

TRADE MARKS ACT 1994

IN THE MATTER OF:

TRADE MARK APPLICATION No. 2628470

IN THE NAME OF THE GOVERNORS OF ALLEYN'S SCHOOL

AND OPPOSITION No. 104218 THERETO

IN THE NAME OF MOHAMMED ABDUS SATTAR

DECISION

1. On 16 July 2012, the Governors of Alleyn's School ('the Applicants') applied under number 2628470 to register their school's crest, in black-and-white and in colour, as a series of two trade marks for use in relation to various goods in Class 16 and various services in Class 41. The Application was opposed by Mr. Mohammed Abdus Sattar in a Notice and Grounds of Opposition filed under number 104218 on 12 December 2012.
2. His pleadings were deficient and the Registry required him to put his case in order. At the conclusion of the to-ing and fro-ing which then ensued, the Opposition went forward under Sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 on the basis of the rights to which Mr. Sattar was entitled as proprietor of earlier registered trade mark 2204909 consisting of a series of 3 representations of the

mark GODGIFT registered on 19 January 2001, with effect from 4 August 1999, for a plethora of goods and services in Classes 6, 19, 37, 41 and 42.

3. In their Defence and Counterstatement filed on 22 May 2013, the Applicants invoked the provisions of Section 6A of the 1994 Act and thereby required Mr. Sattar to provide proof of use of his earlier trade mark in relation to all of the goods and services for which it was registered. From then onwards and continuing down to the hearing of the present Appeal, Mr. Sattar failed to provide the required evidence of use and failed to provide any substantive reasons for non-use capable of satisfying the requirements of Section 6A.
4. He nevertheless persisted in endeavouring to keep the opposition proceedings alive by seeking to have deadlines extended and hearings adjourned on the basis of communications which did not offer any real explanation for his default or any real prospect of it being rectified. Matters came to a head at a hearing which took place before Mrs Ann Corbett acting on behalf of the Registrar of Trade Marks on 3 October 2013. Mr. Sattar did not attend despite having been notified of the date. Attempts to contact him on the mobile telephone number he had provided were unsuccessful.
5. In the result, the Hearing Officer rejected his request for an extension of time within which to comply with the requirements of Section 6A and deemed his Opposition to Trade Mark Application No. 2628470 to have been withdrawn under Rule 20 of the Trade Marks Rules 2008 by reason of his unrectified default

in compliance with his obligation to provide proof of use or proper reasons for non-use. She ordered him to pay £500. to the Applicants as a contribution towards their costs of the proceedings in the Registry. On 30 October 2013, she issued a formal decision under reference BL O-432-13 giving her reasons for taking the course that she did.

6. It was clear from the Decision and from Mr. Sattar's various contacts and communications with the Registry during the pendency of the Opposition that he had failed to proceed with due and proper regard for the procedural requirements applicable to the conduct of his Opposition and that the Hearing Officer was fully entitled to take the view that the Opposition should not be allowed to continue. Nevertheless on 27 January 2014 Mr. Sattar filed a Form TM55 Notice of Appeal to the Appointed Person under Section 76 of the 1994 Act in which he asserted: 'The way the hearing officer has conducted the hearing is contrary to the legal procedure – therefore the decision is unfair, unlawful and absolute miscarriage of justice'. It was not clear from the Form TM55 what contraventions of 'legal procedure' he intended to rely upon in support of his Appeal.
7. By email dated 29 April 2014 (in the case of the Applicants) and by letter dated 29 April 2014 (in the case of Mr. Sattar) the Tribunal notified the parties that the Appeal had been set for hearing at 11:30 a.m. on Thursday, 29 May 2014. On 14 May 2014, Mr. Sattar wrote to the Treasury Solicitor's Department saying that he was unwell and in pain and that the hearing set for 29 May 2014 was not convenient to him because he would not have sufficient time to prepare for it. No

medical certificate was provided. The position he adopted in that letter was reminiscent of the position he had previously adopted in a letter he sent to the Registry in July 2013 (in support of a request on Form TM9 for an extension of time) as quoted in paragraph [26] of the Hearing Officer's Decision. The Applicants indicated by email dated 19 May 2014 that they would not object to the hearing date set for the Appeal being re-scheduled.

8. Mr. Sattar's letter of 14 May 2014 left me with the impression that he was intending to treat the hearing of the Appeal as an opportunity to embark upon an unfocused and unstructured discourse around and about matters which he perceived to be significant in relation to the merits of the deemed withdrawn Opposition. What mattered from the Tribunal's point of view was that he should engage directly with the central question whether the Hearing Officer was entitled to deem his Opposition to have been withdrawn under Rule 20(3) for lack of any sufficient or proper basis for allowing him an extension of time beyond 29 July 2013 within which to file evidence of use of Trade Mark No. 2204909.
9. With that consideration in mind, I issued Case Management directions under Rules 62(1) and 73(4) of the Trade Marks Rules 2008 in the following terms:
 - (i) Since the Respondents do not oppose Mr. Sattar's request for the hearing set for 29 May 2014 to be adjourned, it will be adjourned to a date to be notified to the parties following compliance by Mr. Sattar with (ii) and (iii) below.

- (ii) Mr. Sattar is directed to provide the Tribunal with a written summary of his contentions on Appeal: (a) specifically identifying the particular paragraphs and passages of the Hearing Officer's written Decision of 30 October 2013 which are said to be wrong; and (b) in relation to each of the particular paragraphs and passages specifically identified, clearly stating why it is said to be wrong.
 - (iii) The written summary is to be sent to the Tribunal to arrive by no later than 17:00 hours on Monday, 16 June 2014. The Tribunal will then send copies of the summary to the Respondents, the Treasury Solicitor's Department and the Registry.
 - (iv) Thereafter the parties will be notified by the Tribunal of the date, time and place for the hearing of the re-scheduled Appeal.
10. Mr. Sattar's response was both late and inadequate for the purpose of identifying any error or procedural irregularity in the Hearing Officer's decision taking. The re-scheduling of the hearing was deferred in the light of medical certificates he provided in support of requests for more time to prepare. By letter dated 5 September 2014 he (and the Applicants) were notified that the hearing would take place on 29 September 2014. The letter stated:

For the purposes of paragraph [9] of the Directions issued by the Appointed Person under Rules 62(1) and 73(4) of the Trade Marks Rules 2008 on 22 May 2014, Mr. Sattar's response will be taken to have been set out in his letter dated 13 June 2014 as sent by fax on 19 June 2014.

The date originally set for the hearing of this Appeal was 29 May 2014. The hearing was adjourned because Mr. Sattar had written to the Treasury Solicitor's Department on 14 May 2014 saying he was unwell and in pain and that the hearing set for 29 May 2014 was not convenient to him because he would not have sufficient time to prepare for it.

The setting of a fresh date for the hearing of the Appeal was deferred in order to allow time for Mr. Sattar to address the situation with regard to his health and the preparation and presentation of his Appeal.

MR SATTAR SHOULD ASSUME THAT THE HEARING OF HIS APPEAL WILL TAKE PLACE ON MONDAY 29 SEPTEMBER 2014 AS NOTIFIED ABOVE AND HE SHOULD PROCEED ON THE BASIS THAT IT IS HIS RESPONSIBILITY TO OBTAIN ANY ASSISTANCE HE MAY REQUIRE FOR THE PURPOSE OF ENABLING HIS APPEAL TO BE PREPARED AND PRESENTED AT THAT HEARING.

11. On 25 September 2014, it came to the attention of the Tribunal that Mr. Sattar was proposing that the hearing should be adjourned. By letter of the same date, the Tribunal informed him as follows:

As emphasised in the last paragraph of the letter of notification sent to you by post on 5 September 2014 (further copy enclosed) the hearing of your Appeal was set to take place on Monday 29 September 2014 on the basis that whatever steps you needed to take would be taken in order to enable the hearing to proceed on that date.

The Appointed Person has asked me to inform you in response to your telephone call this afternoon that the hearing will NOT be adjourned.

You or anyone you may wish to speak on your behalf should therefore attend in order to address the Appointed Person on any matters you may want to bring to his attention.

The Appointed Person is prepared to listen to submissions made orally in support of your Appeal, even if no Skeleton Argument has been filed in support of it beforehand.

12. The hearing of the Appeal took place before me on 29 September 2014, with Mr. Sattar and the Applicants' professional representatives in attendance. Mr. Sattar provided pre-prepared submissions in writing and also addressed me orally in relation to points arising in relation to the Hearing Officer's Decision. His submissions and my responses are recorded in the Transcript of the Hearing. It is sufficient for present purposes to note firstly, that he informed me his earlier registered trade mark had not been (and was not about to be) used in relation to any of the goods or services for which it was registered and secondly, that I informed him it was my duty to apply the 'man made' law in the 1994 Act without taking account of considerations of supernatural expression and the attainment of greater spiritual objectives associated with his registration of the trade mark GODGIFT.
13. As I determined at the hearing, the Appeal must be dismissed for lack of any basis on which it could succeed and Mr. Sattar is required to pay £500. to the Applicants as a contribution towards their costs of the proceedings on appeal. I direct that payment of that sum is to be made on or before 3 November 2014. It is payable in

addition to the sum of £500. awarded by the Hearing Officer in respect of the costs of the proceedings in the Registry.

Geoffrey Hobbs QC
13 October 2014

Mr. Sattar represented himself.

Ms Sarah Redmond of Fox Williams LLP appeared on behalf of the Applicants.

The Registrar did not take part in the proceedings on Appeal.