

**O/335/20**

**TRADE MARKS ACT 1994 (AS AMENDED)**

**TRADE MARK REGISTRATION No. 3334181**

**IN THE NAME OF MR MARK LEE**

**AND**

**APPLICATION 502385**

**BY MR ANDREW BAGNALL**

**FOR A DECLARATION OF INVALIDITY**

## Final decision

1. On 24<sup>th</sup> March 2020, I issued a preliminary decision in which I indicated that:

*“44. The applicant has 2 months from the date of this decision to make an application to substitute the name of the applicant in the terms set out in paragraph 29 above. He may also apply in such alternative terms that he considers appropriate, provided that this gives effect to my direction that he may (only) apply to substitute for his name alone, the name of the partnership-at-will that existed as at 24<sup>th</sup> August 2018.*

*45. If no such application is made, I will issue a final decision rejecting the application for invalidation.*

*46. If such an application is made, I will give the proprietor one month to provide written submissions as to whether it should be allowed in the terms sought, or at all.”*

2. The terms set out in paragraph 29 of my decision were:

*“...to substitute the applicant as himself on behalf of the partnership that existed at 24<sup>th</sup> August 2018 and traded as The UB40 Experience as the applicant in these proceedings.”*

3. I noted that the partnership in question consisted of Messrs Bagnall, Linton, (Lewie) Linton, Horton, Spence, Stevenson and Lee.

4. On 27<sup>th</sup> March, an application was made to substitute for Mr Andrew Bagnall, the original applicant, the following:

*“Andrew Bagnall, James Horton, Mark Lee, Lewie Linton, Craig Spence, Andrew Stevenson and Dave Linton on behalf of the partnership that existed at 24<sup>th</sup> August 2018 and traded as The Ub40 Experience”*

5. Nothing was received from the current registered proprietor, Mr Lee.

6. None of the parties to these proceedings are legally represented.

7. The gist of my preliminary decision was that (a) the UB40 Experience consisted of a partnership-at-will, (b) the partnership that existed as at 24<sup>th</sup> August 2018 was the owner of an earlier right, (c) only the owner of the earlier right could bring the application to invalidate the trade mark, (d) Mr Bagnall was not entitled to make the application on his own account, but could do on behalf of the partnership of which he was a member as at 24<sup>th</sup> August 2018.

8. The new applicant, as described above, is clearly intended to be the partnership identified in the preliminary decision. However, part of the description of the applicant is not clear. Messrs Bagnall, Horton, Lee, Lewie Linton, Spence, Stevenson and Dave Linton were the members of the partnership. However, they have not brought the application on behalf of their partnership. Rather, it has been brought by Mr Bagnall on behalf of the partnership of which he was a member. Consequently, I direct that the applicant be amended to:

The UB40 Experience, a partnership of Andrew Bagnall, James Horton, Mark Lee, Lewie Linton, Craig Spence, Andrew Stevenson and Dave Linton.

9. Subject to this clarification, I find that the application succeeds for the reasons given in my preliminary decision. The trade mark is invalid and the registration of it will be cancelled.

### **Costs**

10. On 4<sup>th</sup> February 2020, the original applicant submitted a costs proforma setting out the costs incurred in bringing the application. These consisted of:

- (i) £200 official filing fee for making the application;

- (ii) 39 hours spent making the application, considering the registered proprietor's counterstatement, preparing evidence and making written submissions;
- (iii) £1500 for legal expenses incurred in writing letters to music venues in connection with the dispute about the band name and trade mark.

11. The letters in question were about use of the trade mark, not the application to invalidate it. Those costs are not recoverable in these proceedings.

12. The registrar usually awards costs on a scale. The latest version of the scale was published in 2016 via Tribunal Practice Notice 2/2016. As a matter of practice, litigants in person are asked to complete a costs proforma. The purpose of this to ensure that the costs awarded do not exceed the amount spent on the proceedings. There is no right to be awarded the amount claimed. This is subject to an assessment of the reasonableness of the claim and must also take account of the registrar's practice of awarding costs on a contributory, not compensatory, basis.

13. Approaching the matter in this way, I assess costs as follows:

£200 for the official fee for Form TM26(I);

£665 for the time spent dealing with the application.

14. I have calculated the latter by adopting the standard rate used to calculate costs for unrepresented parties (£19 per hour) multiplied by the time I consider was reasonably spent on this application (35 hours).

15. I therefore order Mr Mark Lee to pay 'The UB40 Experience, a partnership of Andrew Bagnall, James Horton, Mark Lee, Lewie Linton, Craig Spence, Andrew Stevenson and Dave Linton' the sum of £865. This sum to be paid within 2 months of the end of the period allowed to appeal against this decision.

**Dated this 23<sup>rd</sup> day of June 2020**

**Allan James  
For the Registrar**