

**BLO/910/21**

**IN THE MATTER OF THE TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION No. 3 446 046  
FOR THE MARK EXTINCTION REBELLION  
IN THE NAME OF THIS AIN'T ROCK N' ROLL LTD**

**AND IN THE MATTER OF OPPOSITION No. 419 124  
BY CHRISTOPHER AND JASON KINGSLEY**

**AND IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON  
FROM THE DECISION OF MS CLARE BOUCHER  
DATED 19 MARCH 2021**

**DECISION**

1. On 21 November 2019, This Ain't Rock N' Roll Ltd ("the Applicant") applied to register the mark EXTINCTON REBELLION for goods in Classes 9, 14, 18, 25 and 26. The application was opposed by Christopher and Jason Kingsley ("the Opponents") on the grounds of sections 3(6), 5(2)(b) and 5(3) of the 1994 Act, relying upon the earlier mark REBELLION.
2. The opposition was decided by Ms Boucher on behalf of the Registrar on the basis of the evidence filed on both sides and the parties' respective written submissions. There was no hearing before her. In her written decision dated 19 March 2021, she rejected the opposition on all of the grounds. The Opponents appealed and filed lengthy Grounds of Appeal.
3. At the opening of the hearing of the appeal before me, I was informed by counsel for both sides that they had reached an agreement (subject to my approval) that this was a case in which it was appropriate for the opposition to be remitted to the Registry for

a further hearing. The parties did not wish to proceed with the hearing of the substantive appeal. They had also reached an agreement as to costs.

4. The points which they invited me to remit to the Registry are those relating to the opposition pursuant to sub-sections 5(2)(b) and 5(3) only. The Opponents do not seek to pursue the opposition based upon s 3(6) and to that extent the appeal must be dismissed.
5. The explanation for this extremely unusual turn of events was twofold. First, counsel instructed by the Opponents for the appeal had raised a point in his skeleton argument about the Hearing Officer's finding that by the relevant date the sign EXTINCTION REBELLION was known to the public in the UK and connected with the climate activist movement. He submitted that there is an important point of law as to the relevance of that finding to the likelihood of confusion, reflected in a number of General Court decisions. These were not considered by the Hearing Officer. Whilst Counsel accepted in his skeleton argument that no blame could be attached to the Hearing Officer for failing to deal with that point, as it had not been drawn to her attention below, he submitted that her reliance on that finding was misconceived. Indeed, the Opponents submitted that the point was central to the Hearing Officer's decision both in relation to the section 5(2)(b) and 5(3) objections. They were naturally reluctant for the appeal to proceed without the point being considered.
6. Counsel for the Applicant submitted that the point was not only ignored below but also not to be found in the Grounds of Appeal, so that (if I accepted that argument) it would have been necessary for the Opponents to obtain permission to amend the Grounds of Appeal. Nevertheless, the Applicant was plainly concerned that if the appeal proceeded with that point included in it, that would place it at some disadvantage, as the case would be very different to the case run and decided below.
7. The second reason why the parties submitted that it was appropriate for me to remit the matter to the Registry without hearing the substantive appeal, whether with or without the new point of law, was that it was common ground that the Hearing Officer

had made at least one factual error in relation to the evidence produced by the Opponents going to the use and reputation of their earlier mark. Whilst the Applicant said that the mistake was of no consequence, it accepted that there was a risk that this error (if not further errors identified by the Opponents) would require me to make fresh findings of fact in substitution for or in addition to those findings made by the Hearing Officer for the purposes of the analysis under both ss. 5(2)(b) and 5(3).

8. In those circumstances, both parties took the view that it would be appropriate to remit the sub-section 5 points to the Registry to be reheard by another Hearing Officer so that whichever party was dissatisfied with the findings of fact would have an opportunity to appeal, which it would not have were I to make those findings. The need for the matter to be remitted had, to be fair, already been raised by the Opponents in their skeleton argument.
9. In these rather unusual circumstances, I indicated at the hearing that I would be willing to remit the sub-section 5 objections to the Registry to be heard by a different Hearing Officer and I will make an order to that effect. In so doing I should emphasise that I make no comment on the merits of the appeal, or the relevance of Mr Tritton's point of law, nor upon any of the findings of fact made by the Hearing Officer or the conclusions she reached as to sub-sections 5(2)(b) or 5(3).
10. The Opponents did not accept that the point of law mentioned above had not been raised in the Grounds of Appeal, but they accepted that they should pay the Applicant's costs of the appeal, effectively thrown away, in any event. The parties agreed that those costs should be assessed in the sum of £4000, plus VAT, if any, to be paid within 14 days of today. I am happy to make an Order in those terms also.

Amanda Michaels  
The Appointed Person  
15 December 2021

**GUY TRITTON** (instructed by Brand Protect) appeared for the Appellants/Opponents  
**MICHAEL EDENBOROUGH QC** (instructed by McDaniels Law) appeared for the  
Applicant/Respondent