O/0164/25

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00918030694
IN THE NAME OF MIHAI GABRIEL URZICA
FOR THE FOLLOWING TRADE MARK:

Mr. Afterparty

IN CLASSES 16, 35 & 41

AND

AN APPLICATION FOR A DECLARATION
OF INVALIDITY UNDER NO. 506287

BY ASIDE MANAGEMENT LTD

BACKGROUND AND PLEADINGS

1. Mihai Gabriel Urzica ("the proprietor") is the owner of the UK registered trade mark shown on the cover page of this decision ("the contested mark"). The mark was originally applied for in the EU on 4 March 2019 and was granted registration on 18 June 2019. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts and, as such, the filing and registration dates of the contested mark remain in line with its EU counterpart.

2. The contested mark presently stands registered for the following goods and services:

Class 16:	Event programs; Events programmes.
Class 35:	Marketing; Promotional marketing; Marketing agency services; Business marketing services; Online marketing; Internet marketing; Digital marketing; Event marketing; Direct marketing; Marketing services; Marketing studies; Marketing advice; Marketing consulting; Database marketing; Affiliate marketing; Referral marketing; Targeted marketing; Product marketing; Marketing assistance; Marketing consultancy; Marketing forecasting; Financial marketing; Marketing information; Marketing analysis; Marketing research; Promotion services; Promotional services; Business promotion services; Promotional advertising services; Advertising and promotion services; Promotional and advertising services; Advertising and promotional services; Marketing, advertising and promotion services; Advertising, marketing and promotion services; Advertising, promotional and marketing services; Advertising, marketing and promotional services; Marketing, advertising, and promotional services.

Class 41: Dance events; Music festival services; Organising of festivals; Organising dancing events; Musical events (Arranging of -).

3. On 12 July 2023, Aside Management Ltd ("the applicant") made an application for a declaration of invalidity against the contested mark in accordance with section 47 of the Trade Marks Act 1994 ("the Act"). The declaration is sought under section 3(6) of the Act.

4. As the applicant relies solely on section 3(6) of the Act, I will reproduce its pleaded case in full here. This is as follows:

> "Evidence proves Aside Management's co-ownership in the Trademark, which should have been registered with two proprietors, and the registered holder failed to honour the agreement with his 50% partner. The current holder had the leading role in facilitating a business transaction with his former business partner, who wanted to surrender his 50% stake in the brand "Mr. Afterparty". After introductions, Aside Management Ltd signed a brand assignment agreement with the exiting third party and paid him £12,000 to acquire his stake in the brand. In the middle of such negotiation, and a few days before the signature, the current holder decided to register the Trademark in his sole name without notice, then agreed and promised to edit the registration and add Aside Management. To operate the brand, the parties agreed to form a new company, "Beside Promotions Ltd t/a Mr. Afterparty, which has been trading for the past four years. The current holder requested and obtained a refund of the trademark's registration fee from the new company (whose shareholders are Mihai Gabriel Urzica and Aside Management Ltd) so that Beside Promotions Ltd could become the legitimate and final trademark owner. This act of fraud by the holder, who ignores our agreements, gives reason to apply for invalidation on the grounds of bad faith. He is using the Trademark to remain the sole proprietor of the business assets. A detailed witness statement and evidence will be provided."

5. The proprietor filed a counterstatement wherein he denied the claim against him and argued that it was he who had invented the 'misterafterparty' brand and had been using it prior to the incorporation of the applicant company.

6. The applicant is unrepresented, and the proprietor is represented by Alessandro Valerio. The applicant filed evidence whilst also electing to file written submissions at the same time. During the evidence rounds, the proprietor filed a document that was referred to as both 'evidence and submissions'. This was subject to subsequent correspondence from the Tribunal, being something that I will discuss in further detail below. No hearing was requested and both parties filed written submissions in lieu. This decision is taken following a careful consideration of the papers.

7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

8. The applicant's evidence came in the form of the witness statement of Michelle Giuffrida dated 18 April 2024. Mr Giuffrida is the director of the applicant, a position he has held since 2017. Mr Giuffrida's statement is accompanied by 18 exhibits, being MG1 to MG16 (with two additional exhibits present that are labelled MG7.1 and MG7.2), and was adduced in order to demonstrate that the contested mark was applied for in bad faith. It is noted that exhibits MG10 to 13 all contain evidence in Italian. Alongside said evidence are translations that have been provided by Mr Giuffrida himself. On this point, it is noted that in Mr Giuffrida's witness statement (see paragraph 26), he makes a declaration affirming that he is proficient in English and Italian, with Italian being his 'mother tongue' but noting that he has resided in the UK since 2006. This declaration is made with the express understanding of its legal implication. As a result, and in light of no direct challenge as to the accuracy

of these translations by the proprietor, I am content to accept them as being accurate.

9. As above, the proprietor filed a document that it referred to as ‘evidence and submissions’. This was initially filed on 27 February 2024, with a subsequent copy of the same filed on 29 February 2024. Despite the document being referred to as evidence, it did not include a signed statement of truth meaning that it was not capable of being deemed as evidence of fact. As a result, the Tribunal wrote to the proprietor on 12 April 2024, setting out the following:

> “Legal argument and opinion can be provided in written submissions, for which a letter or email would suffice.
>
> However, any factual information must be provided in the form of a witness statement. Any supporting documents referred to in the witness statement must be attached as exhibits. The evidence you have provided should be accompanied by either a Witness Statement, Statutory Declaration or Affidavit, which should be headed to refer to the Trade Marks Act 1994.”

10. In addition, the Tribunal referred the proprietor to online guidance on how to complete a witness statement so it can be deemed admissible by the Tribunal.

11. Upon the refiling of this document on 13 May 2024, the proprietor failed to adhere to the correct format for filing evidence and it was noted, again, that the document did not include a signed statement of truth. On this point, the Tribunal wrote to the proprietor once again on 16 May 2024 setting out the following:

> “It is noted that the evidence submitted by yourself was not filed in the correct format as requested. As such the proprietor shall be made aware that little or no weight will be given to the material as it has not been filed in evidential format.”

12. As a result, the document filed by the proprietor is not to be deemed evidence of fact but is, instead, to be treated as written submissions. Therefore, the documents

that accompanied the document will not be given any evidential weight. That being said, any parts of this document that can be deemed as submissions will be treated as such and assessed in the ordinary way.

DECISION

13. Section 3(6) of the Act has application in invalidation proceedings pursuant to section 47 of the Act, which reads as follows:

> "47. –
>
> (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).
>
> […]
>
> (3) An application for a declaration of invalidity may be made by any person, and may be made either to the registrar or to the court, except that—
>
> (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
>
> (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.
>
> (4) In the case of bad faith in the registration of a trade mark, the registrar himself may apply to the court for a declaration of the invalidity of the registration.

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) […]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed."

Section 3(6): legislation and case law

14. Section 3(6) of the Act states:

"(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith."

15. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin summarised the general principles applicable to bad faith at [240] as follows:

"(i) […]

(ii) The date for assessing whether an application to register [a] trade mark was made in bad faith is the date the application for registration was made (*Lindt*, para 35).

(iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation […], and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 ([*Malaysia Dairy Industries Pte Ltd v Ankenaevnet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 ("*Malaysia Dairy*")], para 29; [*Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 ("*Sky CJEU*"), para 73).

(iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the […] law of trade marks, namely the establishment and functioning of […] a system of undistorted competition 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 consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; [*Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*")], para 45).

(v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky CJEU*, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case (*[Hasbro Inc* v *EUIPO, Kreativni Dogaaji d.o.o. (intervening)* (Case T-663/19) EU:T:2021:211 ("*Hasbro*")], paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky CJEU*, para 76; [*AS v Deutsches Patent-und Markenamt* (C-541/18) EU:C:2019:725], para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (*Sky CJEU*, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (*Sky CJEU*, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a *bona fide* intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky CJEU*, paras 86 and 87)."

16. An allegation of bad faith is a serious allegation which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as bad faith: *Red Bull*.

17. I note that the contested mark is a comparable mark based on an earlier EUTM owned by the proprietor. As such, the application at issue was one that was made to the EU. While that may be the case, the application date for the EUTM remains the relevant date in the present UK proceedings. This is on the basis that this still constitutes the date on which the proprietor sought to protect his mark in the UK because, at that time, the UK was a Member State of the EU. As a result, the relevant date for these proceedings is 4 March 2019.

18. I have set out the pleaded claim of the applicant at paragraph four above. I do not intend to reproduce this here but, in short, remind myself that the application is based on an allegation that the proprietor acted fraudulently by applying for the contested mark and that he ignored the presence of an agreement that the

interests in the ‘Mr. Afterparty’ business would be owned jointly by the proprietor and the applicant. The applicant claims that the proprietor applied for the contested mark in his sole name whilst discussions were ongoing between the applicant and the proprietor’s business partner regarding an agreement to assign his share in the ‘Mr. Afterparty’ brand. If proven, I consider that such a claim can be said to be consistent with an attempt to undermine the interests of a third party, be that the applicant (who is claimed to have, at that time, agreed to come in as a 50% owner of the ‘Mr. Afterparty’ brand) or Mr Moucharafieh (being the business partner of the proprietor prior to the transfer of his interest to the applicant). If I am satisfied that the evidence demonstrates that this was the intention of the proprietor, it constitutes an act of bad faith on the basis that it would demonstrate a dishonest state of mind or intention on the part of the proprietor. For the avoidance of doubt, I consider that the present claim is one that, if successful, applies to the entire breadth of the specification for which the contested mark is registered. This is because although it is possible to apply to register a trade mark for certain goods and services in bad faith, yet apply to register the mark for others in good faith, it seems very likely that all the goods and services included in the application to register the contested mark were perceived as relating to the business described in the pleadings. Therefore, the proprietor’s motives for making the application were probably the same for all the goods and services.

19. In considering the issue of bad faith, I remind myself of the comments of Mr Iain Purvis K.C. sitting as the Appointed Person in the case of *VIDIEM* (Case BL O/0052/25) wherein he stated that:

> “It is obviously wrong to expect a party to Cancellation proceedings to be able to give direct evidence of the motivation of someone who has adopted their mark. All they can reasonably be expected to do in the vast majority of cases is to make inferences from the objective facts and invite the other party to respond to this. If they establish a prima facie case consistent with bad faith, then in the absence of a response from the other party the Cancellation should succeed.”

20. As such, it is not necessary for me to look for direct evidence as to the proprietor's intentions but if I am able to make inferences from the objective facts that he acted in bad faith, then I am entitled to find that it gives rise to a *prima facie* case of bad faith. On this point, I remind myself that, as per the case of *Hasbro* (cited above), if the circumstances of a case give rise to a *prima facie* case of bad faith, it is for an owner of, or applicant to register, a trade mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration. In the absence of such a rebuttal, the *prima facie* case is to be deemed sufficient to conclude that the contested mark was applied for in bad faith.

Summary of evidence

21. The applicant's evidence begins by setting out that 'Mr. Afterparty' is a globally recognised brand that provides advertising services to the music industry, primarily via social media platforms. As well as via digital magazines. It is claims that the brand has over 1.5 million followers.

22. 'Mr. Afterparty' is said to have been a brand initially founded by the proprietor in 2013, who co-owned it 50/50 with Mr Michael Moucharafieh. Beginning in 2019, the evidence of Mr Giuffrida sets out that the proprietor was looking for a new suitable business partner and began conversations with both Mr Giuffrida and Mr Gabriele Cutrano (being the co-director and co-shareholder of the applicant at that time) regarding the acquisition of Mr Moucharafieh's share of the brand.

23. In respect of the discussions with Mr Moucharafieh, it is noted that the applicant has provided extracts from a WhatsApp conversation from early February 2019 between Mr Moucharafieh, the proprietor, Mr Giuffrida and Mr Cutrano.[1] It is noted that in a message from 10 February 2019, Mr Moucharafieh asks if the meeting for tomorrow was still on, to which both the proprietor and Mr Giuffrida reply in the positive.

[1] MG1

24. The narrative evidence sets out that the purpose of the meeting was to discuss some accounting figures in order to quantify Mr Giuffrida's best offer to buy Mr Moucharafieh's stake in Mr. Afterparty. Following said meeting, Mr Giuffrida sent Mr Moucharafieh an email on 11 February 2019 at 20:01 regarding the accounting figures proposed.[2] I do not intend to discuss the nature of the figures but it is clear that the email contains a proposal for Mr Moucharafieh's 50% share in the Mr. Afterparty brand. I also note that the proprietor is copied in on the email.

25. The evidence appears to suggest that there were some emails back and forth regarding the proposed deal. While these are not provided, it appears that an agreement was ultimately reached on 28 February 2019. This is confirmed via an email exchange between Mr Giuffrida and Mr Moucharafieh on that date where each party confirms that they are happy with the proposed deal.[3] Again, the proprietor is copied in to this email exchange.

26. It appears again that there were continued discussions regarding the form of the agreement, with a draft copy of a brand agreement being sent to the proprietor by Mr Giuffrida on 15 March 2019. A copy of this email is provided in evidence.[4] Again, the evidence confirms that the proprietor is copied in on the email.

27. Photographs of the signed agreement are provided in evidence and I note that the agreement is dated 15 March 2019.[5] Mr Moucharafieh is listed as the assignor with the applicant company being listed as the assignee. Further, the document expressly defined 'the Brand' as 'Mr. Afterparty' which is confirmed as being owned equally by the proprietor and Mr Moucharafieh. It is noted that the document is signed by both Mr Moucharafieh and Mr Cutrano (on behalf of the applicant company). On this point, I note that while the document itself is dated 15 March 2019, the narrative evidence sets out that the document wasn't executed until 22 March 2019.

[2] MG2
[3] MG3
[4] MG4
[5] MG5

28. While on the topic of the agreement, I note that clause two of the same sets out the following:

> "2. The Assignor represents and warrants that it is the sole proprietor of all rights, title and interests derived from and in connection with its share of the Brand in Territory, and that the assignment of the Brand from the Assignor to the Assignee shall not cause any infringement of industrial property rights of any third party in the Territory
>
> […] To the Assignor's best knowledge, there are no parties who are using the Brand, own registrations or pending applications for registration of the Brand and there are no pending cases before the court or national authorities, which may adversely affect the Brand."

29. It is clear that, at the time of the agreement being completed, the proprietor had made his application for the contested mark. However, whether or not Mr Moucharafieh was aware of the proprietor applying for the contested mark is not a relevant factor to the present case because he is not a party to these proceedings. Further, I appreciate that the proprietor is not a party to this agreement. That being said, the content of the above clause is relevant to the present case because it is my view that it covers the transfer of any trade mark rights or interests that Mr Moucharafieh had in the 'Mr. Afterparty' brand as that time. This would include rights and interests in the unregistered trade mark for the 'Mr. Afterparty' brand. This relevance of this will be discussed further below.

30. It is confirmed in evidence that the agreed sum for the transfer was invoiced by Mr Moucharafieh to the applicant on 1 April 2019. A copy of the invoice is provided and it is noted that this same evidence also confirms that the payments were duly made in accordance with the invoice.[6]

31. In terms of how the company would operate after the transfer by Mr Moucharafieh, the evidence sets out that the applicant and proprietor formed a new company,

[6] MG6

being ‘Beside Promotions Ltd’. The purpose of this company was, as per paragraph 11 of Mr Giuffrida’s witness statement, to manage the promotion of the activities of the ‘Mr. Afterparty’ brand. A Companies House filing for this company is provided in evidence[7] and I note that the shareholders are listed as being the applicant and the proprietor with Mr Cutrano being the company director. Further evidence of the proprietor’s acknowledgement of the applicant’s interest in the brand is provided by way of an email to a client dated 3 March 2020 wherein the proprietor introduces Mr Cutrano and Mr Giuffrida as the ‘co-owners of the brand’.[8]

32. The applicant’s evidence then moves to discuss the application at issue. I do not consider it necessary to discuss this in full as it includes factual information such as EUIPO records showing the application date of the original EUTM. The relevant evidence, in my view, relates to discussions between the applicant and the proprietor upon the applicant becoming aware of the pending application for the contested mark. In a WhatsApp message exchange, Mr Cutrano suggests that the proprietor should add the applicant on to the trade mark registration, to which the proprietor said that it was not possible.[9] This is correct as once an application for a trade mark is made, it is not possible to amend it so as to add an additional applicant.[10] That being said the proprietor did have the option of withdrawing the application and re-filing it in both parties’ names.

33. The evidence discusses a potential application for another trade mark by the parties in South America. This is demonstrated via another WhatsApp message exchange between Mr Cutrano and the proprietor. In this exchange, the proprietor states that they have to sort out the trade mark in South America on Monday to which Mr Cutrano asked if he knew how to do it. In response, the proprietor confirmed that he “covered for Europe” and that he spent €1,300 in doing so. He also stated that the South American application would be done together.

[7] MG7
[8] MG8
[9] MG10
[10] On this point, I appreciate that an application can be made to correct a procedural irregularly if an error has been made (as opposed to a party simply changing their mind). However, this does not appear to the case here.

34. There appears to have been some discussions between the parties in respect of the request by the applicant to transfer the contested mark into the name of the newly set up company, being Beside Promotions Ltd. There is evidence before me regarding a WhatsApp message from the proprietor to Gab (being Mr Cutrano) stating that they should wait a couple of weeks and, at that point, he will do it.[11]

35. The evidence goes on to discuss a number of additional occurrences that took place after the relevant date for these proceedings. While I appreciate that evidence from after the relevant date above might be relevant if it casts light backwards on the position as at the relevant date (more on this below),[12] the additional evidence referred to here does not.[13] As such, I do not consider that it is of any relevance to these present proceedings and I will say no more about it.

36. In response to the claim against him, I note that the proprietor sought to file his own evidence. However, as I have set out above, this was not filed in the correct format and despite the proprietor being offered an opportunity to file evidence in the appropriate format, he did not do so. As such, I can only treat the proprietor's filed document as submissions and not evidence of fact. On this point, I will say that in response to the claim against him, the proprietor's defence appears to be as follows:

   a. That he invented the brand 'Mr. Afterparty' and has been using it prior to the applicant company being formed;
   b. He was not a party to the agreement between the applicant and Mr Moucharafieh and that he has always disowned it;[14] and
   c. Any and all negotiation documents referred to by the applicant concern only the shares of the 'Mr. Afterparty' company.

[11] MG13
[12] *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited* and others, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).
[13] I say this because, in short, the evidence relates to complaints of the proprietor's actions long after the relevant date and cannot be said to point to his intentions with the brand as at the relevant date.
[14] While his may claim to disown it, there does not seem to be any challenge at the validity of the agreement between the applicant and Mr Moucharafieh.

Assessment of the evidence

37. In assessing all the documents before me, I will begin by saying that while it is noted that the proprietor invented the 'Mr. Afterparty' brand and that he was using it prior to the formation of the applicant company, this is not decisive to the present application. I say this because, firstly, the proprietor's own feelings about his conduct in applying for the contested mark are not relevant. Instead, my assessment is to be made from the perspective of an honest person in the relevant trade. Secondly, regardless of how the brand was formed, the evidence before me suggests that any rights in the 'Mr. Afterparty' brand at around the time of the relevant date vested in both the proprietor and Mr Moucharafieh.[15] Therefore, simply because the proprietor may have coined the mark and used it previously, does not mean that his application is not capable of satisfying the criteria for being made in bad faith.

38. Taking all of the evidence into account, it is clear to me that while the proprietor was not a party to the agreement between Mr Moucharafieh and the applicant, he was aware of it. On this point, I note that he was copied in on not only the email exchanges regarding said agreement but the email confirming that an agreement had been reached on 28 February 2019.[16] This was just a matter of days before the proprietor made the application for the contested mark. Additionally, the proprietor was copied in on the email enclosing the draft agreement which confirms that the proprietor, at that time, was 50% owner of the 'Mr. Afterparty' brand. Again, this was not disputed by the proprietor by way of any sufficiently solid evidence confirming that he was the sole owner of the brand. As such, I am content to proceed on the basis that prior to the agreement, 'Mr. Afterparty' was jointly owned by the proprietor and Mr. Moucharafieh.

[15] Again, this is demonstrated by the content of the agreement between the applicant and Mr Moucharafieh, an issue that has not been proven to be inaccurate by the proprietor.
[16] It is noted in his submissions in lieu of the proprietor that he never authorised Mr Moucharafieh to enter into the negotiations. This is not consistent with the evidence before which confirms that (1) the proprietor was party to the initial discussions (see MG1) and (2) he was copied in to all correspondence regarding said agreement (see MG2, 3 and 4). It follows that if the proprietor had any issue during this time, he could have filed evidence of any attempts to question the legitimacy of the agreement at that time. He did not do so.

39. In respect of the proprietor's position that he always 'disowned' this agreement, I consider that this is contradicted by the evidence filed from after the relevant date. For example, the applicant formed a new company with the applicant on 20 March 2019, being just a number of weeks after the agreement was reached. This evidence, which I have discussed above, confirms that the proprietor was to be a 50/50 shareholder of this new company. Aside from a vague denial that this company is not linked to the 'Mr. Afterparty' brand, the proprietor has not sought to explain this point by way of his own evidence that contradicts the applicant's position. As such, it is my view that the only reasonable conclusion in respect of this company was that it was set up in line with what Mr Giuffrida states in his evidence, namely with the aim of managing the promotion of the 'Mr. Afterparty' brand. This leads me to question why the proprietor would enter into such a corporate arrangement with the applicant if he did not acknowledge the brand transfer agreement and, therefore, the applicant's rights in the brand.

40. In addition to the above, there are three further points in the evidence from after the relevant date that can be said to cast light on the position as at the relevant date. The first point is that there is a conversation between the parties indicating that they would make a joint trade mark application in order to protect the 'Mr. Afterparty' brand in South America. The second point is that the proprietor, on 26 October 2019, agreed via a WhatsApp message to assign the contested mark into joint ownership but never did. The third point is that in introducing Mr Gutrano and Mr Giuffrida to a client in March 2020, the proprietor referred to them as 'co-owners' of the brand. In my view, these points contradict the proprietor's defence that he always intended to 'disown' the agreement. Instead, I consider that this evidence sufficiently points to the fact that the proprietor acknowledged and accepted the applicant's rights in the 'Mr. Afterparty' brand.

41. Lastly, I appreciate that the proprietor's position is that the agreement relates to shares only, and not the contested mark. However, upon review of the documents before me, I do not consider that this is the case. On this point, I refer to the reproduction of clause two of the agreement that I have reproduced at paragraph 28 above. Plainly, the effect of the agreement was that all of Mr Moucharafieh's interests in 'Mr. Afterparty' transferred to the applicant. As above, this will have

included any rights in any trade marks associated with said brand. In my view, it is reasonable to infer that the proprietor, being the co-owner of 'Mr. Afterparty' would be aware of the content of the proposed agreement and, as such, aware of the transfer of Mr Moucharafieh's rights to the applicant.[17] To suggest otherwise is, in my view, incomprehensible. I say this on the reasonable assumption that the proprietor is a prudent businessman and, as such, is expected to have paid attention to transactions affecting his business. This includes the agreement at issue here because, as above, it proposed to transfer 50% of the ownership of the brand to a third party. As a result, I consider it necessary to question why the proprietor sought to apply for the contested mark solely in his own name whilst in the knowledge of the above agreement and of the fact that the agreement covered the transfer of any and all rights in the business (which includes trade marks) to the applicant. In my view, the only reasonable conclusion that can be inferred from the evidence is that the proprietor sought to undermine the rights of the applicant or Mr Moucharafieh. Again, there is no explanation from the proprietor in evidence surrounding the purpose of applying for the contested mark in his sole name at this time.

42. In light of all that I have said above, I am willing to find that the proprietor was aware of a potential acquisition by the applicant of 50% of the 'Mr. Afterparty' business from early February 2019 onwards. Further, the proprietor was aware that a deal for said acquisition of Mr Moucharafieh's shares in 'Mr. Afterparty' was reached on 28 February 2019 and that this included the transfer of any and all rights associated with the 'Mr. Afterparty' brand. On this point, I see no reason why the proprietor would consider that the applicant, who was coming on board as a 50% owner of the brand, would not have an interest in any trade mark rights associated with said brand.

43. In summary, I consider that applying for the contested mark in the immediate aftermath of an agreement being reached for the sale of Mr Moucharafieh's business interest to the applicant was an act that was inconsistent with honest

[17] I say this especially with acknowledgment of the fact that the proprietor was (1) engaged in messages with the parties regarding the meeting between the applicant and Mr Moucharafieh and (2) copied in to all of the subsequent emails regarding the agreement.

business intentions. Such an action can, in my view, be said to be an attempt to undermine the rights of a third party (be that the applicant as the potential recipient of the rights or Mr Moucharafieh as the party transferring said rights). In the absence of any convincing explanation from the proprietor, I do not consider that these actions are consistent with good faith either. As above, I consider that this finding is supported by the actions of the proprietor in the period following the relevant date. Such evidence demonstrates that the proprietor sought to mislead the applicant by (1) confirming that the individuals involved with the applicant were the co-owners of the brand to a third party in 2020, (2) that the applicant and proprietor should apply for a trade mark together in South America and (3) confirming, in October 2019, that he would transfer the contested mark into the appropriate ownership, though ultimately, he did not do so.

44. I appreciate that, as I have set out above, allegations of bad faith are serious ones that should be distinctly proven. However in the present case, I am satisfied that, on the balance of probabilities, the applicant's evidence has given rise to a *prima facie* case of bad faith. As the proprietor failed to file evidence or any suitable argument to rebut this, I hereby find that the contested mark was filed in bad faith. Therefore, I find that the present application, being that brought under section 3(6) of the Act, succeeds in its entirety.

CONCLUSION

45. The application succeeds in its entirety and, subject to any successful appeal of my decision, the contested mark is to be declared invalid and treated as though it was never applied for.

COSTS

46. The applicant has been successful and is, therefore, entitled to its costs. The applicant was unrepresented for the entirety of these proceedings. For unrepresented parties to recover their costs in proceedings before the Tribunal, they are required to file a costs pro forma. The applicant's costs pro forma was

received on 12 June 2024. The applicant claims that it spent the following amount of time on these proceedings.

Notice of cancellation:	5 hours
Preparing witness statement:	10 hours
Preparing evidence and translations:	35 hours
Analysing the proprietor’s evidence and submissions:	4 hours
Final submissions:	7 hours
Total:	**61 hours**

47. I appreciate that the tasks outlined above would have required more of a time commitment by the applicant on the basis that it is unrepresented. That being said, I am of the view that spending 45 hours on preparing the evidence in these proceedings is excessive, especially when you consider that the evidence totaled approximately 30 pages in length. Even being unrepresented, I see no justification for claiming such an excessive amount of time for this task.

48. In light of what I have said above, I consider a costs award for the following number of hours to be reasonable:

Notice of cancellation:	5 hours
Preparing evidence:	15 hours
Analysing the proprietor’s evidence and submissions:	4 hours
Written submissions:	7 hours

Total:	**31 hours**

49. In relation to the hours expended, I note that the Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour. I see no reason to award anything other than this. I therefore award the opponent the sum of £589.00 (31 hours at £19 per hour) in respect of its costs proforma.

50. I hereby order Mihai Gabriel Urzica to pay Aside Management Ltd the sum of £589. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 24th day of February 2025

A COOPER
For the Registrar