

O-432-13

TRADE MARKS ACT 1994


IN THE MATTER OF APPLICATION NO 2628470
IN THE NAME OF THE GOVERNORS OF ALLEYN'S SCHOOL

AND

OPPOSITION UNDER NO 104218 THERETO
BY MR MOHAMMED ABDUS SATTAR

Background

1. Application no 2628470 has a filing date of 16 July 2012, stands in the name of The Governors of Alleyn's School and seeks registration of the following:

The trade mark (Series of two)	Specification of goods and services
	<p>Class 16: Printed matter; printed publications; publications relating to education and training; photographs; stationery; instructional and teaching material.</p> <p>Class 41: Education; provision of training; provision of higher educational courses; entertainment; sporting and cultural activities; library services; education academies; arranging and conducting of conferences, congresses, exhibitions, seminars, symposiums and workshops; correspondence courses; educational services.</p>

2. The application was published in the *Trade Marks Journal* on 14 September 2012. On 12 December 2012, notice of opposition was filed by Mr Mohammed Abdus Sattar. The notice indicated that Mr Sattar sought to oppose under multiple grounds

founded on sections 3, 5(1), 5(2)(a), 5(2)(b), 5(3) and 5(4) as well as “other” (unidentified) grounds. He did not provide any details of most of these grounds of opposition but indicated in the relevant parts of the form that detailed grounds and proper reasons for the opposition would be forwarded in a separate paper. No separate paper was filed. The form was deemed unacceptable and, by way of a letter dated 7 January 2013, Mr Sattar was asked to provide further details and refine his claims. He was allowed until 28 January 2013 to file an amended form. Mr Sattar replied, asking that he be allowed a further “2 or 3 weeks” to respond. In his letter, dated 18 January but received 22 February 2013, he stated:

“I consulted this case with three Solicitors Firm-all of them said that this is very unusual case and because the related Registered Trade Marks are unknown to them –they will not be helpful to deal with this case.

In this situation – I have no choice but to prepare all the related papers in support of the Opposition Application myself. I am therefore very much under pressure and I just need little more time to prepare all the relevant supporting papers which are absolutely important for the Tribunal to know before taking any decision.”

3. Taking into account the number and breadth of grounds sought to be relied upon and his unrepresented status and by way of a letter dated 29 January 2013, Mr Sattar was advised that the period had been extended and that he was allowed until 11 February to file an amended notice of opposition.

4. An amended notice of opposition was filed by Mr Sattar on 7 February. Again, it was deemed unacceptable for lack of detail and, by way of a letter dated 20 February, he was advised that, subject to his right to respond:

- the objections founded on sections 3, 5(4) and ‘other’ sections of the Act would be struck out for lack of particularisation and information;
- the multiple objections founded on section 5(3) would be limited to a single ground;
- an objection founded on section 5(2)(b) would proceed.

5. Reduced to objections under 5(2)(b) and 5(3) of the Act, the opposition relied on a single earlier right, as follows:

Mark (Series of three)	Dates	Specification of goods and services
2204909 GODGIFT Godgift godgift	Filing date: 4 August 1999 Registration date: 19 January 2001	Class 6: Advertisement columns of metals; ducts and pipes of metals for ventilation and air conditioning installations; alloys of common metals; parts and fittings made of common metals and aluminium for furniture, frames and pictures; angle irons; armour plate; parts and balls of steel for bearings; barrels of metal; crash barriers of metal for roads and rail lines; bars of metal for railings; beacons of metal; parts and fittings of metal for beds; bells; belt stretchers of metal; boards of metal; bolts of metal; bottle caps of metal; packaging containers of metal for industrial products; boxes of metal; building materials of metal; building or furniture fittings of

		<p>nickle-silver; building panels of metal; building reinforcing materials of metal; materials made of metal for building construction; frames and structures of metal for building; door fittings, door handles, door scrapers; metal fences; foot scrapers; gates or gate-stops of metal; metal grillers or guardrails; hinges; hooks, lintels, manhole covers, nails, nuts, padlocks, pailings, metal pillars, pins, pipes, poles, posts; metal roof coverings; scaffolding; screws; spring locks; steel sheets or tubes; steel wire; tacks and tree protectors of metal; aluminium sheets, badges for vehicles; petrol cans; oil draining containers; clothes hangers; windows and window-frames made of metals and other materials; window fasteners, window furniture, window fittings, window hardware, window closing devices, window opening devices, window glazing fixtures, window handles, window locks, window stops, window pulleys, window sills, window shutters, and window casement bolts; locking bolts, locking rollers; child safety locks, safety chains; parts and fittings for all the aforesaid goods.</p> <p>Class 19: Advertisement columns (not of metal); pipes for ventilation and air conditioning installation made of non-metallic materials; asbestos cement; non-metallic building and constructional materials; natural stone, crushed stone, stone plate, stone slabs, stone pillars, stone nets, stone windows, artificial stone; chalk, lime, hydrated lime, lime stone, calcareous stone, granite stone; building materials, windows, frames and structures made of stone, granite stone, natural and artificial stone; plaster; gravel; concrete; road-making materials; formulations for road or building constructions containing lime or lime-based products for building and civil engineering purposes; beacons and beams (not of metal); boards for floor; bricks and tiles made of stone and earth; building card-boards; building glass; building timbers; sealants; fillers; waterproof and weatherproof sealants and fillers; sealants for exterior and interior use; cement; cement coatings for fireproof; cement posts; cement slabs; doors and patio doors; door panels; door frames and window frames; glass for building; double glazed glass units; glass panels for doors; glass panels for windows; glass panels for interior and exterior walls of a building and tower blocks; frames, structures; parts and fittings for all the aforesaid goods.</p> <p>Class 37: Air conditioning apparatus installation and repair services; building construction, repair and maintenance; building installation services; supervision of building construction, repair, maintenance and installation; civil engineering; building development services; property and real estate development; renovation and restoration of buildings; refurbishment of buildings; cleaning services for interior and exterior surface of buildings; building insulating services; burglar alarm installation and repair services; building sealing and fire alarm installation services; construction information services; demolition of buildings; electric appliance installation and repair services; elevator installation and repair services; mining extracting services; factory and warehouse construction and maintenance services; freezing equipment installation and repair; furniture installation, repair, restoration and maintenance services; heating equipment installation and repair; leather care, cleaning and repair; lift installation and repair services; masonry services for construction materials; paper hanging and interior and exterior painting and plastering services; plumbing and pump installation, repair and maintenance services; strong-room construction, repair</p>
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		<p>and maintenance services; harbour and under-water construction; ship and boat building, repair and maintenance services; telephone installation and repair services; management supervision for all the aforesaid services.</p> <p>Class 41: Academies for moral education and training services; arranging amusement events (not contrary to morality) for school children, college and university students, teachers and academic staffs, and also for other service men and women; arranging and conducting of conferences, congresses, seminars and symposiums; boarding schools; providing club services for education, culture, training and entertainment; providing camp services for holiday entertainment; organising competitions in sports and entertainments; arranging and organising educational examinations; arranging and providing religious education; providing training, tuition and revision for examinations; production of audio and video recordings; video information services; radio entertainment services; production of radio programmes; entertainment, education and instruction relating to television or radio; production, presentation or rental of television or radio programmes services; interactive information provided on-line from computer data bases or the Internet; arranging, organising, presentation and provision of entertainment services; arranging, organising, presentation and provision of concerts, live entertainment, musical performances; organisation of competitions and awards; arranging and conducting award ceremonies; presentation of awards for achievement in education, economics, cultures, arts and fine arts, architecture and designs, science, International Peace and achievements in sports, musics and entertainments; training and education services in connection with computers, data processing, communication, and financial and business matters; all the aforesaid services and advisory, consultancy and information services provided direct or by means of radio, television and the Internet.</p> <p>Class 42: Accommodation reservation (in hotels and boarding houses) services; arbitration services; research and development in architecture and architectural design; architectural advisory, consultancy and information services; research and development in bacteriology, biology, geology, and geological surveying and land surveys; technical and scientific research in chemical and chemistry, physics, engineering, material testing; computer programming, computer software design, engineering drawing; advisory and consultancy services in the scientific, technical, engineering and computing fields; architecture and architectural consultation; consultation in environmental protection; copyright management services; intellectual property consultancy and licencing intellectual property; patent agency and patent exploitation; research and development in fashion design, industrial design; design services for packaging and interior decoration; dress designing; advisory and consultancy services for constructions, construction drafting, engineering drawing; investigation and analysis of noise and vibration characteristics of complete engine and vehicle systems; research and development in sound and noise reduction in engine and vehicle systems, gear trains and other noises; research and development in marine engineering; drawing and designing for ships, boats, leisure boats and submarines; construction and consultancy services for shipyards, shipbuilding and shipping; research and analysis for oil-</p>
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		field exploitation, oil-field surveys and oil-well testing; catering services in the provision of hotel, restaurant, cafe and bar services; construction and consultancy services for retirement homes; quality control testing, analysis, preparation of reports and management for all the aforesaid services; analysis of building materials and construction; building survey services; construction cost analysis and valuation for new building; mining analysis services; ship and boat designing services.
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6. Mr Sattar did not raise any objection to the striking out of grounds as set out above and the notice of opposition was eventually served on the applicant on 25 March 2013. A due date of 25 May 2013 was given for the applicant to file a defence by way of Form TM8. It was filed on 22 May. The applicant denied the grounds of opposition and put Mr Sattar to proof of use of his earlier mark. By way of a letter dated 29 May, the notice of defence was served on Mr Sattar and he was advised that his evidence in support of his opposition (to include evidence of use of his mark) should be filed on or before 29 July 2013. Under cover of a letter dated 19 July, Mr Sattar sought an extension of time of 90 days for filing his evidence. That request was considered but refused in a letter of 5 August. Mr Sattar was advised that the period for filing his evidence had now expired but that he had the right to be heard and was allowed until 19 August to make such a request. In a letter dated 16 August, following telephone calls to the Tribunal, Mr Sattar sought to be heard.

7. A case management conference (CMC) was arranged to take place on 10 September. The official letter notifying the parties of the CMC was dated 22 August and advised:

“If within 5 days of the date of this letter either party provides the Hearing Clerk with exceptional reasons as to why it cannot make, or make arrangements to be represented at, the date/time in question, then another date/time may be appointed for the [CMC], which will be within 7 days of the first date.”

8. Ms Redmond, of Fox Williams LLP, the applicant’s representatives in these proceedings, contacted the Tribunal on 23 August, in writing, asking for the CMC to be rearranged. Having satisfied the Tribunal that her reasons were justified, the parties were advised in a letter dated 28 August that the CMC would take place on 18 September. This letter also contained the advice, set out above, as to what the parties should do if this date was not suitable to them.

9. No request to further rearrange the CMC was received by either party within the five day period allowed, however, on 16 September, a fax was received from Mr Sattar requesting a postponement. The request was accompanied by a copy of a letter signed by a medical practitioner giving reasons to support the request. The request was granted and the CMC re-appointed for 3 October at 10 a.m.

10. Despite having been in very regular telephone and written contact with the Tribunal since he filed his original notice of opposition, the CMC went ahead in Mr Sattar’s absence. I shall return to this later. Ms Redmond attended on behalf of the applicant.

11. Having considered all submissions made, I refused Mr Sattar's request for an extension of time to file evidence. Given that his opposition was founded on objections under sections 5(2)(b) and (3) of the Act, relied upon a single earlier right for which he was required to show proof of its use and no evidence had been filed, I further directed that his opposition would be deemed withdrawn. Following the conclusion of the CMC, I wrote to the parties to confirm my decision. A copy of my letter is attached at Annex A.

Preliminary issue

12. As I indicated above, the CMC went ahead in the absence of Mr Sattar.

13. The letter notifying the parties of the appointment of CMC, advised them of the need to provide a suitable telephone number which may be either a landline or mobile number. Connection with Ms Redmond was made, to a landline number she had provided, on the first attempt. Mr Sattar had provided a mobile telephone number on which to contact him, however, contact could not be made with him.

14. At 9.55 a.m. and in my presence, the Hearings Clerk made several attempts to ring the number given by Mr Sattar (phone number ending in 6494) in preparation for the CMC. The first call was not answered but an automated response indicated that the call was being diverted to an answerphone. Other attempts were made to contact Mr Sattar on this number over the next few minutes but on each occasion the same response was received. The Hearings Clerk left a message to advise Mr Sattar that she was calling to set up the CMC and indicated that she would call back in a few minutes. Five minutes later she rang the number again but was diverted to the answerphone once more. Whilst the number provided by Mr Sattar was the same as that recorded on his Form TM7 (notice of opposition) and Form TM9 (request for an extension of time) the Hearings Clerk indicated that Mr Sattar, during the course of the proceedings, had, on occasion, made contact via another mobile telephone number (ending in 8627). The Hearings Clerk then rang this number several times but again the calls were diverted to an answerphone. Having been unable to make contact directly with Mr Sattar on either telephone number, the Hearings Clerk left a message to inform Mr Sattar that a further attempt to call him would be made in five minutes but that if nothing was heard from him by Tribunal staff in the meantime, or if he was still unobtainable when she rang back, then the CMC would go ahead in his absence. After a final call to both numbers five minutes later, which were once again redirected to an answerphone, and a final check by telephone with Tribunal staff confirming that there had been no contact from Mr Sattar either in response to the messages or querying why, apparently, he had not been contacted at the appointed time, the CMC went ahead in his absence some seventeen minutes after the first call to him had been attempted.

15. Mr Sattar has represented himself in these proceedings. Whilst recognising that his need for assistance may be greater than that of a represented litigant, there are proper limits to the allowances that can and should be made. I was satisfied that Mr Sattar was well aware of the time and date of the re-arranged CMC. Not only had he been informed of this by way of a letter dated 17 September, but, as the records on the case file show, Mr Sattar had been in telephone contact with Tribunal staff on several occasions since receiving that letter and had discussed the arrangements

and procedure for CMCs including the filing of written submissions in addition to or as an alternative to attending. He had filed written submissions, received at 9.22 a.m. on the morning of the CMC and had rung to confirm they had been received and would be brought to my attention prior to the CMC.

16. Whilst Mr Sattar had given no indication that he wished to change any of the arrangements or that he was unable to attend and, indeed, was expected to be in attendance, it is not unheard of for parties to decide not to attend hearings and not inform the Tribunal. Mr Sattar had provided the Tribunal with the telephone number he wished to be contacted on and multiple calls were made to that number over a period of just over fifteen minutes. There was nothing to suggest that there was anything wrong with his telephone service. Whilst not strictly necessary, given that he had supplied the number he wished to use, but in an attempt to make every effort to contact him and give him every opportunity to attend, multiple calls had also been made, equally unsuccessfully, to another number he had previously used in these proceedings. Messages were left. After some fifteen minutes of trying, I did not consider it appropriate to keep ringing him until such time as contact might be made, as there was nothing to suggest when Mr Sattar might become available (if at all) and it was not fair to the applicant to keep them waiting for an indeterminate time.

17. In all the circumstances, I directed that the CMC would go ahead in the absence of Mr Sattar. I took into account that he was representing himself and might be unfamiliar with Tribunal procedures but considered that every reasonable effort had been made to contact him on the number he had provided and exceptional effort had been made to contact him on another number which he had been known to use. The letter sent to the parties appointing the CMC had warned that it was incumbent on them, if using a mobile telephone, to ensure there is sufficient mobile coverage. I did not consider that it was appropriate simply to abort the CMC and re-appoint it. I had no request to do so or reasons to support it and bore in mind the fact that to do so could unfairly prejudice the applicant. Furthermore, whilst neither party could be criticised for the fact that two earlier appointed CMCs had had to be re-arranged, to do so again would certainly delay matters further.

18. Whilst it was a regrettable situation, I considered that Mr Sattar would not be unfairly prejudiced by continuing with the CMC in his absence. I bore in mind the comments of the Appointed Person in *Style Holdings Plc's application BL O/464/01 and Ministry of Sound BL O/136/03* where it was held that the applicant for an extension must make a full disclosure of the relevant facts in writing prior to the hearing and so Mr Sattar would not have been able to introduce new relevant facts at the CMC. I had before me both his initial request and his explanation of the reasons for the extension of time along with other correspondence from him expanding on that request, as well as the copy of a letter he had faxed to the Tribunal at 9.22 a.m. on the day of the CMC. I took all of that material into account in reaching my decision.

Decision

19. As indicated above, Mr Sattar's opposition, as originally filed, was founded on grounds under sections 3, 5(1), 5(2)(a), 5(2)(b), 5(3), 5(4) and other (unspecified) grounds under the Act. Following a lengthy exchange of correspondence, the

grounds of opposition were reduced to an objection under section 5(2)(b) and a single ground under section 5(3) of the Act, both reliant on Mr Sattar's earlier trade mark no 2204909. Following the filing of a counterstatement by the applicant, Mr Sattar was advised, by way of a letter dated 29 May 2013, that he had a period of two months expiring 29 July 2013, to file evidence in support of these remaining grounds of opposition. The letter also advised him that within that same period and because of a request made by the applicant in its counterstatement, Mr Sattar's evidence should include evidence of the use he had made of his earlier mark. Mr Sattar sought an extension of this period of 90 days.

20. Rule 77 of the Trade Marks Rules 2008 refers to the alteration of time limits. It states:

“Alteration of time limits (Form TM9)

77—(1) Subject to paragraphs (4) and (5), the registrar may, at the request of the person or party concerned or at the registrar's own initiative extend a time or period prescribed by these Rules or a time or period specified by the registrar for doing any act and any extension under this paragraph shall be made subject to such conditions as the registrar may direct.

(2) A request for extension relates to a time period other than one specified under rule 13 and under this rule may be made before or after the time or period in question has expired and shall be made—

(a) where the application for registration has not been published and the request for an extension relates to a time or period other than one specified under rule 13 and is made before the time or period in question has expired, in writing ; and

(b) in any other case, on Form TM9.

(3) Where an extension under paragraph (1) is requested in relation to proceedings before the registrar, the party seeking the extension shall send a copy of the request to every other person who is a party to the proceedings.

(4) The registrar shall extend a flexible time limit, except a time or period which applies in relation to proceedings before the registrar or the filing of an appeal to the Appointed Person under rule 71, where—

(a) the request for extension is made before the end of the period of two months beginning with the date the relevant time or period expired; and

(b) no previous request has been made under this paragraph.

(5) A time limit listed in Schedule 1 (whether it has already expired or not) may be extended under paragraph (1) if, and only if—

(a) the irregularity or prospective irregularity is attributable, wholly or in part, to a default, omission or other error by the registrar, the Office or the International Bureau; and

(b) it appears to the registrar that the irregularity should be rectified.

(6) In this rule— “flexible time limit” means—

(a) a time or period prescribed by these Rules, except a time or period prescribed by the rules listed in Schedule 1, or

(b) a time or period specified by the registrar for doing any act or taking any proceedings; and “proceedings before the registrar” means any dispute between two or more parties relating to a matter before the registrar in connection with a trade mark.”

21. The period for filing evidence in support of an opposition, including evidence proving use of an earlier mark, is not a period set out in Schedule 1. It is, therefore, a flexible time limit within the meaning of the rules. The request was made by the filing of Form TM9 and the requisite fee was paid.

22. It is a matter for Mr Sattar to justify his request to extend the time limit for him to file his evidence. That requires him to give reasons which satisfy the registrar that the request should be granted. In *Siddiqui's Application*, BL O/481/00, the Appointed Person considered what information should be supplied when someone applies for an extension of time. He said:

“In a normal case this will require the applicant to show clearly what he has done, what he wants to do and why it is that he has not been able to do it. This does not mean that in an appropriate case where he fails to show that he has acted diligently but that special circumstances exist an extension cannot be granted. However, in the normal case it is by showing what he has done and what he wants to do and why he has not done it that the Registrar can be satisfied that granting an indulgence is in accordance with the overriding objective and that the delay is not being used so as to allow the system to be abused.”

23. The reasons for the extension should be ‘strong and compelling’ *A.J and M.A Levy's Trade Mark* [1999] RPC 292. It is for the party in default to satisfy the Court that despite his default, discretion should be exercised *Liquid Force* [1999] RPC 429.

24. With all of the above in mind, Mr Sattar’s request was considered.

25. In a letter dated 29 May 2013, the parties had been advised that Mr Sattar’s evidence should be filed on or before 29 July 2013. The case file shows that Mr Sattar telephoned the Tribunal indicating he wanted more time and was advised of the relevant procedures. On 18 July he rang again, indicated that he wished to file a Form TM9 and pay the requisite fee and asked what he should put on the form to justify the extension and how long he should ask for. Given that these are

adversarial proceedings it would be wrong for Tribunal staff to provide guidance of this nature but the file records that Mr Sattar was told that if he considered he needed more time then it was a matter for him to decide how long he needed for the completion of his evidence and, similarly, that he should provide whatever detailed reasons he felt were appropriate given whatever the situation was. Whilst the record does not show it, it is usual practice in such circumstances for callers, who do not have the benefit of legal representation, to be directed to relevant case law and practice which is available from the IPO website and I have no doubt that this was done in this case.

26. A letter and Form TM9 was subsequently received from Mr Sattar. It was dated 19 July 2013 but was not received until 29 July. The handwritten form signed by Mr Sattar requested a 90 day extension of time for filing evidence and indicated that two separate sheets were attached. The two separate sheets take the form of a letter. It begins:

“Thank you very much for your kind advice in regard to request for an extension of time as to the Form TM9 which require payment of £100 Fee. AT THIS SHORT OF TIME I HAVE NO OTHER OPTION BUT TO TAKE THIS OPPORTUNITY TO APPLY FOR AN EXTENTION OF TIME UNDER FORM TM9”.

It continues:

“7. Why do you want more time?”

Further to the telephone conversation I am writing this letter to explain to the Tribunal (as no 7 in Form TM9 advice to use separate sheet) that this case now in a complex situation. With all my respect to the all members of the Tribunal I earnestly request that the Tribunal be kind enough to extend their compassionate approach to this case and not be hurried to take any quick decision.

In fact this is a very tragic case. This is tragic because an educational Institute has failed to understand the consequence of their action. The Applicant has not been able to realize how much damage they have done taking unwise decision to continue this case.

In this situation to inform the Tribunal I have no other option but to reveal that like many other registered trade Mark-“GODGIFT” is not a ordinary Trade Mark design to make just money. Godgift is much much more than that. In reality Godgift is the Devine Gifts from Most Gracious God-the Creator Lord of the Universe.

All those years I was waiting for a precious moment to come when Godgift can reveal itself to the general public and to the World in a very special and dignified way. It is so unfortunate that an educational Institution has forced us to take a legal action and engaged in a undignified legal dispute which has caused a irreparable damage to everythings- my health, my research, my work and mostly the multi-billion Pounds International Projects- what we have

been engaged to develop more than 20 years. This is something so special that it has National and International importance.

I have already informed to the Tribunal in my letter of 18 January 2013 that all those years of dealing with uncertainties and unexpected circumstances and at the same time years after years undertaking painstaking research work and going through countless nights after nights sleepless because being without any kind of assistance- I had to bear all the pressures alone. THAT Situation have made my health extremely frazzled. Day and night being engaged to carry on under such a strain- that any further pressure might damage my health permanently. I am afraid that if anything of that kind happen to my health in that situation most probably I shall not be able to deliver the Most Gracious "God's Gifts " to mankind. My Doctor has already warned me not to put any extra pressure on my health.

In regard to this dispute the Tribunal need to know more about "Godgift" and as well as about "god'sgift". In this legal dispute so many questions are legitimately concerned- that must be answered. Without resolving those questions- any decision the Tribunal want to take might lead to a miscarriage of justice. That means appeal after appeal until the justice has been delivered. On our part we do not want that situation unless we are forced to take that course.

At this moment what is most important for us to get sufficient time to prepare this case in a right manner to give the Tribunal a clear picture about Godgift and the context of this legal dispute. Having necessary informations and clear picture at hand the Tribunal will be in a better position to take the right decision and avoid miscarriage of justice.

I am therefore earnestly requesting all the members of the Tribunal to grant me extra 90 days times to prepare this case. I hope with the blessings of Most Gracious God I shall be able to send all the papers to the Tribunal for their kind considerations and to resolve this legal dispute."

27. Mr Sattar's request was considered, however, in a letter dated 5 August 2013 and, on the basis that he had "not provided any reasons which case law indicates are required to support the request", the preliminary view was given that it be refused. The letter sent to Mr Sattar included an enclosure providing him with details of the relevant case law and the principles derived from it, in the form of a copy of the relevant pages from the Tribunal Work Manual. The letter also noted that the time for filing evidence had now expired, advised him of his right to be heard and allowed him until 19 August to request a hearing. The case file records that on receipt of that letter, Mr Sattar again rang the Tribunal and indicated that he thought the enclosure he had been sent was not complete. A further note on file indicates that, for reasons unknown to me, a complete copy of the work manual was then sent to him.

28. In a letter faxed to the Tribunal on 19 August (but dated 16 August) Mr Sattar stated:

“In this situation I have no other option but to express my disagreement with the preliminary view of the Registry. In my letter of 19 July 2013 I have clearly mentioned that “Registered Trade Mark Godgift is not a ordinary Trade Mark design to make money. Godgift is much much more than that. In this legal dispute that is a main point to note, That is a best reason that the opposition should continue until the Justice has been delivered.

With my all respects and regard I therefore request a hearing and giving me enough time to prepare for the Hearing”

29. A CMC was then appointed to take place on 10 September, however, as set out above, for a variety of reasons it did not go ahead until 3 October. In the meantime, two further letters were sent to the Tribunal by Mr Sattar. The first, dated 12 September but sent by fax on 16 September, was filed in support of Mr Sattar’s request to postpone the CMC but included the following:

“In my previous letter I have mentioned that the Registrar and the Management Conference need to know more about Godgift before taking any decision about this case. I must inform to the Management Conference that what we are developing for Godgift is Patent base huge National and International Projects. As these Projects are designed for the entire World any thing we develop has to be World Class. That means question of Perfection. As a Nation this is also a question of National Prestige as well as many things related with National Security and mostly my personal security.

In this letter I can confirm that those designer working on the projects trying very hard to meet the dead line and they are almost in final stage and waiting for the expert opinion before sending it to Patent Office.”

30. Mr Sattar said that moving the date of the CMC would:

“give me enough time to prepare for this hearing in ease and send some concret evidence to the Patent Office to show why it is so significant for us to oppose the Applicant;s Application for God’s gift.”

31. The second letter was received at 9.22 a.m. on 3 October, the date the CMC finally took place but was dated 30 September. It reads:

THIS IS HEARING CONFERENCE ON EXTENSION OF TIME.

In this written submission I like to explain- Why extention of sufficient times are necessary.

Before opening this Hearing with my all respects it is my earnest request to the Honourable Hearing Officer and the respected Members of the Management Conference to keep in mind – Three Basic things:

1. This is a case where one man's standing and total self-sacrifice for the well-being of the millions.

Versus

An Organization which has no respect for Moral Obligation.

2. This is a legal dispute which has wider public interest as well as very great consequences in people's lives and millions of Children lives.

3. The Patent Office or The Intellectual Property Office being a part of United Kingdom Government Office it has a "Duty of Care" to protect and maintain the security of all Registered Patent right- Registered Trade Marks Rights and any Registered Intellectual Property Rights which Intellectual Property Law covers.

Now here an well established and well-loved Registered Trade Marks for more than 12 years which is touching to the Minds, Hearts and Souls of the Millions is in danger before its GLAMOUR; Glory and Goodness touches to the millions of heart and souls.

Research and Observation

THROUGH THE COURSE OF JOURNEY IN OUR RESEARCH AND OBSERVATION of Modern society what we found is a heart-breaking.

Almost all modern family life are under extreme pressure. Because of this unbearable pressure which cause the domestic dispute and the primary source of unhappiness and at the end which have led millions of couple's Marriage break down.

There is another important issue which deserve to our attention. In domestic life there is traditional inequality between men and women. In family life there is tradition that women tend to involve in unpaid jobs more than men for centuries but in fact not recognize and not properly appreciated by society.

This pressure of unpaid domestic works have created a high tension and unhappiness between the working couples and in many cases led to a divorce which can mark the lifelong unimaginable impact on children. After the separation millions of innocent children have become the victim of their Parent's action.

May we most humbly ask the questions how many divorced Parents give proper thought to the psychological damage of their children? What right the Parents have to damage the innocent children's life? Who should be blame for those millions of innocent children who have been the victim of their Parent's divorce? How many people are thinking for the solution of this epidemic problems in our society? And what is the solution?

We do not know how many people in the United Kingdom and in the Western World really give any thought at all for this epidemic social problems...but we do.

To understand and realize the gravity of those innocent children's silent cries One have to have human heart as well as human soul to feel the undescrivable human pains.

There are more questions to ask- how many people thinking for the solution of those problems? To remove those heart broken pain from those millions of children – who can solve or reduce the magnitude of those problems? Who has the answer for this?

In this Hearing Conference we like to disclose as well as wish to confirm that Godgift has the answer. It is Godgift which has been involved in years after years in observation and research projects to find out the proper solution at the preventive stage. That means to provide the support services which will help to reduce the divorce rate. Therefore the children will not be affected at the first place.

To do so Godgift is preparingto provide all those basic and fundamentally necessary services to those morally bonded married couples to create a well disciplined and loving family atmosphere in which the Husband and Wife and their childrenwill enjoy the real loving relationships in unbroken family life. That will be the 21st century's ideal loving and happy family life.

To provide those services to the millions of families we need to employ millions of employees. That will create millions of jobs for the millions of unemployed people. These are just not the ideas that can be provided over night or five-days and seven-days time limits. To provide that kind of high-tech disciplined domestic services to the millions of families very certainly we need to have proper plan as well as proper mechanism in place and at the same time real support from the Government and from the people we serve.

To organize and develop that kind of mechanism which is capable to provide that high-tech domestic services to the millions of families all over the country- how much time we can assume that is necessary to provide those services?

With my all respects and most humbly may I ask to the honourableMembers of the Conference- how much time do they think is appropriate to give to an organization which is developing that kind of high-tech Patent base domestic services for the millions of people to create millions of happy families where children will be growing up in a loving family atmosphere without having any psychological damage?

Any unreasonable time limit will not be helpful as well as it will destroy my all efforts and all those aspirations hopes and happiness of the millions.”

32. In a handwritten addition to the main (typed) body of the letter, Mr Sattar further states:

“On behalf of those millions of affected children as well as all those general Public who desperately need support services- it is my earnest request that the honourable Hearing Officer and the respected members of the Management Conference (illegible) be kind enough to deal with this case and extend the sufficient time so that we have a proper chance to produce concret evidence to show why we strongly oppose this Application.”

33. Whilst Ms Redmond confirmed at the CMC that she had not had sight of the fax that Mr Sattar had sent about an hour before the CMC eventually began, I made her aware of its contents in general terms. She made no objection to my taking it into account. As I indicated in my letter issued following the CMC, I took this letter into account, as well as all other written material received from Mr Sattar as set out above.

34. In making the original request for further time Mr Sattar indicates that it is “most important for us to get sufficient time to prepare this case” but gives no information of what, if anything, he has done to prepare his evidence, no information of what he still needs to do to prepare it and no information of why he hasn’t been able to do it so far.

35. In his request to postpone the CMC set for 18 September, Mr Sattar refers to his developing “National and International Projects”. He states that designers working on them are “trying very hard to meet the dead line and they are almost in final stage and waiting for the expert opinion before sending it” and that he wants to “send some concret evidence ...to show why it is so significant for us to oppose...[the application]” but again, gives no information of what, if anything, the ‘designers’ have done to identify or prepare evidence, what they still need to do or why they haven’t been able to do it so far, nor is any information given as to what the “expert opinion” relates, who the expert might be or what the relevance of that opinion might be to the matters to be determined.

36. The written submissions received on the day of the CMC set out Mr Sattar’s opinions on certain elements of modern family life and their effects on society/children but again gave no information of what, if anything, he had done to prepare his evidence (nor what was the nature of that evidence), no information of what he still needed to do to prepare it and no information of why he hadn’t been able to do it thus far.

37. Mr Sattar’s opposition to the application is based on grounds under sections 5(2)(b) and 5(3) of the Act. In doing so, he claims there is a likelihood of confusion between the mark applied for and his earlier mark. He claims that his earlier mark has a reputation. His earlier mark is registered in respect of a very wide range of goods and services. The applicant has put Mr Sattar to proof of the use made of his earlier mark. From the material before me, it is not entirely clear whether Mr Sattar has, in fact, put his trade mark to use. Whilst he claims in his notice of opposition that his mark has a reputation through the use made of it, he also says, for example that: “All those years I was waiting for a precious moment to come when Godgift can

reveal itself”, “what we have been engaged to develop for more than 20 years”, “I am afraid that if anything of that kind happen to my health in that situation Most probably I shall not be able to delever the Most Gracious “God’s Gifts” to mankind” and “what we are developing” all of which suggest that his plans to use the mark are still being developed. Whatever the actual situation is, he has not made a claim that he has proper reasons for not using his earlier mark but had he done so, he would still have had to have filed evidence to support such a claim.

38. Mr Sattar indicated that he wishes to have “sufficient time so that we have a proper chance to produce concret evidence to show why we strongly oppose this Application” but has failed to give any reasons which justify such a request. Indeed taking **all** of the material filed by Mr Sattar into account, I consider that it provides no information which in anyway supports his request for further time to file evidence. There is, for example, no indication that he has done anything to identify the evidence he wishes to file, no information as to who is to provide that evidence, no information that he had made any arrangements for it to be collected or collated, no information that collection of that material has begun or that its collection has been monitored or progressed in any way. Indeed other than a vague indication that designers are waiting for expert opinion (which may refer to the evidence he intended to file but could equally well refer to opinion regarding his (planned) projects), there is no information that he has done anything in relation to the identification, collection, preparation and filing of evidence, no information as to why the time already given has been insufficient and no information to indicate what he intends and still needs to do in order to be able to file it.

39. Again, I am acutely aware of the fact that Mr Sattar does not have the benefit of professional advice but, as indicated earlier, there are proper limits to the allowances that can and should be made to him due to his unrepresented status. His earlier mark was applied for in 1999 and registered in 2001 and so is of some age and the onus is on him to protect it. Mr Sattar chose to file the notice of opposition and it is incumbent on him to be fully prepared for what that entails and know what he needs to do to support his case. It appears from the papers on file that Mr Sattar’s knowledge of opposition procedures is somewhat limited, however, the only matter before me is his request for an extension of time for filing evidence and the consequences thereof.

40. Whilst, as I indicated earlier, it is not the role of the Tribunal to help him prepare his case, I am satisfied that Mr Sattar was directed to and sent copies of appropriate information and guidance (which is in the public domain) to alert him to the relevant requirements of opposition proceedings in general and the purpose and preparation of evidence in particular as well as the specific requirements and case law relevant to requests for extensions of time and so he should have known what was required of him. Despite Mr Sattar’s claim that his “is not a ordinary Trade Mark design”, there is nothing to suggest that his request for an extension of time is anything other than a normal request made in the course of proceedings-proceedings based on the commonest of grounds. There is nothing before me to indicate that Mr Sattar has acted with due diligence (or indeed, that he has acted at all) nor is there anything to indicate that this is an appropriate case or that special circumstances exist to excuse any lack of diligence on his part. Mr Sattar has failed to justify his request.

41. I refused the request for an extension of time for filing evidence.

42. Having refused the extension, I went on to consider the consequences of that decision. As indicated above, Mr Sattar's opposition is based on objections under section 5(2)(b) and 5(3) of the Act. He relied on a single earlier mark which, at the date the application he opposes was published, had been registered for more than five years. Section 6A of the Act is therefore relevant. It states:

“6A (1) This section applies where-

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or

(ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a Community trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(7) Nothing in this section affects –

(a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal) or section 5(4)(relative grounds of refusal on the basis of an earlier right), or

(b) the making of an application for a declaration of invalidity under section 47(2) (application on relative grounds where no consent to registration).

43. Given that the applicant, in its counterstatement, has put Mr Sattar to proof of use of his mark, Section 100 of the Act is also relevant. It states:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.

44. Mr Sattar has made no claim in his notice of opposition that there are proper reasons for non-use of his earlier mark and, within the period allowed to him (or since), has filed no evidence to show what use has been made of it. Rule 20 of the Trade Marks Rules 2008 is therefore relevant. It states:

“20—(1) Where—

(a) Form TM53 has been filed by either party;

(b) the opposition or part of it is based on grounds other than those set out in section 5(1) or (2) and the applicant has filed a Form TM8; or

(c) the registrar has indicated to the parties that it is inappropriate for rule 19 to apply,

the registrar shall specify the periods within which evidence and submissions may be filed by the parties.

(2) Where—

(a) the opposition is based on an earlier trade mark of a kind falling within section 6(1)(c); or

(b) the opposition or part of it is based on grounds other than those set out in section 5(1) or (2); or

(c) the truth of a matter set out in the statement of use is either denied or not admitted by the applicant, the person opposing the registration (“the opposer”) shall file evidence supporting the opposition.

(3) Where the opposer files no evidence under paragraph (2), the opposer shall be deemed to have withdrawn the opposition to the registration to the extent that it is based on—

(a) the matters in paragraph (2)(a) or (b); or

(b) an earlier trade mark which has been registered and which is the subject of the statement of use referred to in paragraph (2)(c).

(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

45. Having refused his request for an extension of time for filing evidence, Mr Sattar has failed to file evidence of the use made of his mark as is required by rule 20(2) and is out of time for so doing. That being the case, and given the grounds relied on by him, his opposition is deemed to have been withdrawn under the provisions of rule 20(3).

46. As I indicated in my letter sent following the CMC, Mr Sattar contacted Tribunal staff shortly after it had taken place seeking advice as to its outcome. Nothing is recorded to show that he provided any indication of why he had not been available at (or indeed after) the appointed time.

Costs

47. In my letter issued following the CMC, I indicated that I allowed a period of fourteen days for the applicant to make written submissions on costs which should be copied to Mr Sattar who would then have a further seven days to comment on them. By way of a letter dated 10 October, the applicant made a request for costs. A further letter, dated 17 October and faxed to the registrar the same day, confirmed that a copy of the letter of 10 October had been sent to Mr Sattar, though did not give an indication of when it was so copied. Given that I cannot be sure whether the letter was copied at any earlier date, I proceed on the basis that the seven day period for Mr Sattar to comment began on 17 October. No comments from Mr Sattar have been received, however, this is not surprising given that the request for costs made in the applicant’s letter of 10 October simply requested an award of costs on the basis that the applicant had been successful in these proceedings.

48. As the opposition has failed, the applicant is entitled to an award of costs in its favour. In making the award, I refer to the published scale of costs and note that the applicant has not given any indication that an award other than one on the usual scale is sought. I make the award on the following basis:

For filing a statement (Form TM8) and considering Mr Sattar’s statement (TM7):	£300
For preparation for and attendance at CMC:	£200
Total:	£500

49. I order Mr Mohammed Abdus Sattar to pay the Governors of Alleyn's School the sum of £500. This sum is to be paid within seven days of the expiry of the period for appeal against this decision or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of October 2013

**Ann Corbett
For the Registrar
The Comptroller-General**

Annex A

Mr Mohammed Abdus Sattar
4 Millman Street
London
WC1N 3EB

Our ref: Opp 104218/ Hrnngs/TB
Your ref: Mr Mohammed Abdus Sattar
Date: 3 October 2013

Dear Sirs,

Trade Mark Application No: 2628470 Applicant: The Governors of Alleyn's School

Opposition No: 104218 Opponent: Mr Mohammed Abdus Sattar

1. A case management conference ("CMC") took place before me earlier today. At that CMC, Ms Sarah Redmond represented the applicant. Mr Sattar, for reasons unknown to me, did not attend.

2. The CMC had originally been appointed to take place on 10 September 2013. The official letter notifying the parties of the CMC was dated 22 August and advised:

"If within 5 days of the date of this letter either party provides the Hearing Clerk with exceptional reasons as to why it cannot make, or make arrangements to be represented at, the date/time in question, then another date/time may be appointed for the [CMC], which will be within 7 days of the first date."

3. Ms Redmond contacted the Tribunal on 23 August in writing asking for the CMC to be rearranged. Having satisfied the Tribunal that her reasons were justified, the parties were advised in a letter dated 28 August that the CMC would take place on 18 September. This letter contained the same advice as set out above at paragraph 2.

4. No request to further rearrange the CMC was received from either party within the five day period allowed, however, on 16 September a fax was received from Mr Sattar requesting a postponement. Accompanied by medical evidence, the request was granted. The CMC was re-appointed and the parties advised that it would go ahead today at 10 a.m.

5. Shortly before the appointed hour, the Hearings Clerk attempted to make contact with the parties by telephone. She was unable to make contact with Mr Sattar on the number he had provided. She made several attempts to ring him on this number, as well as on another number he had previously provided but in all instances was re-directed to the answerphone. She left messages, on my instructions, advising him that she was ringing to begin the CMC as arranged and that she would phone him back in a few minutes but that if nothing was heard from him in the meantime, or if

he was still unobtainable when she rang back, then the CMC would go ahead in his absence. Further calls to his telephone were re-directed to the answerphone and, nothing having been heard from Mr Sattar in response, the CMC went ahead at 10.12 a.m.

6. The CMC had been arranged following a request, by Mr Sattar, for an extension of time for the filing of his evidence. That request had been considered and a preliminary view given that it should be refused. Whilst Mr Sattar was not in attendance, he had, earlier this morning, sent a letter by fax giving further submissions to support his request and, indeed, had rung Tribunal staff more than once to confirm that they had been received. Although Ms Redmond confirmed that she had neither seen nor received a copy of them from Mr Sattar, I indicated that I would consider them. Indeed, I considered all the material which has been received from Mr Sattar as well as submissions from Ms Redmond. Having done so, I refused to grant Mr Sattar's request for an extension of the time to file evidence as, in my view, no reasons giving any justification for its grant had been provided at any point.

7. That being the case, I further directed that Mr Sattar's opposition to the application would be deemed abandoned under the provisions of rule 20(3) of the Trade Mark Rules. A written decision will issue in due course giving my full reasons (see below) but, in brief, Mr Sattar has failed to justify the grant of an extension of time for filing evidence, has failed to prove that he has used the earlier mark he relied upon in these proceedings and no claim was made that he had any proper reasons for its non-use.

8. For the sake of completeness, I would add that I understand that Mr Sattar contacted Tribunal staff some time after the CMC had concluded, seeking advice as to its outcome but that at no time did he provide any indication of why he had not been available at (or indeed after) the appointed time.

9. The opposition having been deemed abandoned, the applicant is entitled to an award of costs in its favour. As Mr Sattar was not in attendance, I hereby allow the applicant a period of 14 days from the date of this letter to provide written submissions on costs. These should be copied to Mr Sattar in the usual way and he will then have a further 7 days to file any submissions on costs that he may wish to make. Again, these should be copied to the other side. Once this period has passed, I will issue a full written decision giving the reasons for my decision which will include a decision on costs, taking into account the submissions made. The date for lodging any appeal will begin when my written decision giving full reasons is issued.

Yours faithfully

Ann Corbett
Principal Hearing Officer