

O/083/21

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3298814
BY CAVIAR HOLDINGS INC.**

**TO REGISTER THE FOLLOWING MARKS AS A SERIES IN CLASSES
9, 14, 16, 18, 25, 32, 35, 38, 41 & 43:**

MARQUEE

marquee

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 413728 BY
THE FAMOUS MARQUEE CLUB LIMITED**

BACKGROUND AND PLEADINGS

1. Caviar Holdings Inc (“the applicant”) applied to register the series of trade marks shown on the front page of this decision in the United Kingdom on 22 March 2018. The application was accepted and published on 15 June 2018 in respect of goods and services in Classes 9, 14, 16, 18, 25, 32, 35, 38, 41 and 43. A full specification can be found in the Annex to this decision.

2. On 14 September 2018, the application was opposed by The Famous Marquee Club Limited (“the opponent”). The opposition is based on section 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and concerns the goods and services in Classes 9, 16, 18, 25, 32, 38, 41 and 43. The goods and services in Classes 14 and 35 are, therefore, unopposed.

3. The opponent claims that use of the contested mark would be contrary to the law of passing off and that it has used the sign below since 1958 for a venue, The Marquee Club:

marquee

4. The opponent states that this sign was used on the premises, including on the stage backdrop, at the club’s original location in Oxford Street, London (1958-1964) and its subsequent premises in Wardour Street, London (1964-1988). It claims that the font used for the sign was created by the club’s founder, the late Harold Pendleton. The opponent describes the club as one of Britain’s foremost live music venues, with an international reputation. Artists who performed there include The Who, The Rolling Stones and David Bowie.¹ The opponent also states that it has used the sign for the following goods and services:

Merchandise including apparel; Books and other publications; Records/CDs; Development of a documentary; Development of a radio station and music

¹ Witness statement of Nick Pendleton, paragraphs 15 and 18.

related TV formats; “Pop up” non permanent live music events; Media use, whether known or unknown.

5. In 1987, Harold Pendleton sold the club to Billy Gaff, along with the rights to use the Marquee Club name and logo in relation to a permanent “bricks and mortar” venue.² According to the witness statement of Mr Harold Pendleton’s son, Nick Pendleton, his father retained all other rights including, but not limited to, the copyright in the logo and font design, “as well as unregistered trade mark rights for the Marquee/Marquee club logo”.³ However, a trade mark (UKTM No. 0000937169) for MARQUEE, which had been registered in 1969, was assigned to Mr Gaff. This mark was registered for *Recording apparatus and instruments and amplifiers* in Class 9 of the Nice Classification, and expired on 29 January 2014. Mr Nick Pendleton states that any organisation using the name or logo for a live music venue would have to differentiate themselves clearly from the original club.⁴ This particular statement is uncorroborated.

6. In 2013, Harold Pendleton entered a brand licensing agreement with Robana Limited. One of the consequences of this agreement was the formation of the opponent, which was owned by the Pendletons and one other “minor” shareholder. Mr Harold Pendleton asserted his rights as set out in the previous paragraph.

7. The opponent claims that, as both parties would effectively be using the same sign, there would be confusion in the market place and, as a consequence, loss or damage to the opponent. It states that it does not challenge the applicant’s use of any registered trade mark of the Marquee Club, provided that its use is limited to the context of a permanent “bricks and mortar” music venue. Use beyond those services would, the opponent claims, impute an association with, or the consent of, Harold Pendleton. It would be a false endorsement of Mr Pendleton’s reputation, provenance and of the club he founded.

² According to the statement of grounds, the sale took place in 1988. However, the witness statement gives the date as 1987.

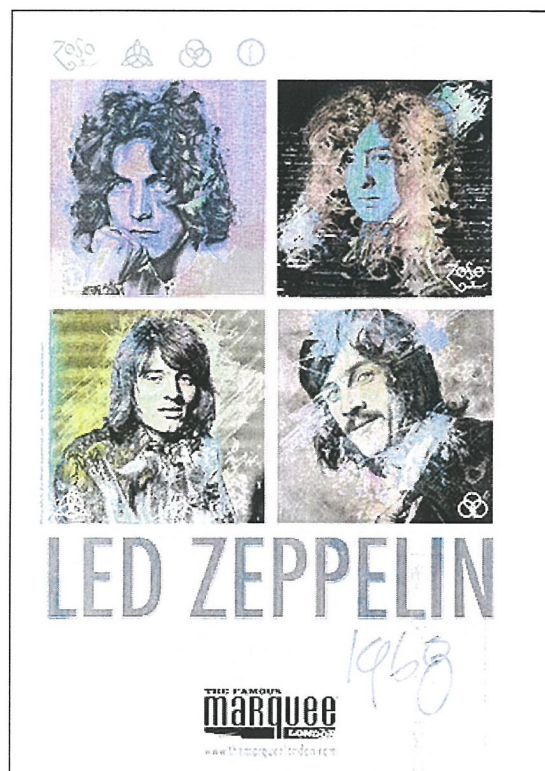
³ Paragraph 2.

⁴ Paragraph 7.

8. The applicant filed a defence and counterstatement denying the claims made and putting the opponent to proof of rights in relation to the section 5(4)(a) claim and of ownership of copyright.

9. The opponent filed evidence in the form of a witness statement by Mr Nick Pendleton dated 30 January 2020. Attached to this statement are the following exhibits:

- Exhibit NP1: the agreement with Robana Picture Library referred to in paragraph 6 above;
- Exhibit NP2: the obituary of Harold Pendleton, published in *The Guardian* on 31 October 2017; and
- Exhibit NP3: an undated print-out from the opponent's website, showing a poster on sale for £12.99. The earlier sign (with additional material) can be seen at the bottom of the poster.



I shall consider the evidence in more detail where appropriate in my decision.

10. The opponent made written submissions on 18 February 2020. Neither party requested a hearing, and the opponent filed written submissions in lieu on 24 November 2020. I have taken my decision following a careful consideration of the papers.

11. In these proceedings, the opponent is represented by Smithfield Partners, having initially been represented by Devereaux Solicitors; the applicant is represented by Trade Mark Owners Association Limited.

Preliminary Issue

12. As I have already noted, the opponent states that Mr Harold Pendleton designed the font used for the earlier sign and claims that it is protected by copyright as an artistic work under section 1(1)(a) of the Copyright, Designs and Patents Act 1988. However, these proceedings are based on a single ground: section 5(4)(a). If the opponent had wanted to claim that the application should be rejected because its use would be prevented by the law of copyright, the appropriate ground would have been section 5(4)(b). It is also important to note that, even if there were evidence that Mr Harold Pendleton had created the font used for the second of the marks in the contested series, and this gave rise to copyright in the logo, this could not have prevented the applicant from registering the first mark in the series. I shall therefore confine my decision to the claim that use would be prevented under the law of passing off.

Section 5(4)(a)

13. Section 5(4)(a) of the Act states that:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule or law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade ...

...”⁵

14. In *Reckitt & Colman Products v Borden (Jif Lemon)* [1990] RPC 341, HL, Lord Oliver described the “classical trinity” that must be proved in order to reach a finding of passing off:

“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services.

Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff.

Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the defendant’s goods or services is the same as the source of those offered by the plaintiff.”

15. I also note the comment of Parker J in *Burberry’s v Cording* [1900] 26 RPC 693 (the emphasis is mine):

“The principles of law applicable to a case of this sort are well known. On the one hand, apart from the law as to trade mark, no one can claim monopoly rights in the use of a word or name. On the other hand, no one is entitled to the use of any word or name, or indeed in any other way to

⁵ As the proceedings began in September 2018, the version of the Act that applies is the one in force before the changes made by The Trade Mark Regulations 2018, S.I. 2018 No. 825.

represent his goods as being the goods of another to that other's injury. If an injunction be granted restraining the use of a word or name, it is no doubt granted to protect property, but the property to protect which it is granted is not property in the word or name but property in the trade or goodwill which will be injured by its use."

Relevant Date

16. In *Advanced Perimeter Systems v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, quoted with approval the summary made by Mr Allan James, acting for the Registrar, in *SWORDERS Trade Mark*, BL O/212/06:

"Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made."⁶

17. There is no evidence that the applicant has used the contested series of marks prior to the date of application (22 March 2018), so this is the relevant date.

Goodwill

18. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantages of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It

⁶ Quoted in paragraph 43 of BL O-410-11.

is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of attraction sufficient to bring customers home to the source from which it emanates.”

19. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J stated:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent’s reputation extends to the goods comprised in the applicant’s specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s. 11 of the 1938 Act (see *Smith Hayden & Co Ltd’s Application (OVAX)* (1946) 63 RPC 97 as qualified by *BALI Trade Mark* [1969] RPC 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

20. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent’s reputation extends to the goods comprised in the application in the applicant’s specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”⁷

21 The opponent claims to have used the sign in connection with the following goods and services: *merchandise including apparel, books and other publications, records/CDs, development of a documentary, development of a radio station and music related TV formats, “pop up” non permanent live music events and media use, whether known or unknown.*

22. In paragraph 11 of his witness statement, Mr Nick Pendleton says that:

“The Pendleton family have and wish to continue to exploit the name and logo for other purposes such as merchandise branding, music recording and development of new talent, TV, publications and live music where it is incidental to a venue but not the venue’s sole or prime purpose. Significant time, money and effort has been expended to this end.”

23. No further information is provided on how much money has been spent, when, and with what result in terms of sales. Indeed, there is no evidence of any sales in connection with the goods and services listed in the above paragraph. Exhibit NP3 does show a poster, reproduced in paragraph 9, but the print-out is undated. The witness statement also mentions radio documentaries broadcast in 2001 and 2019, but there is no evidence that the opponent was responsible for their development.⁸ In its written submissions, the opponent gives examples of discussions relating to use of

⁷ Paragraph 8.

⁸ Paragraphs 19-20.

the name and logo on documentaries, books and recordings, but it is not stated when these took place or whether products have been brought to market. It also mentions clothing with swing tags stating that the name and logo were used on behalf of Harold Pendleton. There are no images or further details of when and where such goods were on sale.

24. In *Starbucks (HK) Limited & Anor v British Sky Broadcasting Group Plc & Ors* [2015] UKSC 31, Lord Neuberger (with whom the rest of the Supreme Court agreed) stated that:

“I consider that we should reaffirm that the law is that a claimant in a passing off claim must establish that it has actual goodwill in this jurisdiction, and that such goodwill involves the presence of clients or customers in the jurisdiction for the products or services in question.”⁹

25. The opponent has not shown that it has customers in the UK for the goods and services listed in paragraph 21. Consequently, I am unable to find that the opponent has protectable goodwill in relation to those goods and services. However, that is not the only element of its claim.

26. The opponent claims that “the provenance, personality and ethos of the original club rests with TFMCL” and that any use of the sign for a “bricks and mortar” music venue should make it clear that such a venue is not the same as the original club run by Harold Pendleton.¹⁰ It continues:

“The provision of goods and services by the Applicant other than a bricks and mortar club would impute an association or consent with the provenance of the Marquee Club founder, Harold Pendleton. By analogy in *Associated Newspapers Group Plc v Insert Media Ltd* [1991] 1 WLR 571 the unauthorised insertion of advertising material between pages of a publisher’s magazine constituted a misrepresentation that the inserts were

⁹ Paragraph 47.

¹⁰ See the opponent’s answer to Q4 in the statement of grounds.

made or authorised by the publisher so that substantial number [sic] of readers would believe the inserts were so made or authorised.

If the Applicant was to have unbridled use of the Marquee Club and logo in relation to any good [sic] and services this would be a false endorsement of Harold Pendleton's reputation, provenance and of the club he founded thus amounting to passing off. – see *Irvine v TalkSPORT Ltd* [2003] EWCA Civ 323.

The unregistered rights asserted by TFMCL concern specific qualities originating from the direct involvement and/or close connection to Harold Pendleton and the reputation imbued from his club, The Marquee Club, and its history in London and its international reputation.”

27. The *Associated Newspapers* case concerns the second element of the “classical trinity” (misrepresentation) and I shall return to this later in my decision if required. Here, I shall consider the claim made that Mr Pendleton himself and the original Marquee Club have a reputation that would be protected by the law of passing off and that the use of the contested series of marks would be a false endorsement of that reputation. I note that the opponent in its written submissions also refers me to the *Rihanna* case (*Fenty & Ors v Arcadia Group Brands Limited (t/a Topshop) & Anor* [2013] EWHC 2310 (Ch)).

28. In *Irvine & Ors v Talksport Limited* [2002] EWHC 367 (Ch), Laddie J (at first instance) gave a thorough analysis of the development of the tort of passing off and concluded that:

“It follows from the views expressed above that there is nothing which prevents an action for passing off succeeding in a false endorsement case. However to succeed, the burden on the claimant includes a need to prove at least two, interrelated, facts. First that at the time of the acts complained of he had a significant reputation or goodwill. Second that the actions of the defendant gave rise to a false message which would be understood by a

not insignificant section of his market that his goods have been endorsed, recommended or are approved of by the claimant.”¹¹

29. Each passing off case turns on its own particular facts. In *Irvine*, Laddie J had taken judicial notice of the fact that famous people frequently exploit their names and images to endorse goods and services. He was in no doubt that Eddie Irvine, a prominent Formula 1 racing driver, had a substantial reputation or goodwill and that he would have been well known by the general public and even more well known by those who seek the endorsement of sports stars of their goods and services. This finding was unchallenged on appeal. In *Fenty*, Birss J found that pop star Rihanna ran a significant merchandising and endorsement business and that the scope of her goodwill encompassed fashion as well as music. The judge was careful to stress that his decision was heavily fact-dependent:

“The mere sale by a trader of a t-shirt bearing an image of a famous person is not, without more, an act of passing off. However the sale of this image of this person on this garment by this shop in these circumstances is a different matter.”¹²

30. From the evidence before me, it appears that Harold Pendleton was a successful man who made a significant contribution to the British music scene, particularly in the 1960s. His obituary appeared in national newspapers and on the Radio 4 obituary programme *The Last Word*.¹³ However, there is no evidence to support the view that Mr Pendleton himself had any goodwill associated with endorsing products or services or selling merchandising. The false endorsement claim does not help the opponent’s case.

31. Might the opponent then own protectable goodwill in relation to the operation of a live music venue between 1958 and 1987? Even though Nick Pendleton refers to the Marquee name and logo being used with the permission of the family by a number of

¹¹ Paragraph 46.

¹² Paragraph 75.

¹³ Witness statement, paragraphs 13 and 14, and Exhibit NP2.

undertakings, the evidence is insufficient for me to find that Harold Pendleton could have retained the goodwill in the business for anything other than the music venue.

32. Even when a business ceases to trade, the goodwill survives for a period: see *Ad Lib Club Limited v Granville* [1971] FSR 1 (HC). Yet that is not what happened. The opponent admits that Harold Pendleton sold the club in 1987 to Barry Gaff along with the rights to use the Marquee name and logo in connection with a live music venue. In Annex 2 to the Agreement with Robana Picture Library reproduced in Exhibit NP1, Harold Pendleton states that:

“... I sold him [Mr Gaff] The Marquee Club and The Marquee Recording Studios, pointing out the lease at 90 Wardour Street was running out. He then moved them to new premises where they ultimately closed.

...

I continued to use my Marquee logo as I had only sold it for use with the club.”¹⁴

33. Unfortunately the evidence does not contain a copy of any agreement effecting this sale. Nick Pendleton states that the rights to the Marquee name and logo were sold in so far as they related to use in connection with a “bricks and mortar” venue. Yet, as I have already noted, he states that any live music venue using the Marquee name or logo would need to differentiate itself from the original club. Without evidence of the agreement, or a statement from either of the parties to it, this is mere assertion. The opponent has not explained what steps it has taken to obtain a copy. Indeed, there is nothing to say that any agreement was in writing.

34. On the basis of the evidence that has been filed, it seems probable that the club was sold to Mr Gaff as a going concern along with the Marquee name and logo for use in connection with a live music venue. In such circumstances, assignment of goodwill may be inferred: see *Wood v Hall* [1915] 33 RPC 16. In *The Law of Passing-Off* (5th

¹⁴ Page 7.

edition, 2016), Professor Christopher Wadlow gives the following commentary (with footnotes omitted and my emphasis):

“Goodwill is personal property and can pass by voluntary assignment, under a will or intestacy or by operation of law. English goodwill is the creature of English law and has no more of an independent existence than a patent or copyright. It can therefore only be dealt with according to transactions recognised by English law. The most important restriction is that goodwill cannot be assigned or otherwise dealt with in gross, but must remain in the same ownership as the business to which it relates.

...

An assignment of goodwill does not have to be in writing or any particular form, and need not mention goodwill by name. A transaction intended to assign a business as a whole necessarily passes the goodwill to the assignee. A transaction which purports to deal with specific brands or marks may be interpreted as dealing with the goodwill of the business in which they are used. It should be remembered that in construing commercial agreements the golden rule is to give effect to the common intention of the parties as expressed in the words they have chosen to use, and to that extent words such as ‘goodwill’ may be used in a variety of ways at variance with their strict legal meaning.”¹⁵

35. However, the 2013 agreement between Harold Pendleton and Robana Picture Library states that:

“HP owns the copyright and all intellectual copyrights except for future use as a Marquee club and activities normally related to the operation of such a club (including use of the Marquee logo in connection with a Marquee club)”.¹⁶

¹⁵ Paragraph 3-195.

¹⁶ Page 5.

36. It is not entirely clear what is intended by this provision, although I note that it only refers to copyright and not any other rights. Could it be interpreted as meaning that Harold Pendleton retained the goodwill associated with the original club, while the business had been sold to Mr Gaff who would acquire goodwill related to future sales? Nick Pendleton's statement that any later club would need to differentiate itself from the original suggests that this might be how he, at least, interprets it, but in the absence of any asset sale documentation, it is difficult to say what Harold Pendleton intended. Neither is it clear how the club under Mr Gaff's ownership was presented to customers. For some months, it operated from the same location, only moving premises in 1988, so there would have been a degree of continuity for the customer. On the balance of probabilities, I find that the sale of the club and the Marquee name and logo to Mr Gaff would have included the sale of the goodwill in that business, and so the opponent does not own any protectable goodwill in relation to music venues.

37. In case I am wrong in this, I shall now consider what the position would be had the sale of the club to Mr Gaff not included the goodwill that had been built up prior to the sale.

38. In *Ad Lib Club Limited*, Pennycuik VC stated that:

"It seems to me clear on principle and on authority that where a trader ceases to carry on his business he may nonetheless retain for at any rate some period of time the goodwill attached to that business. Indeed it is obvious. He may wish to reopen the business or he may wish to sell it. It further seems to me clear in principle and on authority that so long as he does retain the goodwill in connection with his business he must also be able to enforce his rights in respect of any name which is attached to that goodwill. It must be a question of fact and degree at what point in time a trader who has either temporarily or permanently closed down his business should be treated as no longer having any goodwill in that business or in any name attached to it which he is entitled to have protected by law."

39. By selling the club and the Marquee name and logo to Mr Gaff, Harold Pendleton effectively signalled that he had ceased his business of running a music club. In *Minimax*, Floyd J considered how long residual goodwill could survive:

“14. ... in *Sutherland v V2 Music Ltd* [2002] EMLR 28, Laddie J had to consider whether the goodwill generated by a funk music band called Liberty 1, which had been formed in the late 1980s, still subsisted in March 2001. Laddie J considered the relevant principles and reviewed the authorities. At paragraph 22 he said this:

‘There is one other general matter to deal with before turning to the facts, namely the size of the claimant’s reputation. At some point a reputation may be respected by such a small group of people that it will not support a passing-off action. Neither Mr. Purle nor Mr. Speck were able to formulate a test for this bottom level. Mr. Purle said it was a matter of fact and degree. I agree with that. The law of passing off protects the goodwill of a small business as much as the large, but it will not intervene to protect the goodwill which any reasonable person would consider trivial.’

15. It is difficult to define any minimum threshold. It will all depend on the facts. How big was the reputation when use stopped? How lasting in the public eye are the goods or services to which the mark is applied? How, if at all, has the person asserting the existence of the goodwill acted in order to keep the reputation in the public eye? The greater each of these elements is, the longer, it seems to me, it will take for any goodwill to dissipate.”

40. The opponent submits that the club had a national and international reputation, but this is uncorroborated and there is little evidence before me to show how much goodwill was in existence in 1987 when the club was sold. While I consider that I may take judicial notice of the lasting fame of some of the acts who have appeared at The Marquee Club during the period 1958-1987, for example The Rolling Stones, The Who and David Bowie, it does not automatically follow that the club has the same level of renown. Furthermore, although the witness statement refers to a number of broadcasts

on BBC Radio 2, BBC Radio 4, BBC 6 Music and BBC Radio London, earlier in my decision I found that there was no evidence of the extent of the opponent's involvement in their production. It is unclear therefore what the opponent has done to keep the reputation in the public eye.

41. It seems to me likely that, at the relevant date, there would have been an awareness of the original club and its history among a proportion of rock music fans. However, in *W S Foster & Son Limited v Brooks Brothers UK Limited* [2013] EWPC 18, Mr Iain Purvis QC, sitting as a Deputy Judge of the Patents County Court, said:

“... Goodwill is not merely the memory of a business. It is the ‘attractive force which brings in custom’. The acid test for its existence in the present case must be whether, seeing a new pair of shoes bearing the ‘Peal & Co.’ name and the fox and boot brand, such customers would place any reliance on the quality of the old product from the early 1960s when considering whether to buy it. Plainly they would not. The brand would have to justify itself afresh. Residual goodwill cannot seriously expect to survive 48 years with no use.”¹⁷

42. If a customer were to see a new music venue bearing the Marquee name or logo, it is far from clear that they would place any reliance on the quality of the club that was owned by Harold Pendleton and that was sold in 1987 – over 30 years before the relevant date. From the evidence I have before me, I find that the memory of the club has been kept alive through documentaries and interviews with musicians, but this is not the same as goodwill.

43. I also bear in mind that the opponent has admitted that it has no interest in opening a bricks and mortar venue, and indeed the sale to Mr Gaff is a clear signal of its intention. In my view, if he did not assign the goodwill to Mr Gaff, Harold Pendleton abandoned the business of running music venues and, as Lord Diplock held in *Star Industrial Co. Ltd v Yap Kwee Kor* [1980] RPC 31, in such a situation goodwill can no longer be enforced.

¹⁷ Paragraph 74.

44. I find that the opponent has not shown that it has protectable goodwill and so the opposition under section 5(4)(a) fails.

Conclusion

45. The opposition has failed and the application can proceed to registration, subject to the outcome of Opposition No. 413287 which has also been raised against this application.

COSTS

46. The applicant has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice 2/2016. In the circumstances I award the applicant the sum of £300 as a contribution towards the cost of the proceedings. I have borne in mind the fact that the applicant filed no evidence or submissions. The sum is calculated as follows:

Preparing a statement and considering the other side's statement - £300

Total - £300

47. I therefore order The Famous Marquee Club Ltd to pay Caviar Holdings Inc the sum of £300. 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 5th day of February 2021

Clare Boucher
For the Registrar,
Comptroller General

Annex

Goods and services applied for

Class 9

Apparatus for recording, transmission or reproduction of sound and/or images; compact discs, DVDs and other digital recording media; magnetic data carriers; magnetic and/or smart cards; scanners; readers for magnetic data carriers, cameras; records, discs, laser discs, digital versatile discs, videos, tapes, cassettes, cartridges, cards and other carriers bearing or for use in bearing sound, video, data or digital recordings; computer hardware and software; computer software supplied over the Internet; music, images, recordings and publications (downloadable) provided on-line from databases or the Internet; sound recordings in the form of phonograph records, discs and tapes; video recordings in the form of discs and tapes; discs and tapes, all for recording sound and/or vision; cassettes and cartridges all for use with or containing video and sound recordings; cinematographic films; sunglasses; eyewear; eyeglass cases, chains and cords; audio and video recordings; eBooks; binoculars; computer accessories; radios; portable music players; headphones; telephones; batteries.

Class 14

Jewellery, imitation jewellery; chronometric and horological instruments; watches; cases for watches; clocks; key rings and key chains; cufflinks; tie pins; medallions; ornaments [jewellery]; badges of precious metals; key fobs; parts and fittings for the aforesaid goods.

Class 16

Paper and cardboard; printed matter; printed publications; books, novels, booklets, magazines, pamphlets; souvenir event programs; tickets; laminated tickets and VIP tickets; photographs; instructional and teaching material (except apparatus); artists' materials; stationery, writing materials, writing paper, envelopes, notebooks, postcards, diaries, note cards; greeting cards, trading cards; posters; pictures; book covers; book marks, book ends, calendars, diaries, gift wrapping paper, paperweights; paper party decorations, including paper napkins, paper doilies, paper place mats,

crepe paper, invitations, paper table cloths; printed patterns; paper patterns; photographic or art mounts; prints; engravings.

Class 18

Articles made of leather or of imitation leather, namely attaché cases and brief cases; rucksacks; backpacks; bags, cases; wallets; purses; coin purse; business card cases; card wallets; carryalls; key holders; luggage; umbrellas and parasols; sports bags and holdalls; parts, fittings and accessories for all the aforesaid goods.

Class 25

Clothing, footwear, headgear.

Class 32

Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Class 35

Advertising; business management; business administration; business analysis, research and information services; management and operation of restaurants, clubs, bars, recreational facilities for others; retail services, on-line retail services and electronic shopping services all in connection with apparatus for recording, transmission or reproduction of sound and/or images, compact discs, DVDs and other digital recording media, magnetic data carriers, magnetic and/or smart cards, scanners, readers for magnetic data carriers, cameras, records, discs, laser discs, digital versatile discs, videos, tapes, cassettes, cartridges, cards and other carriers bearing or for use in bearing sound, video, data or digital recordings, computer hardware and software, sunglasses, eyewear, eyeglass cases, chains and cords, audio and video recordings, eBooks, binoculars, computer accessories, radios, portable music players, headphones, telephones, batteries, printed publications, books, novels, booklets, magazines, pamphlets, souvenir event programs, tickets, laminated tickets and VIP tickets, photographs, stationery, writing materials, writing paper, envelopes, notebooks, postcards, diaries, note cards, greeting cards, trading cards, posters, pictures, book covers, book marks, book ends, calendars, diaries, gift wrapping paper, paperweights, paper party decorations, photographic or art mounts, prints, engravings, jewellery, imitation jewellery, watches, cases for watches, clocks,

key rings and key chains, cufflinks, tie pins, medallions, ornament badges of precious metals, rucksacks, backpacks, bags, cases, wallets, purses, business card cases, card wallets, carryalls, key holders, key fobs, luggage, umbrellas and parasols, badges, sport bags and holdalls, clothing, footwear, headgear, beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices; information, consultancy and advisory services in relation to all the aforesaid services.

Class 38

Telecommunication services; electronic messaging services; provision of wireless internet access services; video, audio and television streaming services; telecommunication services, namely, electronic transmission of streamed and downloadable audio, video, photograph and game files via computer and electronic communications networks; providing on-line facilities, via a global computer network and other computer and electronic communication networks, to enable users to access multimedia content; instant messaging services; providing on-line chat rooms and bulletin boards for the transmission of messages among computer users; provision of information, consultancy and advisory services in relation to all the aforesaid services.

Class 41

Entertainment; sporting and cultural activities; organising of entertainment and social events; entertainment services provided at nightclubs; nightclub and discotheque services; provision of live entertainment; live entertainment services; musical entertainment services; arranging of musical entertainment; services providing entertainment in the form of live musical performances; organising of exhibitions and shows for entertainment purposes; production, presentation, distribution, syndication, and/or rental of television and radio programmes and/or films and sound video recordings; entertainment services relating to competitions; provision of entertainer, amusement, leisure and recreation facilities, services and amenities; organisation of parties and events; club entertainment services; art exhibition services; reservation services for show tickets; provision and production of information relating to entertainment and music; cabaret, theatre, casino and gaming (primarily for entertainment) services; providing non-downloadable audio, visual and audio visual recordings via the Internet; publishing and providing printed publications and electronic

publications; providing online electronic publications; information, consultancy and advisory services in relation to all of the aforesaid services.

Class 43

Services for providing food and drink; preparation of food and drink; restaurant services for the provision of fast food; self-service restaurants; takeaway, cafe, cafeteria, canteen, coffee shop and snack-bar services; wine bar services; catering services for the provision of food and drink; club services for the provision of food and drink; night club services (provision of food); information, consultancy and advisory services in relation to all the aforesaid services.