

**O/0711/24**

**TRADE MARKS ACT 1994**

**TRADE MARK APPLICATIONS 3800900, 3824086 & 3824089**

**BY JOHN BINGHAM**

**AND**

**OPPOSITIONS 436896, 437979 & 438172**

**BY RICHARD MCALISTER AND STEVEN MCSEVENY ON BEHALF OF THE  
BLUE ANGELS MOTORCYCLE CLUB**

**AND**

**TRADE MARK APPLICATIONS 3831596, 3831580 & 3831602**

**BY RICHARD MCALISTER AND STEVEN MCSEVENY ON BEHALF OF THE  
BLUE ANGELS MOTORCYCLE CLUB**



**AND**

**OPPOSITIONS 439718, 439719 & 440654**

**BY JOHN BINGHAM**

## BACKGROUND AND PLEADINGS

1. John Bingham applied to register the trade marks shown below.

Trade Mark No.	Trade Mark	Classes of goods & services	Filing date
3800900	<b>blue angels motorcycle club</b> <b>blue angels mc</b>	6,9,14,16,17,20,22,24,25, 26,35,36,37,41,43 & 45	20/06/22
3824086		26	26/08/22
3824089		41	26/08/22

2. The '900 application covers a very wide range of goods/services, including badges, stickers, clothing, organisation of entertainment events, the services of a private members club, and licensing of intellectual property rights. The full list of goods/services is at Annex A below. The goods covered by '086 application are patches of the kind that may be used as badges. The full list of goods is at Annex B below. The '089 application covers the services of a *private members club*.

3. These applications are opposed by Richard McAlister ("RA") and Steven McSeveney ("SM") in their capacity as President and Vice-President, respectively, of Blue Angels Motorcycle Club ("BAMC"), which they say is an unincorporated association comprised of motor cyclists.

4. RA/SM claim (1) they hold the intellectual property of the BAMC on trust for its membership of around 300, (2) the club was established in Glasgow in 1963, (3) it was inspired by the 'Hells Angels' movement in the United States of America, and (4) has since expanded with additional chapters in Edinburgh, Aberdeen, West Coast of Scotland, South East of Scotland, Fife, Perthshire and Borders, Leeds (two), Kirklees, York, Cumbria, as well as chapters in Belgium and Spain.

5. According to RA/SM, members of the BAMC wear distinctive clothing bearing the names 'Blue Angels Motorcycle Club' and/or 'Blue Angels MC' and only members of the BAMC are allowed to use these names to distinguish their membership. They claim the BAMC has acquired valuable goodwill in these signs.

6. The list of goods/services said to be provided by the BAMC to its members is shown at Annex C below. It includes badges, stickers, protective clothing, motorcycle maintenance and repair, organising rallies, and the services of a private members club.

7. According to RA/SM, use of the '900 marks by Mr Bingham would amount to a misrepresentation that the user is a member of the BAMC. It is said that this would take unfair advantage of, and damage, the established goodwill and constitute passing off. Consequently, RA/SM claim that registration of the contested marks would be contrary to section 5(4)(a) of the Trade Marks Act 1994 ("the Act"), which is as follows:

*"(4) A trademark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented—*

*(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,*

*(aa) –*

*(b) by virtue of an earlier right other than those referred to in subsections(1) to (3) or paragraph (a) or (aa) above, in particular by virtue of the law of copyright, or the law relating to industrial property rights.*

*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.”*

*(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.*

8. RA/SM further claim that Mr Bingham applied to register the trade marks in bad faith. They say that Mr Bingham is well aware of the BAMC. Although he is not a member, he attended a motorcycle show in Scotland prior to filing his application at which the motorcycle club was present and had a discussion with Mr McAlister about membership of the BAMC.

9. RA/SM also rely on the fact that Mr Bingham applied to register, not just the name of the BAMC, but also the '086 mark and '089 marks, which they say are artworks associated with the motorcycle club. Consequently, they say that registration of the contested mark would be contrary to section 3(6) of the Act, which requires the refusal of applications made in bad faith.

10. RA/SM further claim that the winged helmet and skull device in the '086 mark was created by John McDermott, a Scottish citizen, in Scotland in 1963. They say the first publication of the work was also in Scotland in 1963 when Mr McDermott's mother stitched the patch shown below on the back of a motorcycle jacket.



11. Leonard Reynolds (also a Scottish citizen) later added to the work (again in Scotland) in 1964. Messrs McDermott and Reynolds were members of the BAMC. According to RA/SM, they created the work for use by its members. RA/SM claim the winged helmet and skull device has subsequently been used in the following signs, which are badges used by members of the BAMC to identify themselves as such.



12. Therefore, for the same reasons given in relation to the '900 mark, registration of the '086 mark would also be contrary to sections 3(6) and 5(4)(a) of the Act.

13. Additionally, RA/SM claims that Mr McDermott and Mr Reynolds have assigned their copyright in the original work to them as trustees of the BAMC's intellectual property. They claim that in applying to register the '086 mark, Mr Bingham has copied the work contrary to the Copyright, Designs and Patents Act 1988. Therefore, registration of the '086 mark would also be contrary to section 5(4)(b) of the Act.

14. RA/SM further say that:

*"In November 2011, a BAMC support club by the name of "Scottish Street Fighters", based in Edinburgh changed its name to "Tribe 21" and adopted the logo of a helmeted skull inside a wreath as shown [below]. This logo is familiarly*

*known as the 'Sammy Skull' by members of the BAMC. Tribe 21 subsequently changed their name to "Tribe" and are still a member of BAMC. The Tribe formed a chapter in Aberdeen and other towns and cities throughout the UK, so that there are now twelve chapters of Tribe.*

*Members of the Tribe chapter of BAMC wear distinctive clothing bearing the "Sammy Skull" logo, and only members of the Tribe chapter of BAMC are allowed to use the logo to distinguish their membership of the club. Badges bearing the logo are awarded to members of the Tribe as and when they are accepted into the BAMC by a vote of the members. The BAMC, through its elected officials (RA/SM), decides who may become a member and be entitled to use the names and logos of the club to show their membership thereof."*



15. Therefore, for the same reasons given in relation to the '900 mark, registration of the '089 mark would be contrary to sections 3(6) and 5(4)(a) of the Act.

16. According to RA/SM, the work embodied in the '089 mark (known as the 'Sammy Skull') was created by Mr Nicholas Cummings, a Scottish citizen in October 2011 in Scotland. Mr Cummings was a member of Tribe 21 at the time and created the work for use by its members. The work was first published in November 2011, when members of Tribe 21 sewed badges bearing the work to their jackets in Edinburgh.

17. RA/SM claim that Mr Cummings has assigned his copyright in the original work to them as trustees of the BAMC's intellectual property. They claim that in applying to register the '089 mark, Mr Bingham has copied the work contrary to the Copyright, Designs and Patents Act 1988. Therefore, registration of the '089 mark would also be contrary to section 5(4)(b) of the Act.

18. Mr Bingham filed counterstatements denying the grounds of opposition and putting RA/SM to proof of their claims. I note the following:

(i) He denied the BAMC has any constitution, bank account, or structure, and claimed its purported members are merely motorbike enthusiasts sharing a common interest (namely, motorbikes), but operating as individuals. Thus he denied that the alleged club exists in law.

(ii) He denied that the alleged club has used the signs relied on by RA/SM and put them to proof of such;

(iii) He denied the alleged club was engaged in any business and, therefore, disputed that it had any protectable goodwill.

(iv) He contended that RA/SM's claim that the 'Sammy Skull' logo is only used by members of Tribe is at odds with their claim that it distinguishes members of BAMC generally.

(v) He admitted to having met Mr McAlister, but put RA/SM to proof that this meant he was aware of BAMC.

(vi) He claimed to have carried out trade mark searches to ensure the '900, '089 and '086 marks were not registered before applying for registration. He denied having filed the applications in bad faith.

(vii) He claimed to have independently created the logo which is the subject of the winged helmet and skull device in the '086 mark in 2000 or 2001 without any knowledge of Mr McDermott and Mr Reynolds' alleged work.

(viii) He denied there was a valid deed of assignation transferring the copyright in the winged helmet and skull device from Mr McDermott and Mr Reynolds to RA/SM, and put them to proof of the same.

(ix) He denied that the winged helmet and skull device was a substantial part of the '086 mark.

(x) He claimed to have created the work embodied in the '089 mark in 2005, six years before Mr Cummings claims to have created it.

(xi) He denied there was a valid deed of assignation transferring the copyright in the 'Sammy Skull' device from Mr Cummings to RA/SM and put them to proof of the same.

19. On 21<sup>st</sup> September 2022, in their capacity as President and Vice-President of the BAMC, RA/SM applied under numbers 3831596, 3831580 and 3831602 to register the following marks:

'596 application (series of two)

**BLUE ANGELS MOTORCYCLE CLUB**

**BLUE ANGELS MC**

'580 application



'602 application



20. The list of goods/services is the same for each application. It is set out at Annex D below.

21. Mr Bingham opposed the applications. He relies on the '900, '086 and '089 marks as earlier trade marks within the meaning of section 6(1) of the Act. He claims the respective marks and goods/services (or, in the case of the '580 and '602 marks, some of them<sup>1</sup>) are the same or similar, and there is a likelihood of confusion under section 5(1) or (2) of the Act, which are as follows:

*“(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.*

*(2) A trade mark shall not be registered if because—*

*(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or*

*(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”*

22. As regards the '580 application (the winged helmet and skull device), Mr Bingham claims that he:

*“... a British citizen resident in Scotland, created the winged skull logo at least as early as 2005.”*

And

*“The winged skull logo is an original work protected by the Copyright, Designs and Patents Act 1988. [RA/SM] have copied this original work in its entirety and thus [their] mark is an infringement of the copyright in the work.”*

23. Mr Bingham makes the same claim in relation to the '602 application claiming copyright in the 'Sammy Skull' device.

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<sup>1</sup> See Annexes E and F

24. Therefore, he claims that registration of the '580 and '602 marks would be contrary to section 5(4)(b) of the Act.

25. As regards the '596 application, Mr Bingham claims it was filed in bad faith because:

*“The filing of Application No.UK00003831596 constitutes an attempt by [RA/SM] to interfere with [his] earlier trade mark application, thus diverting custom from [him].”*

26. As regards the '580 and '602 marks, Mr Bingham claims that:

*“The filing of [these applications] constitutes bad faith by [RA/SM] as it is an attempt by them to secure registered rights in [his] trade mark.*

*This action by [them] is an attempt to appropriate [his works] illegally for [their] use in relation to the various goods and services listed in [the applications], while knowing that the [works do] not belong to them.”*

27. Accordingly, Mr Bingham asks for RA/SM's applications to be refused under section 3(6) of the Act.

28. RA/SM filed counterstatements denying Mr Bingham's grounds of opposition.

29. The proceedings were consolidated.

## **REPRESENTATION**

30. RA/SM are represented by Murgitroyd & Company. Mr Bingham is represented by Douglas C Thomson, Trade Marks and Brands Ltd. Neither side asked to be heard. Consequently, this decision is based on the papers on file and, of course, the law.

## **THE EVIDENCE**

31. RA/SM's evidence consists of:

1. Witness Statement of Steven McSeveney dated 30<sup>th</sup> July 2023 with exhibits SM1 – SM19

2. Two Witness Statement by Hugh Christian Finn with exhibits HCF1 – HCF2
3. Witness Statement of Leonard Reynolds dated 2<sup>nd</sup> July 2023
4. Witness Statement of Nicholas Cummings dated 2<sup>nd</sup> July 2023
5. Further Witness Statement of Leonard Reynolds dated 30<sup>th</sup> November 2023
6. Witness Statement of Nicholas Cummings dated 30<sup>th</sup> November 2023
7. Witness Statement of David Grier dated 30<sup>th</sup> October 2023 - South East Scotland Chapter
8. Further Witness Statement of David Grier dated 30<sup>th</sup> November 2023
9. Witness Statement of Samuel McCully – South East Scotland Chapter
10. Witness Statement of Oliver Jackson - Cumbria Chapter
11. Witness Statement of Paul Brogden - Cumbria Chapter
12. Witness Statement of Graeme Ledward – Borders Chapter
13. Witness Statement of Gregg Cliff - Fife Chapter
14. Witness Statement of John Cant - Fife Chapter
15. Witness Statement of Paul Coe – Edinburgh Chapter
16. Witness Statement of Shaun Smith - Edinburgh Chapter
17. Witness Statement of Richard McAlister - Glasgow Chapter
18. Witness Statement of James Milligan – East Coast Scotland Chapter
19. Witness Statement of Kevin Finlay – East Coast Scotland Chapter
20. Witness Statement of John Cooper - Perthshire Chapter
21. Witness Statement of Mark Anderson - Perthshire Chapter
22. Witness Statement of Brian Middleton – Kirklees Chapter
23. Witness Statement of Mick Hammill - Kirklees Chapter
24. Witness Statement of Ian Lewis – Leeds Chapter
25. Witness Statement of Steve Clayton - Leeds Chapter
26. Further Witness Statement of Steven McSeveney dated 6<sup>th</sup> November 2023
27. Witness Statement of James Hossell – City of Leeds Chapter
28. Witness Statement of Neil Byrne – City of Leeds Chapter
29. Witness Statement of Micheal Tyson – West Coast of Scotland Chapter
30. Witness Statement of Alex Wason - West Coast of Scotland Chapter
31. Letter of support by Evelyn Milligan
32. Letter of support by Jennifer Campbell

32. The purpose of Mr McSeveney's evidence is to support the facts about the BAMC set out in RA/SM's grounds of opposition/counterstatements, and to challenge some of Mr Bingham's evidence (below). He also provides evidence about an altercation between Mr Bingham and some members of BAMC at the Erskine Motorcycle Meet in May 2022. This evidence goes to the RA/SM's allegation that Mr Bingham's applications were filed in bad faith.

33. Mr Finn is a Chartered Trade Mark Attorney with Murgitroyd & Company. He provides the results of image searches conducted via Google in December 2023 (i.e. well after any relevant dates), which show members of the BAMC, The Tribe, as well as pictures of some of the artwork in dispute in these proceedings.

34. Mr Reynolds gives evidence about the creation of the work called the winged Helmet and skull in 1963 and its subsequent assignation to RA/SM. Mr Cummings is a member of Tribe. He gives evidence about the creation of the work called the 'Sammy Skull' in 2011 and its subsequent assignation to RA/SM. They both give evidence contesting some of Mr Bingham's evidence (below).

36. The other witnesses are Presidents and Vice-Presidents of the various chapters of BAMC. They give similar evidence about their chapters, the relationship between them and the club as a whole, and how they were elected by the members of their chapter.

37. Mr Milligan is a director of Lochbarr Services Ltd. He provided a 'to-whom-it-may-concern' letter dated 3<sup>rd</sup> December 2023 in which he states that the Glasgow chapter of the BAMC has been using his company's premises since 2015, attending rallies, auto jumbles and other events to sell merchandise (he does not say of what kind).

38. Jennifer Campbell is the Events Manager for Erskine Veterans Charity. She provided a similar letter to that of Mr Milligan. She confirms that the Glasgow Chapter of the BAMC has attended the Erskine Motor Meet for many years to talk to visitors and sell merchandise (she does not say of what kind).

39. Mr Bingham's evidence consists of:

1. Witness Statement by himself dated 5<sup>th</sup> October 2023 with exhibits JB1 – JB2;
2. Witness Statement by Bryon Samuel Martin;
3. Witness Statement by David Collins;
4. Witness Statement of Kevin Sinclair.

40. The purpose of Mr Bingham's evidence is to explain the reasons he applied to register the '900, 086 and '089 marks, and established a company called Blue Angels Motorcycle Club Limited in 2022. This was after "*discussions over several years with various people who share my interest in motorbikes, but who are dismayed by the "gang" culture and violence that are often associated with them.*"

41. Mr Bingham also gives evidence that he (and not Mr Cummings) created the 'Sammy Skull' logo in 2005 with the assistance of Allan Morrison (since deceased) and Byron 'Sammy' Martin.

42. Mr Martin gives evidence supporting Mr Bingham's evidence on this matter.

43. Mr Collins gives evidence that he is "*one of the organisers*" of an informal motorcycle club in Scotland, with a following in and around the Borders, which uses the name Blue Angels. However, he denies his club is a chapter of any other club.

44. Mr Sinclair gives similar evidence about a Blue Angels club operating in and around Aberdeenshire.

## **THE DISPUTED FACTS**

### **Does the BAMC exist?**

45. There is ample evidence that an association, or associations, in the nature of a motorcycle club(s) have been known by this name since 1963.

**Is BAMC an association with ‘chapters’ or are the so-called ‘chapters’ separate associations who simply share the same name?**

46. Mr McSeveney’s evidence is that:

*“The BAMC is an international outlaw (“one percenter”) motorcycle club which was founded in Maryhill, Glasgow on 15 January 1963 by Allan Morrison and Billy ‘Stone’ Gordon. The BAMC is the oldest outlaw motorcycle club in Europe and will be celebrating its sixtieth anniversary this year. Since its inception, the BAMC has used the names ‘Blue Angels’, ‘Blue Angels Motorcycle Club’ and ‘Blue Angels MC’... firstly in Scotland and then in the rest of the United Kingdom from the 1970s, to differentiate the club from other motorcycle clubs. The BAMC is organised into ‘chapters’, each of which have their own officers, although Glasgow is the ‘Mother Chapter’.”*

And:

*“The BAMC currently has around 300 active members.”*

47. Exhibited to Mr McSeveney’s first statement are copies of nine letters purporting to be from members of the BAMC. There is no need to go into them because what they say is largely overtaken by the numerous witness statements from the Presidents and Vice-Presidents of the BAMC chapters that were filed later. I mention them only because the authenticity of two of the letters from a ‘Kev, East Coast Chapter’ and ‘Davey, South East Chapter’ are disputed by Mr (Kevin) Collins and Mr (Davie) Sinclair. It will be recalled that they claim to be ‘organisers’ of Blue Angel clubs in Borders and Aberdeenshire, respectively. They both deny having written the letters.

48. According to Mr McSeveney:

*“The BAMC and its chapters are governed by a constitution and agreed rules, which are regularly reviewed by the officers and members. Each chapter holds an annual general meeting during which office holders are elected and new members’ applications reviewed and voted upon. Upon becoming a member of the BAMC, the member is granted their ‘colours’, being the insignia of the club*

*and its name. Now are shown to me and annexed hereto, marked 'Exhibit SM10', a bundle comprising copies of the BAMC constitution and rules.*

*Each chapter of the BAMC is allowed to own property and has its own bank account for the club funds, which are used for the members to fund motorcycle rallies, excursions, social events and to purchase merchandise with the club colours and name for the members."*

49. Exhibit SM10 comprises the constitutions of several chapters of BAMC. They are similar and provide for officers to be elected by members of the chapter. There is no copy of a constitution for the BAMC as a whole. Various financial and business documents in exhibits SM11 to 14 show that the chapters have their own bank accounts and hold property/accounts in their own names. Again, there is no similar evidence for the BAMC as a whole.

50. The evidence of Mr Finlay is typical of the evidence given by the Presidents and Vice-Presidents of the chapters of the BAMC. He says:

*"The Chapter was formed in 2019 to represent the members of the BAMC in the East Coast region. Together with the other Chapters based in other parts of the United Kingdom, the Chapter is a part of the BAMC, the overall body, and each and every member of the Chapter is thus a member of the BAMC. The allegiance of the members of the Chapter is to the BAMC as their club.*

*The structure of the BAMC into Chapters is purely for geographical administrative convenience, as the membership of the BAMC is spread throughout the United Kingdom. The members of the BAMC from every Chapter regularly meet at rallies held in either Scotland or England (and also in Belgium) at which club matters are discussed, and the heads of every Chapter meet once a year to discuss matters of mutual interest to all of the members of the BAMC and decide on future priorities.*

*The Chapter has its own bank account and a place to meet, but this is once again purely for administrative convenience. The BAMC originally started in Glasgow in 1963 and grew organically from then, so as more and more*

*members joined from different parts of the United Kingdom it was decided at the time to simply open separate chapters of the original club to service the needs of the BAMC club members, which is why the Chapter was established in 2019.”*

51. Set against this is the evidence of Mr Collins and Mr Sinclair. Mr Collins' evidence is that:

*“I am one of the organisers of an informal motorcycle club ("my Club") in Scotland, with a following in and around the Borders.*

*Like many motorcycle clubs in the UK, my Club adopted the name Blue Angels in homage to the loose association of motorcycle enthusiasts created in Glasgow in the mid-1960s. However, my Club is separate from and has no formal or business relationship to any other motorcycle club, other than a mutual interest in motorcycles. My Club is not a "branch" or "chapter" of any other motorcycle club.”*

52. Mr Sinclair gives similar evidence to which he adds:

*“I note that Mr McSeveney's Witness Statement refers to a motorcycle club called Blue Angels Motorcycle Club which, he claims, has 'chapters' in various areas in the United Kingdom. There is no such club in a formal sense, although there is a loose association of motorcycle enthusiasts primarily based in Glasgow which has called itself Blue Angles Motorcycle Club for several years.*

*I also note that Mr McSeveney styles himself as the 'vice president' and 'treasurer' of the Blue Angels Motorcycle Club. However, there is no leadership role in the loose association of motorcycle enthusiasts with which Mr McSeveney rides. He has never produced accounts or had any business records audited by an accountant. The offices that Mr McSeveney purports to hold are imaginary and empty.”*

53. I note that Mr Collins does not identify his formal role within the motorcycle club he describes in the Borders region of Scotland beyond claiming he is one of its organisers. His evidence is contradicted by the evidence of Graeme Ledward, who identifies

himself as the President of the Borders chapter of the BAMC, and says it is a part of the BAMC.

54. By contrast, there is no evidence from anyone claiming to be an officer of the Aberdeen chapter of the BAMC, unless this is what Mr Finlay and Mr Milligan describe as the East Coast Chapter.

55. The weight of the evidence establishes that:

1. The BAMC was formed in Glasgow in 1963.
2. As membership grew 'chapters' were established in other parts of Scotland and beyond.
3. The chapters elect their own officials and hold property in their own names: at least some have 'chapter' constitutions.
4. With the possible exception of Blue Angels in Aberdeen, these chapters consider themselves (as the word 'chapter' implies) to be part of a wider motorcyclists club called Blue Angels.
5. That is also how the public at large are likely to understand things.
6. The chapters co-operate around mutual activities, such as motorcycle rallies, and regard the original Glasgow chapter as the 'mother' chapter.

56. There is no probative evidence that the BAMC as a whole has an overarching constitution, holds property, or elects its own officers.

**Does the BAMC, or its chapters, trade?**

57. Mr Bingham relies on the following written submission made on behalf of RA/SM on 4<sup>th</sup> July 2023:

*"[RA/SM] have goodwill and a reputation in the Opponents' Signs by reason of long use of the signs in the United Kingdom, notwithstanding that the Opponents have not been trading with the general public. The general public*

*will, however, recognise the Opponent's Signs as designating the BAMC and its members and differentiating them from other motorcycle clubs.” (emphasis added)*

58. Mr Bingham’s representative submits this is an admission that BAMC does not trade.

59. Although there is some material suggesting that the BAMC, or its chapters, offer merchandise at public events, there is insufficient evidence to establish this as a fact, let alone the extent of any such trade.

60. On the other hand, there is evidence that the chapters hold funds used to fund motorcycle rallies, excursions, social events and to purchase merchandise with the club colours and name, for their members. It is not clear how the chapters raise funds, but they are plainly raised by the chapters and used for the benefit of their members. Therefore, although neither the BAMC nor its chapters appear to trade with the general public, the chapters do operate as associations with their own finances providing material and services to their members.

#### **Who created the winged helmet and skull device in Mr Bingham’s ‘086 mark?**

61. Mr Leonard Reynolds gives evidence that:

*“Together with another founding member of the BAMC, John McDermott (aka ‘Lead Belly’), in 1963, John and I designed a logo for the use of the BAMC, being a helmeted skull with wings (“the BAMC Logo”). The BAMC Logo was loosely inspired by similar ‘death's head’ logos used by the Hells Angels Motorcycle Club in the United States. Now is shown to me, and annexed hereto, marked Exhibit LRI, examples of the BAMC Logo as used by members of the BAMC, as well as by the BAMC itself on their webpage [ups//blueangelsglasgow.com](https://blueangelsglasgow.com).*

*The BAMC Logo was originally drawn by John McDermott at a residence in Ryedale Place, Drumchapel, Glasgow in 1963, and then, using pieces of material, John's mother (a seamstress) stitched the patch together for her son and myself. Now is shown to me, and annexed hereto marked Exhibit LR2*

*photograph showing this first ever patch with the BAMC Logo displayed on the back of my jacket, dating back to 1963.”*

62. The logos shown in exhibit LR1 correspond to the first, third and fourth pictures shown at paragraph 11 above (i.e. they do not include the second logo including the location of the Edinburgh chapter).

63. The logo shown in exhibit LR2 corresponds to the picture shown at paragraph 10 above.

64. I take Mr Reynolds' evidence to mean that the graphic work used as the basis for the decoration on his motorcycle jacket was jointly created by himself and Mr McDermott, and subsequently developed into the badges or 'colours' used by BAMC members (as per paragraph 11 above). This is supported by Mr McSeveney's evidence that in 1997 a previous President and Treasurer of the BAMC registered a series of six trade marks comprised of slightly different versions of the third logo shown in para 11 above. These trade marks have now been assigned to RA/SM.

65. I see nothing in the submissions or evidence filed on behalf of Mr Bingham which casts serious doubt on this evidence. Therefore, I accept Mr Reynolds' evidence that the drawing used as the basis of the logo shown in paragraph 10 above was created by Mr McDermott and himself in 1963. The subsequent iterations of the winged helmet and skull device were clearly derived from that original work.

66. Mr Bingham's pleadings claim the winged helmet and skull device in the '086 mark was independently created by him in 2000 or 2001 without any knowledge of Mr McDermott and Mr Reynolds' alleged work. I note that Mr Bingham gives no specific evidence about this claim in his subsequent witness statement. He simply asserts that:

*“I have neither copied, nor tried to take advantage of, any alleged right belonging to anyone else.”*

67. Saying that he did not copy anything in which anyone else claimed to have rights is not the same as saying that he created the work himself. There is no evidence that Mr Bingham independently created the winged helmet and skull device in the '086 mark.

## Who created the 'Sammy Skull' device in Mr Bingham's '089 mark?

68. Mr Cummings gives evidence that:

*"When The Scottish Street-fighters became Tribe 21, they asked me to design a logo for use by the members of the club, and I accordingly designed a logo consisting of a skull in profile, wearing a helmet, and surrounded by a wreath, which is affectionately referred to by members of Tribe and the BAMC as 'Sammy Skull'. The Sammy Skull logo is loosely based upon, and inspired by, the Skull and Winged Helmet Device which is the main distinguishing logo of the BAMC, used in the UK since 1963, and the 'Death's Head' logo used by the Hells Angels Motorcycle Club.... in the UK since the 1960s. Now is shown to me and annexed hereto, marked Exhibit NC1, a copy of the Sammy Skull logo as designed by me for Tribe 21 in November 2011."*

69. The logo he claims to have created is shown below.



70. Mr Cummings explains that:

*"The Sammy Skull logo is used by Tribe and its members to show their membership of Tribe and their loyalty and brotherhood to each other and to the members of the BAMC as a whole. The Sammy Skull logo is thus displayed primarily as club colours for Tribe members in the greater BAMC, on apparel and on the members motorcycles."*

71. According to Mr Bingham:

*“13. I created the logo which is the subject of Application No, UK00003824089 in 2005 while I was living in Annat Hill, a village near Cumbernauld, Scotland, with the assistance of Allan Morrison (a respected motor bike enthusiast, who died in 2020) and Bryon "Sammy" Martin (also a respected motorbike enthusiast), some six years before the date on which Nicholas Cummings claims to have created the same logo.”*

*“14. I note that Nicholas Cummings refers to the logo which he incorrectly claims to have created as the ‘Sammy Skull’ logo. It is relevant to note that the Sammy in question is Bryon ‘Sammy’ Martin, who is known to motorbike enthusiasts as Sammy and who helped me create my logo in 2005.*

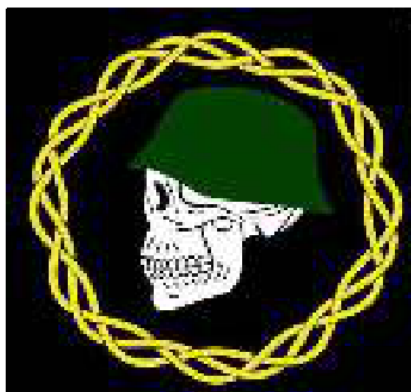
*15. I cannot understand why Nicholas Cummings has claimed ownership of the Sammy Skull logo, but it is possible that he is confused as to the logo which he claims to have created. In the assignation which appears in Exhibit NC3, he describes his artwork as ‘a device of a skull wearing a winged military helmet, looking to the left on a black background and surrounded by a circular golden wreath of two twisted strands’. That certainly is not the logo shown in the document.”*

72. Mr Martin’s statement says:

*“3. I was with John Bingham when he created the logo and assisted him in connection with this.*

*4. I am known as Sammy to many members of the biker ‘scene’ in Scotland and I understand that the logo shown above is known as Sammy Skull due to my involvement in the creation of it.”*

73. The logo Mr Martin says he helped to create is shown below.



74. Mr Cummings filed a further witness statement in reply in which he refuted the claims of Mr Bingham and Mr Martin to have created the logo. He reiterated that:

*“I created the logo in November 2011 for Tribe, and the logo has only ever been used by members of the Tribe to show their affiliation with Blue Angels MC. Mr Bingham has never been a member, or prospective member, of Tribe and hence would have no reason to have designed the logo.”*

75. Mr McSeveney’s second witness statement also responded to Mr Martin’s evidence as follows:

*“I disagree with Mr Martin’s assertion that the ‘Sammy Skull’ logo is in some way named after him as a consequence of his alleged involvement in its creation, or that he was in any way connected with the alleged creation of the logo by Mr. John Bingham. Mr Martin is not, and has never been, a member of the BAMC or any affiliate organisations of the BAMC such as the Tribe (formerly Tribe 21”). The ‘Sammy’ after whom the ‘Samy Skull’ logo was nicknamed is, however, a longstanding member of the BAMC, namely Samuel McCully.”*

*“There is no indication in either Mr Bingham’s Witness Statement or Mr Martin’ supporting statement as to why Mr Bingham would want to create the logo in 2005, or for what purpose.”*

76. No application was made to file evidence in reply to Mr Cummings and Mr McSeveney’s second witness statements.

77. The degree of similarity between the respective logos, bordering on identity, is such that it seems highly unlikely they were created independently of one another. Therefore, either Mr Cummings and Mr McSeveney, or Mr Bingham and Mr Martin, are probably not speaking the truth. In the light of the evidence of Mr Collins and Mr Sinclair, I have serious doubts about whether two of the letters exhibited to Mr McSeveney's first witness statement were written by their purported signatories: "*Kev, East Coast Chapter*" and "*Davey, South East Chapter*." This casts a wider shadow over the reliability of McSeveney's evidence. However, neither side asked for a hearing to cross examine the other's witnesses. Consequently, I have to make the best I can of the written evidence before me. The possibility that Mr McSeveney may have been less than honest about some of the supporting letters he claims to have received, does not mean that his evidence on other matters is untrue. In evaluating the evidence I will take particular account of the surrounding circumstances at the times the logo(s) are claimed to have been created, and I will also give weight to the evidence the parties clearly could have provided, but have not done so.

78. In this connection, I am struck by the absence of any explanation from Mr Bingham or Mr Martin as to the purpose for which they claim to have created the 'Sammy Skull' logo in 2005. And also by the absence of any evidence showing the publication or use of 'their' logo between the date of its alleged creation in 2005 and the date of Mr Bingham's trade mark application in 2022.

79. By contrast, Mr Cummings and Mr McSeveney explain why the 'Sammy Skull' logo was created and what its purpose was. Their evidence on this matter appears entirely credible. For this reason, I prefer their evidence to that of Mr Bingham/Mr Martin.

80. Consequently, I accept that Mr Cummings created the logo shown at paragraph 69 above in November 2011, and I reject Mr Bingham/Mr Martin's claim to have created a virtually identical logo in 2005.

## **Has the copyright in the works used as logos been transferred to RA/SM?**

81. Mr McSeveney provides a copy of an assignation dated 7<sup>th</sup> January 2023. It is signed by Mr Reynolds and Mr McDermott as co-authors and first owners of the copyright in the graphic work embodied in the decoration shown on the motorcycle jacket shown at paragraph 10 above. They confirm in the document that it was created for the benefit of the BAMC, and they transferred ownership of the copyright to RA/SM to hold on trust for the BAMC.<sup>2</sup>

82. Mr Reynolds own witness statement also attests to the transfer of the copyright.

83. Mr Cummings first witness statement provides very similar evidence about the assignation to RA/SM on 8<sup>th</sup> February 2023 of the copyright in the ‘Sammy Skull’ logo. The work is described in the assignation document as “*comprising a device of a skull wearing a winged military helmet, looking to the left, on a black background and surrounded by a circular golden wreath of two twisted strands, a copy of which is annexed hereto*” (emphasis added).

84. Mr Bingham points out that the description does not match the logo depicted. He suggests that Mr Cummings is therefore confused about which work he created in 2011. I reject this submission. The textual description of the work in the assignation document is clearly in error. It was probably made because Mr Cummings had BAMC’s winged helmet and skull device in mind, which he says was one of the inspirations for his later design. The actual work covered by the assignation is depicted in the assignation document. It is clearly the skull logo shown at paragraph 69 (without wings). I therefore accept Mr McSeveney/Mr Cummings evidence on this matter.

## **RA/SM’s OPPOSITION TO MR BINGHAM’S APPLICATIONS**

### **The Section 5(4)(b) Ground Of Opposition to the ‘086 and ‘089 applications**

85. The relevant sections of the Copyright, Designs & Patents Act 1988 are as follows:

*“4 Artistic works*

*(1) In this Part "artistic work" means--*

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<sup>2</sup> See exhibit SM15 to Mr McSeveney’s first statement

*( a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality ...”*

*“9 Authorship of work*

*(1) In this Part "author", in relation to a work, means the person who creates it.”*

*“11 First ownership of copyright*

*(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.*

*(2) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.”*

*“12 Duration of copyright in literary, dramatic, musical or artistic works*

*(1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.*

*(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies ...”*

*“16 The acts restricted by copyright in a work*

*(1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom--*

*(a) to copy the work (see section 17);*

*(b) to issue copies of the work to the public (see section 18);*

*(ba) to rent or lend the work to the public (see section 18A);*

*(c) to perform, show or play the work in public (see section 19);*

*(d) to communicate the work to the public (see section 20);*

*(e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21); and those acts are referred to in this Part as the "acts restricted by the copyright".*

*(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.*

*(3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it--*

*(a) in relation to the work as a whole or any substantial part of it, and*

*(b) either directly or indirectly;*

*and it is immaterial whether any intervening acts themselves infringe copyright.*

*(4) This Chapter has effect subject to--*

*(a) the provisions of Chapter III (acts permitted in relation to copyright works), and (b) the provisions of Chapter VII (provisions with respect to copyright licensing)."*

*"17 Infringement of copyright by copying*

*(1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.*

*(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form.*

*This includes storing the work in any medium by electronic means."*

86. I accept that copyright exists in the graphic work used to produce the logo shown at paragraph 10 above. There is no suggestion that the work is banal or commonplace, or copied from something created earlier. It is therefore an original work.

87. The BAMC logos shown in paragraph 11 above are either trivial adaptations of the original work, or they are themselves original works protected by copyright, albeit works that take a very substantial part of the earlier work.

88. RA/SM are the legal owners of the copyright in the earlier work.

89. Mr Bingham's representative submitted that:

*"At no time has Bingham copied any material from Leonard Reynolds, or Steven McSeveney for that matter. It is no secret that Bingham is interested in the biker 'scene' in Scotland and has seen many insignia. They are, almost by default quite similar.*

90. It seems to be suggested that the similarity between the winged helmet and skull device in Mr Bingham's '086 mark and the copyright work depicted in paragraph 10 above is a coincidence arising from the fact that the insignia used by those in the biker 'scene' in Scotland are quite similar.

91. In his first witness statement, Mr McSeveney says:

*"The Applicant for the three marks which are the subject of these oppositions, Mr John Bingham, is known to the BAMC as he has been a member of other motorcycle clubs and has attended motorcycle shows at which the BAMC was present. He is therefore fully aware that the BAMC has been using the names 'Blue Angels/Blue Angels MC/Blue Angels Motorcycle Club' and the Blue Angels Logo since the 1960s and that the names and the logo belong to, and are associated with, the BAMC."*

92. Mr McSeveney followed this up in his second statement where he says:

*"Mr Bingham and Mr Martin had previously had a conflict with the BAMC at the 2022 Erskine Motorbike Meet, an annual event held in May in the town of Erskine in Scotland, which is attended every year by the BAMC and has been for almost two decades. The BAMC takes a stand at the event and raises funds for the Erskine Veterans Charity at the event. Following an altercation between Mr Bingham and Mr Martin on the one hand, and members of the BAMC on the other, Mr Bingham and Mr Martin tried to get the organisers to ban the BAMC from future events, Now is attached hereto, marked 'Exhibit SM1' a selection of screenshots from messages sent by Mr Bingham - and previously, Mr Martin - to the organiser of the event seeking to have the BAMC banned from attending (which was refused), from which it will be noted that:*

*They acknowledge that the BAMC exists ("..blue angels...")*

*They acknowledge the existence of Tribe (formerly Tribe 21), for whom the 'Samy Skull' device was designed, referring to it as '...blue angels 21 support gang....'*

*They acknowledge that the BAMC is a one percenter motorcycle club*

*They complain about the use of the Winged Helmet & Skull Device which they find very offensive... .”*

93. The screenshots in exhibit SM1 include a text from Mr Bingham to an organiser of the Erskine Motorbike Meet in 2023 in which he asks whether the ‘blue angels 1% MC’ will be in attendance. When asked about the reason for his concern he wrote:

*“On there back patch it shows a scull weaning a German helmet and depending on what area they from they have an SS natzi sign on the helmet this myself and others find this very offensive.”*

94. Subsequent texts indicate Mr Bingham’s concern was generated by an altercation with members of the Blue Angels at the previous year’s event in May 2022. This was prior to the date of Mr Bingham’s applications. This supports RA/SM’s claim that Mr Bingham was aware of the name and logo used by BAMC members at the time he made his applications for registration.

95. Mr Bingham himself filed evidence from the Sun newspaper in February 2023 which included an article with the title *“The biggest and most notorious biker gangs in the UK and where they operate.”* This listed (amongst others) ‘Blue Angels – Founded in Glasgow in the 1960s.’ Given Mr Bingham’s interest in the biker ‘scene’ in Scotland, this supports RA/SM’s claim that the logo used by BAMC was known to Mr Bingham. I am satisfied that Mr Bingham had access to the copyright work, either directly or via subsequent versions of the logo which were adaptations of the earlier work or, at the least, included a very substantial part of it.

96. In *Designers Guild v Russell Williams (Textiles) Ltd*,<sup>3</sup> Lord Millett set out the approach to assessing whether artistic copyright has been infringed, as follows:

*“The first step in an action for infringement of artistic copyright is to identify those features of the defendant’s design which the plaintiff alleges have been copied from the copyright work. The court undertakes a visual comparison of the two designs, noting the similarities and the differences. The purpose of the examination is not to see whether the overall appearance of the two designs is*

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<sup>3</sup> [2000] 1 WLR 2416

*similar, but to judge whether the particular similarities relied on are sufficiently close, numerous or extensive to be more likely to be the result of copying than of coincidence. It is at this stage that similarities may be disregarded because they are commonplace, unoriginal, or consist of general ideas. If the plaintiff demonstrates sufficient similarity, not in the works as a whole but in the features which he alleges have been copied, and establishes that the defendant had prior access to the copyright work, the burden passes to the defendant to satisfy the judge that, despite the similarities, they did not result from copying.”*

97. I find the degree of resemblance between the design and arrangement of the green helmet, the skull, and the yellow wings, in the work depicted in paragraph 10 above, and that of the green helmet, skull and yellow wings, depicted in the '086 mark, sufficient to make it more likely than not that the device in Mr Bingham's '086 mark was directly, or indirectly, copied from the original copyright work. The main difference between the works is that the skull and helmet in the copyright work appear to be placed on top of the yellow wings, whereas the yellow wings in the device in Mr Bingham's '086 mark appear to emerge out of the back of the helmet. This is the way the wings/helmet are depicted in later versions of the BAMC logo. Therefore, the difference between the device in the '086 mark and the copyright work does not indicate the absence of copying. Rather, it indicates that Mr Bingham copied later versions of the work. In my judgement, by doing so he indirectly copied a very substantial part of the earlier work relied on by RA/SM.

98. The fact that the '086 mark also includes the abbreviated name of the BLUE ANGELS MOTORCYCLE CLUB, which was clearly known to Mr Bingham, makes it even more likely that the logo in that mark was copied.

99. Consequently, I find that use of the '086 mark would infringe RA/SM's copyright in the work depicted in paragraph 10 above.

100. Turning to the '089 mark, I accept that copyright exists in the 'Sammy Skull' logo as a graphic work. There is no evidence that the work is banal or commonplace, or copied from something created earlier. It is therefore an original work.

101. RA/SM are the legal owners of the copyright in the work.

102. Mr Bingham was plainly aware of the motorcycle group known as Tribe because he referred to them (as ‘...*blue angels 21 support gang*...’) in one of the texts he sent to the organiser of the Erskine Motorbike Meet. I find it more likely than not that he was also aware of the badge used by their member.

103. The badge or logo depicted in Mr Bingham’s ‘089 mark is virtually identical to the work created by Mr Cummings, as depicted in paragraph 69 above. Given the complexity of the work, the chances of these badges or logos having been created independently from one another is virtually nil. The resemblance is certainly high enough to support a *prima facie* case of copying.

104. Mr Bingham’s answer is that he and Mr Martin created the work first in 2005. However, for the reasons given above, the evidence does not support that claim. I find that Mr Bingham’s ‘089 mark was copied from Mr Cummings’ original work.

105. Consequently, I find that use of the ‘089 mark would infringe RA/SM’s copyright in the work depicted in paragraph 69 above.

106. These findings mean that RA/SM’s grounds of opposition under section 5(4)(b) of the Act succeed against the ‘086 and ‘089 applications.

## **RA/SM’s OPPOSITIONS TO MR BINGHAM’S APPLICATIONS UNDER SECTION 5(4)(a) OF THE ACT**

### **The Section 5(4)(a) Grounds of Opposition to the ‘900 and ‘086 Marks**

107. It is convenient to start by examining RA/SM’s passing off claim against Mr Bingham’s ‘900 and ‘086 applications. In *Discount Outlet v Feel Good UK East*<sup>4</sup> Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. *The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the Jif Lemon case (Reckitt & Colman Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341,*

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<sup>4</sup> 2017] EWHC 1400 IPEC

*HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.*

*56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."*

108. In *SWORDERS TM*<sup>5</sup> I assessed the relevant date for establishing a passing off right in the context of an action based on section 5(4)(a) of the Act. I found that:

*"Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made."*

109. There is no evidence of Mr Bingham having conducted any business under the opposed marks prior to the date of his applications. Consequently, the relevant dates are the filing dates of his applications in June and August 2022.

## **Goodwill**

110. The first question is whether RA/SM owned a relevant goodwill in the UK under the earlier sign by the relevant dates. I have found that the BAMC is, essentially, a private members club. An important part of Mr Bingham's case is that the club does not trade with the public and, therefore, he says, has no protectable goodwill.

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<sup>5</sup> BL O-212-06. This statement was subsequently approved by Mr Daniel Alexander KC as the Appointed Person in *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11

111. According to Wadlow on the Law of Passing-Off 6th Ed.:

*“3-58 The cases..... on public bodies, charities, churches, clubs, political parties, and (to some extent) associations all raise the same issue, which is whether a body can be said to enjoy a goodwill when it does not carry on any business with the public in the normal sense, but still benefits from voluntary membership, subscriptions, donations or support so as to be capable of being damaged by a misrepresentation in the nature of passing-off. The modern tendency is to recognise that bodies of this kind do have goodwill capable of being protected, so that it is increasingly unhelpful simply to ask whether the claimant can be said to be carrying on any trade. Nevertheless, whatever the claimant may do by way of trading or otherwise, it is in his capacity as a trader that he must suffer damage.”*

### **Clubs**

*“3-65 A proprietary club such as a night club is a business like any other and requires no special treatment in the law of passing-off. Injunctions have been granted in favour of proprietary clubs in *Annabel’s v Schock* and *Ad-Lib Club v Granville*. Professional sports clubs, such as Arsenal also require no special analysis.*

*3-66 The position of a private members’ club such as a sports or social club is more difficult. In general, one would not necessarily think of such a club as being a trader or as carrying on a business in the normal sense of those words. However, in *British Legion v British Legion Club (Street) Ltd* an injunction was granted against a social club of about 500 members in a small village. The action for passing-off lies only against traders, and if the criteria for claimant and defendant are comparable, then this would suggest that such a club could itself sue for passing-off in an appropriate case.”*

112. I see some similarity between the facts in this case and those in *British Legion*,<sup>6</sup> which are described in the following extract from the judgment of Farwell J.:

*“The case on behalf of the Defendant Company has been put on two grounds most clearly and concisely by Mr. Theobald Mathew and the grounds upon which he bases his case are these. He says, first of all, that the Defendant Company was first in the field; that on the 7th of October 1922, the Defendant Company was registered as a Company; there was no legal entity in existence at that date who could have sued them in the name of the British Legion and restrain them from using that name, and it was not until 1925 when the British Legion obtained the Royal Charter that they were in a position as the British Legion, and under the name of the British Legion, to sue and seek the relief they are seeking to-day, and under those circumstances the Defendant Company being first in the field the Plaintiff Association has no right to complain. In my judgment, that argument is not well founded, and is not well founded for this reason, that, although it is true that up till 1925 the British Legion was not in itself under the name of the British Legion a legal entity which was capable of bringing an action in that name, none the less there was an association of persons from July 1921, and that association was known as the British Legion, and those words had, prior to the 7th of October 1921, become well known all over this country and abroad as meaning the association of persons who were associated together for the purpose of promoting the benefit and welfare of ex-Service 'men and officers; and it is a fallacy to say that that association could not have prevented the Defendant Company, if it was proved that there was serious risk of damage to the association, registering the name of the Defendant Company, or that prior to 1925 the persons forming that association could not have sued for the relief which is sought in this action.”*

113. The question of whether the BAMC and/or its chapters had goodwill of a kind that is capable of protection under the law of passing off may, therefore, be answered by asking whether the use of the trade marks applied for by Mr Bingham is

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<sup>6</sup> (1931) 48 R.P.C . 555

liable to cause serious damage to the BAMC and its chapters as providers of the services of a private members club. In my view, the answer to that is affirmative, most obviously if the '900 and '086 marks (i.e. the club name and badge) are used by Mr Bingham or his company in relation to badges, private members club services and organisation of recreational events. If the marks are available for use by people (such as Mr Bingham) who are not members of any of the chapters of the BAMC, the ability of the club and its chapters to recruit and retain members will be seriously diminished. This is bound to cause damage because the financial success of any club depends to a large degree on its membership.

114. I do not think it matters whether the goodwill relied on by RA/SM is held on trust for the BAMC as a whole or for its individual chapters. There are two reasons for this. Firstly, it is well established that, subject to the terms of any contractual arrangements between them, the goodwill accrued by an unincorporated association belongs collectively to its members. It seems clear from the evidence that, with one possible exception, the chapters of BAMC regard themselves and their members as part of the BAMC. Looked at this way the goodwill belongs, collectively, to all the members of the various chapters of the BAMC. Secondly, even if that is wrong, and the members of each chapter (collectively) own the goodwill belonging to their chapter, it is well established that any party with goodwill under a distinctive name may sue for passing off, notwithstanding the name or sign relied on may also be distinctive of other parties with goodwill in the name.<sup>7</sup> On this view of the matter, each of the chapters of the BAMC, including the Glasgow 'mother' chapter which has existed for more than 60 years, has the necessary goodwill to bring a passing off action against Mr Bingham. RA/SM bring their action on behalf of the BAMC, including the Glasgow chapter of which they are President and Vice-President, respectively. According to section 5(4)(a) of the Act:

*“A person.... 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.”*

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<sup>7</sup> *Dent v Turpin* 70 E.R. 1003 and *J. Bollinger and Others v Costa Brava Wine Co. Ltd.* [1960] R.P.C. 16

115. I have no doubt that RA/SM would be entitled to ask a court to grant relief under the law of passing off to the club of which they are the officers, which is essentially what they have done in these proceedings. Therefore, I find that RA/SM have the necessary standing to bring this action, whether it is on behalf of the BAMC as a whole or the chapters (including their own Glasgow chapter) whose Presidents and Vice-Presidents have given evidence of their behalf.

### **Misrepresentation and damage**

116. For reasons I think are by now clear, I find that use of the '086 mark in relation to the goods in class 26 covered by that application would amount to a misrepresentation to the public that the user is, or is connected to, the BAMC. This would cause serious damage to the goodwill generated under BLUE ANGELS MOTORCYCLE CLUB for the reasons given at paragraph 113 above. The same applies to the '900 marks so far as badges, stickers etc. in classes 6, 14, 16, 17, 20, 24 and 26 are concerned, organising entertainment events in class 41, and private members club services in class 43.

117. The application to register the '900 marks covers a very wide range of goods and, even more so, services. It is not a requirement of the law of passing off that the parties be engaged in the same field of economic activity. Nevertheless, where the respective goods/services appear to indicate different fields of economic activity, the burden of establishing misrepresentation and damage becomes heavier.

118. Set against this is the fact that Mr Bingham's marks are not just BLUE ANGELS (which could be used, without deception, in numerous different fields of economic activity), but BLUE ANGELS MOTORCYCLE CLUB and, in its shorter form, BLUE ANGELS MC. These express references to a specific motorcycle club increases the strength of the suggested connection between the user of these names and the BAMC and, where there is no such connection, the likelihood of misrepresentation and deception. This applies even where the goods/services covered by the '900 marks are further removed from the services of a motorcycle club.

119. Additionally, it is well established that where the evidence shows the defendant intended to deceive the public, tribunals should be slow to find that he would not have succeeded in his endeavour. This is because the trader's understanding of the viability of his plans is likely to be better informed than the tribunal's more distant appreciation of the market. For reasons I will come to under the heading of 'bad faith' below, I am satisfied that Mr Bingham intended to use the marks to indicate that the user is connected to the existing BAMC, albeit 'under new management'. That would be a misrepresentation.

120. After explaining why he applied to register the '900 marks, Mr Bingham stated:

*"I took the precaution of filing the applications in respect of various products and services, to cover activities in respect of which I thought my company may wish to use the trade marks."*

121. I infer from this that Mr Bingham considered use of the '900 marks in relation to all the goods/services in his application was consistent with his purpose in filing the application. If I am right, that was to control future use of marks and simultaneously exploit the reputation of the BAMC. In doing so, he would necessarily have deprived the BAMC of income it may have been able to generate itself through merchandising and licensing. This is a recognised head of damage under passing off law.

122. For these reasons, I have adopted a broad approach to the question of which uses of the '900 marks in relation to the many goods/services covered by that application would constitute a misrepresentation to the public causing damage to the goodwill relied on by RA/SM.

123. Even so, I find it difficult to see how any significant damage would be caused by use of the marks in relation to some of the goods/services in Mr Bingham's applications, e.g. *Advice concerning chemical product marketing*. The goods/services for which I find use of the '900 marks would be a misrepresentation capable of causing damage to BAMC are shown in bold in the list at Annex A. The goods/services shown in normal font are, in my view, too far removed from BAMC's reputation for Mr Bingham's use of the '900 marks to cause any serious damage to

the goodwill of BAMC. Damage is an essential requirement under the law of passing off. Consequently, the section 5(4)(a) ground of opposition succeeds in relation to:

- (i) all the goods covered by the '086 mark (see Annex B);
- (ii) the goods/services covered by the '900 marks shown in bold in Annex A.

124. The opposition against the '900 marks under section 5(4)(a) fails in relation to the goods/services shown in normal font in Annex A.

### **The Section 5(4)(a) Grounds of Opposition to the '089 Mark**

125. Mr McSeveney's evidence is that:

*"86. In November 2011, an established support club of the BAMC based in Edinburgh, the Scottish Street-fighters, renamed itself "Tribe 21", with the numeral "21" referring to the second and first letters of the alphabet (i.e. "BA" = Blue Angels). They have subsequently changed their name to "Tribe" alone. Whilst not formal chapters of the BAMC, Tribe chapters are affiliated with the BAMC and its members attend rallies and social events with BAMC members. Tribe members do not use the name Blue Angels or the Blue Angels Logo, but have their own logo."*

126. I understand this to mean that (1) although Tribe 'supports' the BAMC, it is not a chapter or branch of BAMC, and (2) the '089 mark distinguishes members of that motorcycle club rather than members of the BAMC. Article 2 of the Trade Marks (Relative Grounds) Order 2007 states:

*"2. The registrar shall not refuse to register a trade mark on a ground mentioned in section 5 of the Trade Marks Act 1994 (relative grounds for refusal) unless objection on that ground is raised in opposition proceedings by the proprietor of the earlier trade mark or other earlier right."*

127. There is no evidence that Tribe has assigned any goodwill it has under the '089 mark to RA/SM. Consequently, RA/SM are not the proprietor of any common law rights that may be owned by the motorcycle group known as Tribe. Nor do they hold positions

in Tribe that enable them to claim they act on behalf of that group. Even if they did, section 38(2A) of the Act states that where an opponent relies on multiple earlier trade marks or other earlier rights “*the rights (if plural) must all belong to the same proprietor.*” Tribe is not the same opponent as the BAMC.

128. The effect of these findings is that RA/SM do not have the necessary standing to bring an opposition under section 5(4)(a) against the ‘089 application. This ground fails for this reason.

### **RA/SM’s OPPOSITIONS TO MR BINGHAM’S APPLICATIONS UNDER SECTION 3(6) OF THE ACT**

#### **Bad faith: the case law**

129. In *Sky Limited & Ors v Skykick, UK Ltd & Ors*,<sup>8</sup> the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, *Hasbro, Inc. v EUIPO*, Case T-663/19, and *pelicantravel.com s.r.o. v OHIM*, Case T-136/11. So far as it is relevant to the facts of this case, the court summarised the law as follows:

1. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, 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 the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].

2. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other

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<sup>8</sup> [2021] EWCA Civ 1121

sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].

3. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].

4. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].

5. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].

6. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

7. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

8. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

130. The evidence establishes that Mr Bingham was well aware of the name and badges used for years by BAMC and Tribe at the date of his trade mark applications. The identity or close similarity of the marks in his applications to those signs gives rise to a rebuttable presumption of bad faith.

131. In his witness statement, Mr Bingham's answered this allegation as follows:

*“3. I am the owner and sole director of Blue Angels Motorcycle Club Limited (a company incorporated in Northern Ireland under No. NI689131) of 3 Wellington Park, Belfast, BT9 6DI (“my company”).*

*4. When establishing my company, the advice I received was that it should be limited by guarantee, rather than shares, as companies limited by guarantee are widely used by charities, community projects, clubs, societies, and other similar bodies.*

*5. I decided to establish my company in 2022 after discussions over several years with various people who share my interest in motorbikes, but who are dismayed by the ‘gang’ culture and violence that are often associated with them*

*6. For many years, motorcycle gangs have been the source of much illegal activity, and, for background, I attached as exhibit JB1 an article dated January 2013 from the Guardian newspaper noting that sophisticated criminal organisations are behind some of these gangs. The article from the Guardian was from 2013, but the themes mentioned in it remain current. I attach as exhibit JB2 an article dated February 2023 from The Sun newspaper*

*7. The discussions mentioned in paragraph 5 were with leading lights of the Scottish biker ‘scene’ in Scotland, including Leonard Reynolds, Allan Morrison (who died in 2020), Bryon ‘Sammy’ Martin and others, and the consensus was that a company should be incorporated to provide a provide a structure for those in the biker ‘scene’ who wished to take part in lawful activities in a transparent manner. It was for that reason that my company was incorporated.*

*8. The trade mark applications that I filed were lodged in my personal name, as I wanted to ensure that my company was properly established before transferring the trade marks to it.”*

132. Mr Martin’s evidence in support of Mr Bingham sheds no light on this matter. Mr Reynolds’ filed a witness statement in reply in which he denied having discussed Blue Angels business with Mr Bingham, as claimed. The motive behind the activity of which Mr Bingham’s trade mark applications are a part seems to have been:

*“..to provide a provide a structure for those in the biker ‘scene’ who wished to take part in lawful activities in a transparent manner.”*

133. The trade marks and the company incorporate in Northern Ireland appear to have been intended to provide the required ‘structure’. It must, of course, have been central to this objective that the company and the marks took the name and insignia of the BAMC, as well as its ‘support group’, Tribe.

134. Mr Bingham has not clearly explained how the registration of the trade marks was expected to address the “*gang culture and violence*” he cites as a reason for applying for registration of these marks. The implication is that the ‘structure’ he was setting up would allow him, or his company, to restrict use of the marks to only lawful, approved activities. This would necessarily mean that the existing use of the marks by the groups already identified by those signs would fall under Mr Bingham’s control and, potentially, be preventable as acts of trade mark infringement. This may be why the specification of Mr Bingham’s 900 application includes 25 separate descriptions of services relating to the licensing or exploiting of IP rights.

135. Mr Bingham’s general justification for his applications boils down to his statement that:

*“I thought that my company would be free to use any trade mark which did not belong to anyone else.”*

136. Even if he was right about the absence of existing, legally enforceable IP rights, I have no doubt that honest traders would not think it commercially acceptable behaviour to register the name and insignia of someone else’s club as a trade mark with the intention of licensing the signs, establishing legal controls on the use of those signs by their existing users, and creating the legal tools to exploit the club’s reputation or (depending on your viewpoint) notoriety.

137. In my view, Mr Bingham has not rebutted the *prima facie* objective evidence of bad faith in so far as the ‘086 application is concerned. The fact that Mr Bingham

also appears to have copied a copyright work provides further support for a finding of bad faith.

138. Even if the sole motivation for Mr Bingham's '900 and '086 applications was curbing gang culture and unlawful activities, this is not a proper use of the trade mark registration system. In any event, the scope of his '900 application and the rights he intended to acquire go much further than would be necessary for his stated purpose.

139. Mr Bingham has not explained why he applied to register the '900 marks in relation to such a diverse range of goods/services beyond saying that he thought his company might want to trade in them. In the absence of any evidence from him that he had different motivations for including different categories of goods/services, I find that his subjective intention was the same for all of them. The fact that his use of the marks in relation to some of the goods/services, such as *advice concerning chemical product marketing*, is unlikely to have caused any damage to BAMC is not decisive. This is because 'bad faith' in this context requires no more than a "*dishonest state of mind or intention*" (albeit in a commercial context). It does not require the dishonest intention to be commercially viable (although in many cases a lack of viability may cast doubt on whether this really was the applicant's intention). On the facts of this case I am satisfied that Mr Bingham applied to register the '900 marks in relation to all the goods/services included in the application for the same purposes, i.e. those set out in paragraph 136 above. The '086 and '900 applications were filed in bad faith.

140. As I noted earlier, RA/SM are the proprietors of a relevant copyright in the '089 mark. The fact that Mr Bingham appears to have copied the work supports a finding of bad faith. RA/SM are not the proprietors of any common law rights that exist under the '089 mark. However, it is not necessary to be the owner of an earlier right to oppose an application on bad faith grounds.<sup>9</sup> So my findings in relation to the other marks also apply to the '089 application. It too was applied for in bad faith.

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<sup>9</sup> See the decision of Mr Geoffrey Hobbs KC, as Appointed Person, in *Fine Gael and Fianna Fail v Melly*, BL 0/043/08

## **MR BINGHAM'S OPPOSITIONS TO RA/SM's TRADE MARK APPLICATIONS**

141. I can deal with these briefly. As I refused Mr Bingham's earlier filed trade mark applications, his oppositions to the '596, '580 and '602 marks under section 5(1) or (2) of the Act fall away.

142. And as I have found that RA/SM are the legal owners of the copyright work reproduced in the '580 and '602 marks, Mr Bingham's oppositions under section 5(4)(b) of the Act must also be rejected.

143. As to Mr Bingham's claim that '596, '580 and '602 marks were filed in bad faith because they represent attempts by RA/SM to secure registered rights in his trade marks and/or copyright works, this claim turns reality on its head. I reject this ground of opposition too.

## **OVERALL RESULT**

144. Mr Bingham's '900, '086 and '089 applications will be refused in full.

145. The opposition to RA/SM's '596, '580 and '602 marks are rejected. Those marks will be registered.

## **COSTS**

146. RA/SM have succeeded and are entitled to a contribution towards their costs. I assess these in accordance with the registrar's published scale, as follows:

£600 official filing fee for three Notices of Opposition;

£600 for preparing the notices and considering the applicant's counterstatements;

£2000 for preparing evidence and considering Mr Bingham's evidence;

£200 for preparing written submissions.

147. I therefore order John Bingham to pay Richard McAlister and Steven McSeveney the sum of £3400. This sum to be paid within 21 days of the end of the period allowed for appeal or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

**Dated this 26<sup>th</sup> of July 2024**

**Allan James  
For the Registrar**

## **ANNEX A – Specification of '900 mark**

Class 6: **Badges of metal for vehicles.**

Class 9: **Magnetic badges; Mobile apps;** Illuminated advertisements; Illuminated advertising signs; Advertising signboards [luminous]; Advertising signboards [mechanical]; Electronic advertising displays; Computer software for advertising.

Class 14: **Badges of precious metal; Lapel badges of precious metal; Metal badges for wear [precious metal].**

Class 16: **Paper badges; Cardboard badges; Paper name badges; Name badge holders [office requisites]; Name badges [office requisites]; Badge holders [office requisites]; Badge holders of plastic [office requisites]; Clips for name badge holders [office requisites]; Retractable reels for name badge holders [office requisites]; Stickers [stationery]; Car stickers; Sticker activity books; Stickers; Vehicle bumper stickers; Bumper stickers; Stickers [decalcomanias]; Sticker books; Sticker albums; Adhesive stickers; Decorative stickers for cars; Albums for stickers; Decorative stickers for helmets; Decorative stickers for soles of shoes; Advertising pamphlets; Printed advertisements; Advertising posters; Advertising publications; Advertisement boards of paper; Advertising signs of cardboard; Advertisement boards of card; Advertisement boards of cardboard; Event albums; Events programmes; Events albums; Event programs; Souvenir event programs; Printed event admission tickets.**

Class 17: **Decorative articles [badges] made of mica; Decorative articles [badges] made of rubber.**

Class 20: **Plastic name badges; Novelty badges (Non-metallic -) for vehicles; Clear plastic holders for badges;** Display stands for merchandise; Display cases for merchandise; Floor units of cardboard for displaying merchandise; Advertising balloons; Advertisement boards; Advertising display boards; Advertising signboards of wood; Advertising signboards of plastics; Advertising display boards [furniture].

**Class 22: Textile bags for merchandise packaging [envelopes, pouches].**

**Class 24: Badges made of fabric material.**

**Class 25: Clothing; Clothes; Wristbands [clothing]; Tops [clothing]; Knitted clothing; Oilskins [clothing]; Motorcyclists' clothing; Hoods [clothing]; Leisure clothing; Infant clothing; Children's clothing; Childrens' clothing; Sports clothing; Leather clothing; Gloves [clothing]; Waterproof clothing; Plush clothing ; Girls' clothing; Swaddling clothes; Knitwear [clothing]; Cloth bibs; Cyclists' clothing; Playsuits [clothing]; Slipovers [clothing]; Jerseys [clothing]; Weatherproof clothing; Casual clothing; Denims [clothing]; Combinations [clothing]; Furs [clothing]; Shorts [clothing]; Collars [clothing]; Babies' clothing; Ties [clothing]; Outer clothing; Cashmere clothing; Bandeaux [clothing]; Women's clothing; Bodies [clothing]; Embroidered clothing; Layettes [clothing]; Jackets [clothing]; Kerchiefs [clothing]; Chaps (clothing); Maternity clothing; Thermal clothing; Belts [clothing]; Muffs [clothing]; Capes (clothing); Motorists' clothing; Boas [clothing]; Slips [clothing]; Veils [clothing]; Wraps [clothing]; Gloves for apparel.**

**Class 26: Cloth patches for clothing; Buckles for clothing [clothing buckles]; Embroidered badges; Button badges; Ornamental novelty badges; Badges [buttons] (Ornamental novelty -); Ornamental novelty badges [buttons]; Novelty buttons [badges] for wear; Badges for wear, not of precious metal.**

**Class 35: Merchandising; Inventorying merchandise; Product merchandising; Business merchandising display services; Display services for merchandise; Product merchandising for others; Preparing promotional and merchandising material for others; Marketing; Promotional marketing; Market research; Market canvassing; Marketing research; Marketing analysis; Research (Market -); Market analysis; Marketing advice; Marketing consultancy; **Event marketing**; Market studies; **Targeted marketing**; **Product marketing**; Marketing information; Marketing forecasting; Market campaigns; Financial marketing; **Direct marketing**; Market surveys; **Surveys (Market -)**; **Online marketing**; **Marketing consulting**; **Database marketing**; **Market prospecting**; **Digital marketing**; **Influencer marketing**; **Market****

**research and marketing studies; Market research and market analysis; Marketing assistance; Market forecasting; Marketing services; Referral marketing; Affiliate marketing; Internet marketing;** Marketing studies; **Advertising and marketing;** Market assessment services; **Business marketing services;** Market reporting services; **Marketing by telephone; Direct market advertising;** Market research studies; Market analysis services; Market study services; Market research consultancy; Market study and analysis of market studies; Market information services relating to market statistics; **Direct marketing services;** Market analysis studies; Grain market analysis; Marketing consultation services; Marketing plan development; Marketing management advice; Market survey analysis; Conducting marketing studies; Market analysis reports; Market segmentation consultation; Marketing analysis services; Analysis of markets; Direct marketing consulting; Market assessment consultancy; Marketing agency services; Market reporting consultancy; Computerised market research; Conducting market surveys; Marketing research services; Market research services; Real estate marketing; Marketing advisory services; Market intelligence services; Business marketing consultancy; Advertising and marketing consultancy; Provision of marketing information; Investigations of marketing strategy; **Search engine marketing services;** Market research and analysis; Real estate marketing analysis; Marketing research or analysis; Preparation of marketing surveys; **Advertising and marketing services;** Conducting of marketing studies; Estimations for marketing purposes; Computerized market research services; Market opinion polling studies; Market research data analysis; Analysis relating to marketing; Market analysis and research; Conducting of market research; Marketing research and analysis; Providing market intelligence services; Analysis of marketing trends; Business marketing consultation services; Providing market research statistics; Development of marketing concepts; Provision of marketing reports; Administration relating to marketing; Preparation of marketing plans; Consumer market information services; Business analysis of markets; Planning of marketing strategies; Market reports and studies; Business and market research; Market research for advertising; Providing business marketing information; Consultancy relating to marketing; Design of marketing surveys; Business marketing consulting services; Market investigation via the telephone; Statistical evaluations of marketing data; Market research data collection services; Trade marketing [other than selling]; Market research data retrieval services; Market research and business analyses;

Market research and analysis services; Preparation of market analysis reports; Creative marketing plan development services; Analysis of market research data; Collection of market research information; Advisory services relating to marketing; Marketing (Business advice relating to -); Personnel management of marketing personnel; Advice concerning chemical product marketing; **Advertising, marketing and promotion services; Advertising, promotional and marketing services;** Preparation of reports for marketing; Market surveys conducted by telephone; Market research services for publishers; Provision of market research information; Planning services for marketing studies; Telephone marketing services [not selling]; Interviewing for qualitative market research; Analysis of market research statistics; **Marketing, advertising and promotion services;** Market analysis and research services; Providing marketing information via websites; Interviewing for market research purposes; Advice relating to marketing management; **Retail services relating to jewelry; Advertising; Advertising and advertisement services; Online advertising; Radio advertising; Cinema advertising;** Advertising agencies; **Online advertisements; Newspaper advertising; Television advertising;** Advertising analysis; **Classified advertising; Elevator advertising; Banner advertising;** Advertising planning; Advertising consultation; Advertising research; Advertising copywriting; **Response advertising; Advertising services;** Recruitment advertising; **Magazine advertising; Outdoor advertising; Electronic billboard advertising; Cinematographic film advertising; Promotional advertising services; Press advertising services; Providing advertising services; Online advertising services; Direct mail advertising; Mail-order advertising;** Political advertising services; Providing advertising space; Creating advertising material; Mediation of advertising; Personnel recruitment advertising; Arrangement of advertising; Advertising of cinemas; Dissemination of advertisements; Advertisement hoarding rental; Rental of advertisement space and advertising material; Press advertising consultancy; Advertisements (Preparing of -); Updating advertising material; **Graphic advertising services;** Advertising agency services; **Publicity and advertising; Taxi top advertising;** Preparation of advertisements; **Advertising flyer distribution; Advertisements (Placing of -); Advertising and publicity;** Compilation of advertisements; **On-line advertising; Classified advertising services; Digital advertising services;** Advertising research services; Advertising for others; Provision of advertising space; Production of advertising matter; Production of radio

advertisements; **Promotional and advertising services; Distribution of advertising leaflets;** Hire of advertising equipment; **Advertising and publicity services; Promotion [advertising] of travel;** Preparation of advertising material; **Advertising via the Internet;** Rental of advertising space; Consultancy relating to advertising; Consultations relating to advertising; **Pay per click advertising;** Scriptwriting for advertising purposes; **Distribution of advertising samples; Distribution of advertising materials;** Hire of advertising billboards; Hire of advertising hoardings; Advertisement billboards (Rental of -); Production of advertising material; Reproduction of advertising material; Advertising services for architects; **Promotion [advertising] of business; Publication of advertising texts;** Updating of advertising material; Hire of advertising aids; Rental of advertising matter; **Direct mail advertising services;** Preparation of advertising matter; **Radio advertising and commercials;** Preparation of advertising campaigns; **Distribution of advertising material; Advertising matter (Dissemination of -);** Design of advertising logos; Rental of advertisement hoardings; **Advertising, including on-line advertising on a computer network; Advertising services of a radio and television advertising agency;** Rental of advertising space on the Internet for employment advertising; Advertising services provided by a radio and television advertising agency; **Advertising and promotion services; Provision of advertising information;** Advertising material (Updating of -); **Publication of advertising literature; Distribution of advertising announcements; Radio and television advertising;** Planning services for advertising; Rental of advertising material; Hiring of advertising materials; Promotion [advertising] of concerts; Production of advertising films; Advertising space (Rental of -); Negotiation of advertising contracts; Displaying advertisements for others; **Dissemination of advertising matter; Advertising material (Dissemination of -);** Design of advertising brochures; Leasing of advertising billboards; Development of advertising concepts; **Publication of advertising matter;** Advertising matter (Production of -); Management consulting; Employment consultancy; Business consultancy; Business consulting; Business consultation; Personnel consultancy; Commercial consultancy; Tax consultancy [accountancy]; Taxation [accountancy] consultancy; Business acquisitions consultation; Recruitment consultancy services; Personnel recruitment consultancy; Business administration consultancy; Strategic business consultancy; Employment consultancy services;

Public relations consultancy; Corporate management consultancy; Business consultancy services; Business organization consulting; Business organisation consultancy; Business organization consultancy; Human resources consultation; Tax consultations [accountancy]; Employment recruiting consultation; Business recruitment consultancy; Job placement consultancy; Business research consulting; Business management consulting; Professional business consulting; Professional business consultations; Business consulting services; Commercial consultancy services; Personnel management consulting; Career planning consultancy; Personnel placement consultancy; Business relocation consulting; Business management consultancy; Business management consultation; Business consultancy (Professional -); Business consultation services; **Conducting of commercial events; Promotion of special events; Marketing services relating to esports events; Arranging and conducting of marketing events; Arranging and conducting of promotional events; Advertising services relating to esports events; Promotion of sports competitions and events; Arranging and conducting of advertising events; Promotion services relating to esports events; Arranging promotion of charitable fundraising events;** Arranging and conducting sales events for livestock; Arranging and conducting sales events for cattle; **Organisation of events for commercial and advertising purposes; Arranging and conducting marketing promotional events for others;** Business meeting planning; Arranging and conducting of business meetings.

Class 36: Financial consultancy and insurance consultancy; Pension consultancy; Consultancy (Financial -); Financial consultation; Consultations [financial]; Investment consultation; Investment consultations; Insurance consultancy; Consultations [insurance]; Reinsurance consultancy; Pensions consultancy; Financial consultancy; Investment consultancy; Credit consultation; Credit consultancy; Financial consulting; Insurance consultation; Accounting consultation ; Corporate finance consultancy; Fund investment consultation; Real estate consultation; Financial loan consultancy; Political fundraising consulting; Financial consultancy services; Insurance underwriting consultancy; **Financial sponsorship of sports events;** Financial sponsorship of theater events; Financial sponsorship of dance events; **Financial sponsorship of cultural events; Financial sponsorship of visual arts events; Charitable fundraising by means of entertainment events.**

Class 37: Cleaning of venues before and after events; Erection of temporary constructions for outdoor events.

Class 41: Dance events; Organising gymnastics events; **Sporting event organization; Organising sporting events;** Organising dancing events; **Special event planning; Organisation of musical events;** Special event planning consultation; **Arranging of sporting events; Organising of sports events;** Conducting of educational events; **Organisation of cycling events;** Timing of sports events; **Organising of recreational events; Organisation of cultural events; Organization of sporting events;** Organisation of educational events; Arranging of educational events; **Conducting of cultural events; Organisation of esports events; Organising community sporting events; Organization of entertainment events; Conducting of sports events; Organisation of sporting events; Organising of sporting events; Provision of sporting events; Provision of recreational events; Organising of football events; Musical events (Arranging of -); Organisation of entertainment events;** Sports events (Timing of -);Gymnastics events (Organising of -); **Arranging of musical events;** Organization of dancing events ;**Production of sporting events;** Handicapping for sporting events; **Arranging of cultural events; Conducting of entertainment events; Production of esports events; Organising community cultural events;** Handicapping services for sporting events; **Providing facilities for sports events; Organisation of automobile racing events; Organising of motor racing events; Ticket reservation for cultural events; Conducting of live esports events; Organising events for entertainment purposes; Publication of calendars of events; Organising events for cultural purposes; Conducting of live entertainment events; Production of live entertainment events; Conducting of live sports events;** Providing information on congress events; Organization of cosplay entertainment events; Video editing services for events; **Organizing cultural and arts events;** Ice-skating events (Organising of -);Horse jumping events (Organising of -); **Organisation of vehicle racing events; Ticketing and event booking services; Presentation of live entertainment events;** Sound engineering services for events; Lighting technician services for events; **Organizing community sporting and cultural events; Organisation of entertainment and cultural events;** Arranging and conducting of educational events; **Organising of sports and sports events;** Wine tasting events

for educational purposes; Production of esports events for television; **Management of events for sporting clubs**; Ticket procurement services for entertainment events; **Production of sporting events for film**; Ticket procurement services for sporting events; **Booking of seats for entertainment events**; Ticket information services for esports events; **Organisation of sporting events and competitions**; **Organising of sports competitions and events**; **Organization of events for cultural purposes**; **Arranging and conducting of sports events**; **Organization of sporting events and competitions**; **Production of sporting events for television**; Preparing subtitles for live theatrical events; **Production of sporting events for radio**; Time recording services for sporting events; **Provision and management of sporting events**; **Ticket information services for entertainment events**; **Ticket information services for sporting events**; **Organisation of stock car racing events**; **Arranging and conducting of entertainment events**; Organizing and conducting college athletic events; **Entertainment services relating to sporting events**; **Services for the organisation of football events**; **Provision of information relating to sporting events**; **Organisation of sporting competitions and sports events**; Disc jockeys for parties and special events; **Organising of sports competitions and sports events**; **Entertainment provided during intervals of sporting events**; **Arranging and conducting of live entertainment events**; **Services for the organisation of sports events**; Entertainment services in the nature of skating events; **Ticket reservation and booking services for esports events**; **Entertainment services provided during intervals at sports events**; **Ticket reservation and booking services for sporting events**; Rental of equipment for use at athletic events; **Booking of seats for shows and sports events**; **Ticket reservation and booking services for entertainment events**; **Organisation of automobile rallies, tours and racing events**; **Organization of sporting events and competitions, involving animals**; Disc jockey services for parties and special events.

Class 43: **Private members club**; **Providing accommodation for meetings**; **Accommodation services for meetings**; Rental of meeting rooms; Provision of conference, exhibition and meeting facilities; Provision of facilities for board meetings; **Event facilities and temporary office and meeting facilities**; **Providing community centers for social gatherings and meetings**; **Provision of event facilities and temporary office and meeting facilities**.

Class 45: Zodiac consultation; Psychic consultancy; **Security consultancy**; Astrology consultancy; Astrology consultation; Litigation consultancy; Spiritual consultancy; Political consulting; Fire prevention consultation; Fire prevention consultancy; Copyright management consultation; Political campaign consulting; **Physical security consultancy**; Intellectual property consultation; Consultancy (Intellectual property -); Legal advice; Legal conveyancing; Legal services; Legal research; legal conveyancing; Legal mediation services; Legal compliance auditing; Legal consultancy services; Legal consultation services; Legal research services; Legal advocacy services; Mediation [legal services]; Legal support services; Legal aid services; Legal watching services; Legal process serving; legal process serving; Registration services (legal); Legal information services; Legal investigation services; Legal administration of licences; Software licensing [legal services]; Certification of legal documents; Legal advice and representation; Personal legal affairs consultancy; Trademark monitoring [legal services]; Preparation of legal reports; Conveyancing services [legal services]; Compilation of legal information; Bailiff services (legal services); Attorney services [legal services]; Legal information research services; Pro bono legal services; Provision of legal information; Patent licensing [legal services]; Provision of legal research; Legal document preparation services; Mediation in legal procedures ;Licensing of software [legal services]; **Licensing of trademarks [legal services]**; **Legal advice relating to franchising**; Legal services relating to business; Provision of expert legal opinions; **legal services relating to licences**; Legal services relating to wills; Computer software licensing [legal services]; Cartoon character licensing [legal services]; **Legal services relating to licences**; Domain names (Registration of -) [legal services]; Licensing of patent applications [legal services]; Granting of software licences [legal services]; **Licensing of intellectual property [legal services]**; Registration of domain names [legal services]; Information services relating to legal matters; Licensing of computer software [legal services]; Granting of software licenses [legal services]; Legal consultancy relating to patent mapping; Alternative dispute resolution services [legal services]; **Professional legal consultations relating to franchising**; **Providing information relating to legal affairs**; **Licensing of registered designs [legal services]**; Computer software (Licensing of -) [legal services]; **Legal services relating to copyright licensing**; **Expert consultancy relating to legal issues**; Provision of information relating to legal services; **Legal services relating to intellectual property rights**; Trademark

watch services for legal advisory purposes; Legal services relating to social insurance claims; Legal research relating to real estate transactions ; Legal consultation in the field of taxation; **Legal consultancy relating to intellectual property rights**; Legal services relating to time share rights; Arranging for the provision of legal services; Legal services provided in relation to lawsuits; Legal services in the field of immigration; Monitoring industrial property rights for legal advisory purposes; Advisory services relating to consumers rights [legal advice]; Legal services relating to the exploitation of patents; Monitoring intellectual property rights for legal advisory purposes; Legal assistance in the drawing up of contracts; Legal services relating to the registration of trademarks; Legal services relating to company formation and registration; Legal advice in responding to calls for tenders; Providing information about legal services via a website; **Consultancy services relating to the legal aspects of franchising**; Legal services relating to the exploitation of broadcasting rights; **Legal services relating to the exploitation of film copyright**; **Legal services for procedures relating to industrial property rights**; **Legal services relating to the acquisition of intellectual property**; Information, advisory and consultancy services relating to legal matters; Legal services relating to the exploitation of transmission rights; Legal advice in responding to requests for proposals [RFPs]; Licensing [legal services] in the framework of software publishing; Preparation of legal reports in the field of human rights; **Legal services relating to the exploitation of intellectual property rights**; Legal consultancy relating to television advertising, television entertainment and sports; **Licensing of intellectual property in the field of copyrights [legal services]**; **Legal services relating to the exploitation of copyright for printed matter**; **Licensing of intellectual property in the field of trademarks [legal services]**; Legal services in relation to the negotiation of contracts for others; **Legal services relating to the exploitation of copyright and industrial property rights**; **Legal services relating to the management, control and granting of licence rights**; **Legal services relating to the management and exploitation of copyright and ancillary copyright**; Registration of domain names for identification of users on a global computer network [legal service]; **Legal services relating to the negotiation and drafting of contracts relating to intellectual property rights**; **Legal services relating to the exploitation of ancillary rights relating to film, television, video and music productions**; **Legal services relating to the**

**protection and exploitation of copyright for film, television, theatre and music productions; Public events security services.**

**ANNEX B – Specification of ‘086 mark**

Class 26: Embroidered patches; Ornamental cloth patches; Heat adhesive patches; Patches for clothing; Cloth patches for clothing; Patches (Textile -) for ironing-on; Embroidered patches for clothing; Patches for repairing textile articles; Ornamental adhesive patches for jackets; Patches (Heat adhesive -) for repairing textile articles; Heat adhesive patches for repairing textile articles; Heat adhesive patches for decoration of textile articles; Patches for use in the repair of clothing; Patches (Heat adhesive -) for decoration of textile articles [haberdashery]; Heat adhesive patches for decoration of textile articles [haberdashery]; Decoration of textile articles (Heat adhesive patches for -) [haberdashery].

**ANNEX C = List of Goods/Services in which RA/SM claim the BAMC has goodwill**

Goods:

Badges for vehicles, motorcycle helmets, protective clothing for wear by motorcyclists for protection against accident or injury, motorcycles and parts and fittings therefor, motorcycle covers, printed matter, stickers, decorative stickers for motorcycles, decorative stickers for helmets, badges made of fabric material, motorcyclists' clothing, including boots and gloves, cloth patches for clothing, buckles for clothing, embroidered badges, embroidered patches, button badges, ornamental cloth patches, heat adhesive patches for decoration of clothing, iron-on textile patches, badges for wear, pin badges.

Services:

Maintenance and repair of motorcycles, customisation of motorcycles, custom building of motorcycles, arranging, conducting and provision of motorcycle shows, organisation of motorcycle rallies, organisation of motorcycle racing, social club services for entertainment purposes, instructional services relating to the maintenance and repair of motorcycles, conducting workshops relating to motorcycle engine maintenance and repair, motorcycle riding instruction, motorcycle training, fan clubs, private members club services, private members dining club services, private members drinking club services, operating membership accommodation, providing accommodation for meetings, and hiring of rooms for social functions.

## **ANNEX D – List of Goods/Services for RA/SM's trade mark applications**

Class 6: Badges of metal for vehicles.

Class 9: Magnetic badges; mobile apps; sunglasses; motorcycle helmets; motorcycle goggles; articles of protective clothing for wear by motorcyclists for protection against accident or injury; encoded membership cards.

Class 12: Motorcycles and parts and fittings therefor; fitted motorcycle covers.

Class 14: Badges of precious metal; lapel badges of precious metal; metal badges for wear [precious metal].

Class 16: Printed matter; printed publications; leaflets, brochures, newspapers, periodicals, magazines, posters; stationery; cards; motorcycle stickers; stickers; bumper stickers; adhesive stickers; decorative stickers for motorcycles; decorative stickers for helmets.

Class 20: Non-metallic badges for vehicles.

Class 22: Motorcycle covers, not fitted.

Class 24: Badges made of fabric material.

Class 25: Clothing, footwear and headgear; motorcyclists' clothing; motorcyclists' clothing of leather; motorcyclists' boots; motorcycling gloves; waterproof suits for motorcyclists.

Class 26: Cloth patches for clothing; clothing patches; buckles for clothing; embroidered badges; embroidered patches; button badges; ornamental novelty badges; ornamental cloth patches; heat adhesive patches for decoration of clothing; iron-on textile patches; patches for clothing made of plastic; patches for clothing made of vinyl; badges for wear, not of precious metal; pin badges, not made of precious metal.

Class 37: Maintenance and repair of motorcycles; information, advisory and consultancy services relating to all of the aforementioned services.

Class 40: Customisation of motorcycles; custom building of motorcycles; information, advisory and consultancy services relating to all of the aforementioned services.

Class 41: Arranging, conducting and provision of motorcycle shows; organisation of motorcycle rallies; organisation of motorcycle racing; social club services for entertainment purposes; instructional services relating to the maintenance and repair of motorcycles; conducting workshops [training] relating to motorcycle engine maintenance and repair; motorcycle riding instruction; motorcycle training; fan clubs; information, advisory and consultancy services relating to all of the aforementioned services.

Class 43: Private members club services; private members dining club services; private members drinking club services; operating membership accommodation; providing accommodation for meetings; hiring of rooms for social functions; information, advisory and consultancy services relating to all of the aforementioned services.

**ANNEX E – The Goods in the ‘580 application opposed under section 5(1) or (2) of the Act by Mr Bingham.**

Class 6: Badges of metal for vehicles.

Class 14: Badges of precious metal; lapel badges of precious metal; metal badges for wear [precious metal].

Class 26: Cloth patches for clothing; clothing patches; embroidered badges; embroidered patches; button badges; ornamental novelty badges; ornamental cloth patches; heat adhesive patches for decoration of clothing; iron-on textile patches; patches for clothing made of plastic; patches for clothing made of vinyl; badges for wear, not of precious metal; pin badges, not made of precious metal.

**ANNEX F** - The Services in the '602 application opposed under section 5(1) or (2) of the Act by Mr Bingham.

Class 43: Private members club services.