

O/224/12

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION No. 2510775  
STANDING IN THE NAME OF  
TRIPLEU PRODUCTIONS  
AND  
IN THE MATTER OF A REQUEST FOR A RECTIFICATION**

## BACKGROUND

1) The following trade mark is registered in the name of TripleU Productions:

Mark	Number	Filing and Registration Dates	Class	Specification
TRANNYSHACK	2510775	11.03.2009 / 12.06.2009	41	Services providing entertainment in the form of live musical performances; services providing entertainment in the form of recorded music; organisation of musical entertainment; organisation of pop music concerts; club [discotheque] services; club entertainment services.

2) By an application dated 1 May 2012, Mr Walt Utz applied for a rectification in respect of this registration. He states that the registration request should have been made in the following name “Mr Walt Utz t/a TripleU Productions”.

3) In the concurrent invalidity case number 83838, Mr Utz filed evidence of use of the mark. Below is a copy of my summary of the evidence of Mr Utz from the invalidity case.

“Mr Walter Utz filed an affidavit dated 27 April 2011. He states that he is a director of TripleU Productions Limited and has been since its incorporation in 2006. He states that it is a promotions company, and that one of its events is “Trannyshack”, a drag queen performance evening which occurs weekly at Madame Jo Jo’s in London, and has been since January 2009, prior to which it was at the Soho Revue Bar from September 2005. He states that TUP in conjunction with Madame Jo Jo’s have invested consider time and resources on promoting the Trannyshack drag queen event. He states that since its inception in 2005 there have been 52 shows a year, with Stephen Grygelko appearing at four on 5 April 2006, 18 October 2006, 17 October 2007 and 28 January 2009. He states that he has never been approached by consumers under the impression that the show was connected to Mr Grygelko, and that Mr Grygelko has been aware of his use since 2005 and has made no attempt until now to prevent use of the mark in suit. He also provides the following exhibits:

- WU1: A range of posters for events under the name Trannyshack. For the most part these are not dated but there are some which do have dates and these range between 29.03.06 and 17.03.10. All relate to drag queen shows.
- WU2: These would appear to be the costs for virtually every Wednesday show from 20 May 2009 – 3 November 2010. Each shows Mr Utz’s name and address, the name of Madame Jo Jo’s and the “stage name” of TRANNYSHACK. It then lists the individuals and the amount to be paid e.g. DJ/host, DJ, Door Host, Stage manager, pole dancers and prize money. However, there are certain issues with these invoices. The invoice at WU2-8 has the date 7 October 2009 at the top but later shows the date of Wed 10 October 2009 (this date was a Saturday). Wu2-3 shows a date of 2 December 2009 at the top but 1 December 2009 later on. WU2-

25 has 23 December 2009 at the top but 16 December 2009 later on. WU2-72 shows both dates as 18 February 2010 and shows this as a Wednesday, but this date was a Tuesday. There are two invoices for 7 July 2010. One shows a total cost of £680, the other £1330. Four of the names paid are the same, but there are differences in other names. WU2-68 and WU2-77 both show the same dates of 13 October 2010. However, page 68 shows 8 performers being paid a total of £805, whereas page 77 shows eight performers being paid £1,830. The first six names on each list and the amounts paid to these performers are identical but the last two names on each invoice differ as do the amounts paid to these persons. Wu2-66 and WU2-70 both relate to 8 December 2010 both show a total of £830 being paid, but only the details for three of the names and amounts paid for three persons are identical. Also included in this exhibit are other exhibits for posters. However, most of these are after the relevant date.

4) The Registry sought the views of the applicant in the invalidity case, Mr Grygelko, in relation to the request to rectify the Register. A letter, dated 24 May 2012, was received objecting to the amendment as it would affect the validity of the mark, referring to section 64(1) of the Act, on the basis that it would circumvent one of the grounds of invalidity. I note that paragraph 3-29 of Kerly's deals with exactly this point. It states:

"3-29 Presumably, errors which could affect the validity of the registration of a trade mark, and which accordingly could not be corrected under section 64(1), would include such matters as mistakes concerning the identity of its proprietor,<sup>35</sup> or the specification of goods, which affected its liability to revocation for non-use."

<sup>35</sup> Rather than just an error in describing the correct person, perhaps by misspelling or by using a trading name instead of the correct corporate name. "

5) It is my opinion that the evidence is sufficient to show that Mr Utz was trading as TripleU Productions at the time that the application was filed. I order that the Register be amended to reflect the change requested

## **CONCLUSION**

6) Trade mark number 2510775 for the mark TRANNYSHACK registered in relation to "Services providing entertainment in the form of live musical performances; services providing entertainment in the form of recorded music; organisation of musical entertainment; organisation of pop music concerts; club [discotheque] services; club entertainment services." in Class 41 will be amended to show the name of the proprietor of this mark as Mr Walt Utz t/a TripleU Productions.

**Dated this 6<sup>th</sup> day of June 2012**

**G W Salthouse  
For the Registrar  
the Comptroller-General**