishonesty and “some dealings which fall short of the standard of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examined<sup>iv</sup>”. Certain behaviour might have become prevalent but this does not mean that it can be deemed to be acceptable<sup>v</sup>. It is necessary to apply what is referred to as the “combined test”. This requires me to decide what Ms Campbell knew at the time of making the application and then, in the light of that knowledge, whether the behaviour fell short of acceptable commercial behaviour<sup>vi</sup>. Bad faith impugns the character of an individual or collective character of a business, as such it is a serious allegation<sup>vii</sup>. The more serious the allegation the more cogent must be the evidence to support it<sup>viii</sup>. However, the matter still has to be decided upon the balance of probabilities.

29) My decision that Ms Campbell owns the copyright in the trade mark does not mean that she owns the trade mark or had a right to apply for it<sup>ix</sup>. However, saying that, the matter becomes somewhat more complicated. The trade mark as registered does not reflect the application as made. Ms Campbell included a letter of explanation with the application form; the contents of the letter are as follows:

“I would like the illustration shown on question 2 of the application form to be trademarked. I would like to make clear in this application that I want the logo, the look and the design to be trademarked as opposed to the name.

I hope my intention has been made clear, if they haven't then please to hesitate to contact me on the numbers listed on the application form."

The contents of this letter appear to have been overlooked in the examination process. Effectively Ms Campbell, who at the time did not have professional representation, was submitting a limitation to her rights as per section 13 of the Act<sup>x</sup> and an appropriately worded limitation should have been entered upon the register. (This oversight might give rise to issues re the registrability of the trade mark as per section 3 of the Act, however, this is not a matter before me. This is an inter partes matter and my rôle is limited to the examination of the facts, evidence and arguments provided by the parties and to the relief sought<sup>xi</sup>.)

30) *The Official Guide to International Women's Month* was a joint venture between Sugar and Barb Wire. (Ms Campbell refers to an agreement between the parties. At one stage she refers to it as a draft agreement, it is not clear if there was a signed agreement; the clear fact is that no agreement has been exhibited and so no light can be thrown on the conduct of the parties in relation to the agreement.) As the publication was a joint undertaking, for one party to apply for the trade mark without the permission of the other, and in fact without telling the other party, normally would have been, in my view, an action which fell short of the standard of acceptable commercial behaviour observed by reasonable and experienced men and women in the virtually any field of business. However, Ms Campbell's application effectively was not for the trade mark but for the copyright in the work that she considered she owned. Of course, owning the trade mark would not mean that she automatically owned the copyright, as mentioned above. If the contents of Ms Campbell's letter had been actioned Sugar could have continued to use the title *The Official Guide to International Women's Month* without infringing the trade mark, as long as they do not use the same or a similar get-up (as per sections 9 and 13 of the Act.) As I have decided, on the basis of the evidence before me, that Ms Campbell, is the owner of the copyright in the work that is the subject of the trade mark and as her application was strictly limited to this, I do not consider that her application for the trade mark was behaviour that which falls short of acceptable commercial behaviour. If Ms Campbell's application had not included the restriction of her rights my view of the situation would have been very different.

**31) Consequent upon the above I find that the application was not made in bad faith and the grounds of invalidation under section 3(6) of the Act are dismissed.**

32) There have been noticeable lacunae in the evidence in this case. Sugar has not had professional representation and this may well have had an effect upon the evidence that it presented and how the case was conducted eg the absence of a hearing and cross-examination. However, I can only decide the matters upon the basis of the evidence before me. I can only consider the case on the way it has been conducted by the parties.

## Costs

33) Ms Campbell having been successful is entitled to a contribution towards her costs. I award costs on the following basis:

Consideration of application	£200
Statement of case in reply	£300
Preparing and filing of evidence	£300
Considering evidence of applicant	£150
Total	£950

I order Sugar Media Ltd to pay Barbara M Campbell the sum of £950. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful

**Dated this 5<sup>th</sup> day of February 2008**

**David Landau**  
**For the Registrar**  
**the Comptroller-General**

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<sup>i</sup> See *Francis Day & Hunter Ltd v Twentieth Century Fox Corp* [1940] AC 112 PC.

<sup>ii</sup> See *Allen & Co v Brown Watson Ltd* [1965] RPC 191.

<sup>iii</sup> *L B (Plastics) Limited v Swish Products Limited* [1979] RPC 551 at 567.

<sup>iv</sup> *Gromax Plasticulture Limited v. Don and Low Nonwovens Ltd* [1999] RPC 367.

<sup>v</sup> *Harrison v Teton Valley Trading Co* [2005] FSR 10.

<sup>vi</sup> (1) *Barlow Clowes International Ltd. (in liquidation)* (2) *Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* Privy Council Appeal No. 38 of 2004 and *Ajit Weekly Trade Mark* [20006] RPC 25.

<sup>vii</sup> See *Royal Enfield Trade Marks* [2002] RPC 24.

<sup>viii</sup> *Re H (minors)* [1996] AC 563.

<sup>ix</sup> This issue was explained by Mr Peter Prescott QC, sitting as a deputy judge of the High Court, in *R Griggs Group and Others v Ross Evans and Others* [2004] FSR 31:

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“26 As I have said, it is possible for the *trade mark* rights in a logo and the *copyright* in that same logo to belong to different people. Here is a simple example, and I shall take the liberty of using the name of Barclays Bank, with apologies to that reputable organisation. An artist writes in to Barclays Bank saying: "I have designed a new logo for your business (specimen enclosed). I believe it is a more attractive way of presenting your bank's name. Are you interested in using it? If so, I will sell you the copyright for £10,000". The bank politely declines. The artist continues to own the copyright in his new version of the Barclays logo. The bank continues to own the trade mark rights in *all* versions of "Barclays"--even in the artist's version of the logo.

27 In case it is not obvious why, here is the explanation. If the bank started to use the artist's version of the logo after all, without his permission, they would be taking advantage of his skill and labour in coming up with his original design. Copyright law prohibits this. But if the artist were to sell his logo to a rival bank and that bank started to use this logo in connection with its business, that would be a misuse of the business goodwill associated with the word "Barclays". Trade marks law prohibits this.

28 Put another way, neither copyright nor a trade mark right are a right to *do* anything. They are a right to stop other people from doing something. The rights are purely negative. This explains why, in the above example, neither the artist nor the bank is allowed to use the artist's logo in connection with a banking business.”

<sup>x</sup> “13. - (1) An applicant for registration of a trade mark, or the proprietor of a registered trade mark, may -  
(a) disclaim any right to the exclusive use of any specified element of the trade mark, or  
(b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation;  
and where the registration of a trade mark is subject to a disclaimer or limitation, the rights conferred by section 9 (rights conferred by registered trade mark) are restricted accordingly.  
(2) Provision shall be made by rules as to the publication and entry in the register of a disclaimer or limitation.”

<sup>xi</sup> *Iudex judicare debet secundum allegata et probata partibus.*