

O/644/21

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

**IN THE MATTER OF APPLICATION NO. 3449492
IN THE NAME OF RAM JAM MUSIC LIMITED FOR THE TRADE MARK**

Ram Jam

IN CLASSES 9, 25, 38 AND 41

AND

**THE OPPOSITION THERETO UNDER NUMBER 420319
BY RAMJAM LTD**

AND

**IN THE MATTER OF REGISTRATION NO. 3186244
IN THE NAME OF RAMJAM LTD FOR THE SERIES OF TWO TRADE MARKS**

**RamJam
RAMJAM**

IN CLASS 41

AND

**THE APPLICATION FOR A DECLARATION OF INVALIDITY THERETO UNDER
NUMBER 503227 BY RAM JAM MUSIC LIMITED**

Background and pleadings

1. On 15 December 2019, Ram Jam Music Limited (“Music”) filed an application for the trade mark Ram Jam (number 3449492) for a range of goods and services in classes 9, 25, 38 and 41, the relevant details of which are given later in this decision. The application was published on 14 February 2020 and opposed by RamJam Ltd (“RJL”) on 14 May 2020 initially under sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”), except in relation to Class 25. RJL later withdrew its grounds under sections 5(1) and 5(2)(b). RJL relies upon a single earlier trade mark registration, as follows:

3186244

RamJam

RAMJAM

(a series of two marks)

Filing date: 18 September 2016 (“the relevant date”); date of entry in register: 16 December 2016

Class 41: Animated musical entertainment services; Animation production services; Business training provided through a game; Computer and video game amusement services; Creating animated cartoons; Digital video, audio and multimedia entertainment publishing services; Electronic game services and competitions provided by means of the internet; Electronic games services provided from a computer database or by means of the internet; Electronic games services provided via a global computer network; Electronic games services, including provision of computer games on line or by means of a global computer network; Film production for educational purposes; Film production for entertainment purposes; Film production services; Game services provided by means of communications by computer terminals or mobile telephone; Game services provided on-line from a computer network; Game services; Interactive entertainment; Internet games (non-downloadable); On-line gaming services; Production of animated cartoons; Production of animated motion pictures; Production of animated programmes for use on television

and cable; Production of animated programmes; Production of animation; Production of musical videos; Production of training videos; Production of videos; Providing a computer game that may be accessed by users on a global network and/or the internet; Providing a computer game that may be accessed network-wide by network users; Providing an on-line computer game; Providing games; Providing interactive multi-player computer games via the internet and electronic communication networks; Providing on-line computer games; Providing on-line videos, not downloadable; Provision of entertainment services through the media of video-films; Provision of games by means of a computer based system; Provision of on-line computer games; Special effects animation services for film and video; Video game arcade services; Video game entertainment services.

2. RJL relies upon all of its services, claiming that even if the marks are not identical, there will be a likelihood of confusion because there is a “close and complementary connection” between Music’s goods and services and RJL’s services; and, because the marks are highly similar.¹

3. Music filed a defence and counterstatement, admitting that the parties’ marks are identical (including identical to each of the series marks). Whilst admitting that some of the parties’ goods and services are identical and similar, Music stated that there is no likelihood of confusion because it would be bringing an application for a declaration of invalidity against the earlier mark, on the grounds of passing off, which would resolve the claim in Music’s favour. To the extent that any relevant services remained in RJL’s specification, Music claims that there would be no likelihood of confusion, citing *Budejovicky Budvar Narodni Podnik v Anheuser-Busch Inc* [2012] EWCA Civ 880.

4. Music duly filed its application for a declaration of invalidity against the earlier mark on 16 July 2020, relying on section 5(4)(a)/Section 47(2)(b) of the Act on the basis of its use of the sign RAM JAM throughout the UK, since 1966, in relation to (inter alia) entertainment services, broadcasting services, personal appearances by a musical performer, printed matter, downloadable and non-downloadable audio and audio-

¹ This was before RJL withdrew its section 5(2)(b) ground.

visual recordings, video games, musical events and promotional materials. The statement of grounds states that Music is the corporate vehicle of Mr David Rodigan MBE, a musician, entertainer and performer, better known by his nickname “Ram Jam”. It is stated that Mr Rodigan has performed globally under the nickname as a DJ, ‘selector’ and broadcaster. It is claimed that Music and Mr Rodigan have amassed enormous goodwill identified by the term RAM JAM, which would enable the use by RJL of its registration to be prevented under the law of passing off.

5. RJL filed a defence and counterstatement, denying the ground and the existence of the claimed goodwill. At this point, the two sets of proceedings were consolidated.

6. Both parties filed evidence. The matter came to be heard by video conference on Friday 18 June 2021. At the hearing, RJL was represented by Mr David Cole, of Cole Francis Solicitors, and Music was represented by Mr Aaron Wood, of Blaser Mills LLP. Mr Wood cross-examined RJL’s witness, Mr Tom Jackson, for which permission had been sought and granted by the Tribunal.

Music’s application to invalidate RJL’s registration

7. The single earlier right relied upon for the opposition is subject to attack by Music by way of the invalidity application. I will, therefore, start with the invalidity application to determine whether, and to what extent, RJL may rely upon its earlier mark in the opposition.

8. Section 5(4)(a) states:

“(4) 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 of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) [...]

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

9. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

10. The relevant parts of section 47 state:

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

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

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

11. Music’s evidence comes from David Rodigan, its director, and from Mr Wood. Mr Rodigan provides Music’s evidence-in-chief as a witness statement dated 9 December 2020. Mr Wood provides Music’s evidence-in-reply as a witness statement dated 19 January 2021. RJL filed evidence from Mr Tom Jackson (evidence-in-chief and evidence-in-reply) in the form of two witness statements, dated 9 December 2020 and 4 March 2021. Mr Jackson is RJL’s Managing Director. As the burden of proving its goodwill rests with Music, I will begin with Music’s evidence.

12. Apart from being Music’s director, Mr Rodigan states that he is a musician, DJ, broadcaster and entertainment personality. He has been Music’s sole director since its incorporation in March 2013. Mr Rodigan describes Music as the corporate vehicle for his own activities and states that he does not distinguish between himself as an individual and Music for those activities which post-date its incorporation in March 2013; nor does he consider the goodwill he has created to be different between himself and Music.

13. The genre of music in which Mr Rodigan operates is reggae. He states he began his broadcasting career in 1978, co-presenting the BBC London radio show *Reggae Rockers*, alternating each week with another presenter. This radio job lasted for around four months, followed by others:

- Capital 95.8, March 1979 to September 1990
- Kiss 100, September 1990 to November 2012
- BBC Radio 1Xtra, January 2013 to present day
- BBC Radio 2, 2011 to 2018
- BFBS Radio, 1984 to 2004²

² British Forces Broadcasting Corp: Exhibit DMR6, page 424

14. I note from a review of a David Rodigan album released under the Ministry of Sound label in 2014 that Mr Rodigan interviewed Bob Marley on his Capital Radio show, airing the world exclusive of Marley's track "Could You Be Loved".³

15. Mr Rodigan explains that a key element of reggae is live entertainment, dominated by what is known as a 'sound system'. This is analogous to a musical band, involving a mixture of musical craft and technical expertise. The 'selector' chooses the records, the DJ plays the records; there is a 'mic man', who can also be the DJ, and often there is also a technician responsible for the mix of speakers, amplifiers and other such electrical equipment. Sound systems are involved in a key part of the live reggae scene: the sound clash. These are events where two sound systems 'face off' against each other for entertainment. Mr Rodigan describes it as the musical equivalent of chess. Each sound system chooses records, with some events being so important that sound systems will often arrange for a well-known musical artist to create a one-off record called a 'dub plate' which compliments the sound system or undermines the other side. Mr Rodigan states that many sound clashes are fondly remembered by reggae fans in the same way that sports fans remember being present at a prominent sporting occasion.

16. Mr Rodigan states that his work in the UK was so followed that he was invited to take part in clashes with top selectors in Jamaica. In 2020, the Jamaican government made him an Officer of the Order of Distinction for his contribution to music. Mr Rodigan states that this award is partly as a result of his work in the UK. Apart from radio presenting, he has also taken part in sound clashes in the UK, including against LUV INJECTION, a sound system from Birmingham.⁴

17. In 2008, Mr Rodigan states that he was included in one of the world's best selling video games, 'Grand Theft Auto'. When a player got into a car, they could listen to the radio, a feature incorporated by the game's developers, requiring them to obtain special content. Mr Rodigan states that in the content for Grand Theft Auto 4 ("Episodes from Liberty City"), there was a reggae and dancehall station for which he

³ Exhibit DMR 1, page 267.

⁴ An article in Exhibit DMR1 puts the date of the clash as 198 (page 283).

was asked to be the DJ and curate the content. He states that the game developers chose the name RAMJAM FM as a tribute to Mr Rodigan's nickname, RAMJAM. Mr Rodigan believes that the game developers chose him because of his pre-eminent position in the industry and his distinctive voice and performance. He states that his inclusion in the game means that he has become known to an even broader range of the public by reference to his name RAMJAM.

18. Mr Rodigan concludes his statement by stating that his income derives from several sources; such as, presenting, appearances, musical performances and merchandise sales. His annual income has consistently remained in excess of £80,000.

19. A substantial number of exhibits is provided of which a sizeable proportion refers to 'David Rodigan', but not to RAM JAM, and/or are not attributable to use in the UK. I describe the exhibits which I consider to be relevant below, bearing in mind that the burden is upon Music to prove goodwill in its business distinguished by the sign RAM JAM in the UK; the claims made as to ownership of that goodwill, prior to and subsequent to Music's incorporation in 2013; and that the contested registration was filed on 18 September 2016.

- An interview on a website called jamaicans.com. This appears to be UK-centric from the content, referring to the MBE being awarded in 2012, and to UK radio stations. It appears to date from 2015. The article refers to David 'Ram Jam' Rodigan and his career. In the interview, Mr Rodigan explains that he got his nickname 'Ram Jam' from a track of that name that he loved. He says that it was 'a thing' in the 1960s for DJs to have signature tunes, and the Ram Jam tune was his.⁵
- An article on a website called soulradiouk.net, nearly a year after the relevant date, but regarding Mr Rodigan's long career in reggae. The writer refers to him as David 'Ram Jam' Rodigan.⁶

⁵ Exhibit DMR1, page 278

⁶ Exhibit DMR1, page 321

- An article on esquire.com/uk, entitled “David “RamJam” Rodigan: the King of Reggae”, dated 22 February 2014 about his career and the new Ministry of Sound album.⁷
- A description on the Sheffield students’ union website regarding an event on 20 November 2012: “The Tuesday Club presents Sir David ‘Ram Jam’ Rodigan MBE...Legendary Reggae selector and King of the Soundclash, Sir David ‘Ram Jam’ Rodigan is one of the most respected DJs in the world and a vital part of Reggae culture World wide.”⁸
- An article advertising the Red Bull Culture Clash in London, in 2016: “David ‘RamJam’ Rodigan is the UK’s very own soundclash Godfather. He’s a one-man dubplate army, a titan of clashing who’s been crushing opponents worldwide for close to 40 years.”⁹
- An article, dated 17 September 2003, in the online version of *The Independent* newspaper, headed “The fiftysomething Englishman in a blazer and slacks is celebrating 25 years as one of Britain’s top DJs. Radio 2? Hardly. David ‘Ramjam’ Rodigan is Kiss FM’s reggae soundmaster and a hero to Jamaican music lovers.”¹⁰
- An interview with Mr Rodigan on a website called trenchtrenchtrench.com. It is undated, but refers to the radio stations listed above. It also refers to “his Ram Jam club nights”.¹¹
- Prints from the comments regarding a YouTube video of the soundclash in 1998 with Luv Injection, in Birmingham, uploaded to YouTube in July 2012. Three of the comments refer to Ram Jam (without the name David Rodigan). It is not possible to say from which country the comments were made.¹²

⁷ Exhibit DMR1, page 324

⁸ Exhibit DMR1, page 330

⁹ Exhibit DMR2, page 335

¹⁰ Exhibit DMR3, page 356

¹¹ Exhibit DMR5, page 410

¹² Exhibit DMR6, page 436

- Prints from the comments regarding a YouTube video of Mr Rodigan's DJ set in London's 'Boiler Room', in 2011, uploaded to YouTube in March 2017. One comment says "Ram Jam yes!"¹³
- A print from the Grand Theft wiki website referring to the three new radio stations incorporated in the game released in 2009, including RamJam FM. In another, from a fan website for Grant Theft Auto game fans, Mr Rodigan is referred to as appearing as the DJ for the radio station. A print from the official website of Rockstar Games, dated 11 April 2013, says that one can download playlists from the Grand Theft Auto radio playlists on Spotify and iTunes, including RamJam FM.¹⁴
- A poster advertising Parklife in June 2016:¹⁵



- A 2015 poster:¹⁶

¹³ Exhibit DMR6, page 440

¹⁴ Exhibit DMR9, pages 464, 466 and 477

¹⁵ DMR10, page 488

¹⁶ DMR10, page 491



- Posters from 2016:¹⁷

¹⁷ DMR10, pages 492, 493, 495 to 497, and 499

DAVID RODIGAN PRESENTS

RAM JAM FOUNDATION SESSION

ELECTRIC, BRIXTON
26.02.16

David Rodigan hosts a special evening joining the dots across all the UK sounds. Taking it back to the roots before bringing it right up to date.

DAVID RODIGAN
FOUNDATION REGGAE SET

PREDITAH & MC KIE
SPECIAL GUESTS

RANDALL B2B DILLINJA & MC GO
FOUNDATION JUNGLE SET

MATT JAM LAMONT & MIGHTY MOE
FOUNDATION GARAGE SET

N-TYPE B2B YOUNGSTA & SGT. POKES
FOUNDATION DUBSTEP SET

SLIMZEE & FLOWDAN
FOUNDATION GRIME SET

KLASHNEKOFF
FOUNDATION HIP HOP SET

PERFORMS HIS CLASSIC UK HIP HOP LP 'THE JAGA'S'

CHANNEL ONE
FOUNDATION SOUNDSYSTEM SET

EXIT DAVID RODIGAN ELECTRIC

DAVID RODIGAN PRESENTS

RAM JAM FOUNDATION SESSIONS AUTUMN 2016

"DAVID TRACES THE FOUNDATION OF ALL GENRES OF UK BASS MUSIC WITH SELECTED LEGENDARY GUESTS. THIS IS HISTORY. THIS IS THE FOUNDATION."

FRI 30.09
CANAL MILLS
LEEDS

SAT 01.10
THE BRICKWORKS
NOTTINGHAM

SAT 08.10
CONCORDE 2
BRIGHTON

SAT 15.10
ELECTRIC BRIXTON
LONDON

THU 20.10
WAREHOUSE PROJECT
MANCHESTER

DAVID RODIGAN PRESENTS

RAM JAM TOUR BIRMINGHAM 2016

FEBRUARY 19TH 2016

DAVID RODIGAN
GENTLEMAN'S DUB CLUB LIVE

DILLINJA B2B RANDALL
FLAVA D • VENUM SOUND

10PM - 5AM

TheRainbowVenues
BIRMINGHAM

WEIRD science

LOWER TRINITY ST, BIRMINGHAM B9 4AG
THERAINBOWVENUES.CO.UK

DAVID RODIGAN PRESENTS

RAM JAM TOUR JAN - MAR 2016

MARCH 11TH
LEMON GROVE
EXETER

DAVID RODIGAN MBE
MATT JAM LAMONT
KIKO BUN (LIVE PA)
BEN & LEX, LEWAH

LEMON GROVE, CORNWALL HOUSE, UNIVERSITY OF EXETER
DOORS 8:30 - 02:00

FOR ACCESS TO ALL PRE-SALE TICKETS GO TO
RODIGAN.COM/RAMJAM2016



20. It is a particular feature of RJL’s evidence-in-reply that, in attempting to show that Music’s/ Mr Rodigan’s event posters only refer to David Rodigan, and not to RAM JAM, that some of the evidence does refer to Ram Jam (presumably as an oversight).¹⁸ Mr Jackson states that in a search on Google for David Rodigan in the line-up or billing, for some years no posters or fliers were found and that there is no use in pre-18 September 2016 material of Ram Jam. As facts speak for themselves, whichever party has filed those facts, I include some of RJL’s evidence about Music/Mr Rodigan below:

- A transcript of an interview with Mr Rodigan by Fact Magazine, uploaded to YouTube on 8 May 2013, which had received 34,604 views as of 8 February 2021. Fact Magazine has 304,000 subscribers, but the evidence does not say where they are located. The interviewer says “David Rodigan will bring his Ram Jam night to the London Forum on May 17 with sets from Toddla T, Ms Dynamite and more.” In answer to a question about what the events are actually called, Mr Rodigan answers: “Well, they’re called Ram Jam Presents because that was my nickname at school from 67 when I found this instrumental called Ram Jam by Jackie Mittoo and in those days DJs had signature tunes,

¹⁸ Second witness statement of Tom Jackson, 4 March 2021

believe it or not, and I used to play this tune all the time so my friends started calling me Ram Jam. And I had a little record shack in a market place in Putney in the mid 70s. It was called Ram Jam's Record Shack. And then when I joined Capital Radio, Nicky Horne started calling me Ram Jam and it sort of stuck. And the idea was to in a sense go back to what I'd done years before at Capital Radio where we'd done the Roots Rockers Roadshow live from the Brixton Academy in the 80s with artists on stage performing live, and John Bailey at SEG, mum's the word, said "look I think we can do something above and beyond what you're doing at the moment and we can create Ram Jam Presents...".¹⁹

- A poster for the 2013 Bestival, mentioning "David Rodigan MBE presents Ram Jam".²⁰



- A 2013 poster mentioning "David Rodigan's Ram Jam" for a London carnival:²¹

¹⁹ Exhibit TJ7, page 83
²⁰ Exhibit TJ16, page 127
²¹ Exhibit TJ16, page 130

19-21 JULY 2013 * MAMA PRESENTS * VICTORIA PARK, LONDON *

LOVEBOX

A MULTI-STAGE CARNIVAL OF MUSIC, ART, FASHION AND STYLE SET IN 40 ACRES OF LONDON'S MOST BEAUTIFUL PARK

PLAN B SAT * **GOLDFRAPP** SUN
AZEALIA BANKS FRI
D'ANGELO SAT

EPIC/TAQUILAN LIVE PERFORMANCES FROM
FLYING LOTUS * **JURASSIC 5** * **HURTS** * **RUDIMENTAL**
PAUL KALKBRENNER (LIVE) * **NETSKY** (LIVE) * **WILEY** * **ALUNA GEORGE** * **FOREIGN BEGGARS**
JOHN TALABOT (LIVE) * **GOLD PANDA** * **BENOIT & SERGIO** * **FACTORY FLOOR** * **REDLIGHT** (LIVE)
MISS KITTIN (LIVE) * **ZEBRA KATZ** * **MYKKI BLANCO** * **PURITY RING** * **MS MR** * **GASLAMP KILLER**
LE CAROUSEL * **LULU JAMES** * **ODDISEE QUADRON**

RED BULL MUSIC ACADEMY PRESENTS
DAVID RODIGAN'S RAM JAM * **MARK RONSON'S TRUE LOVES** * **HARVEY'S DISCOTHEQUE**

DAVID RODIGAN (MIX) * JAZZE & GROSS (LIVE)
TODDLA 1 SOUND * DRE SKULL
ARTWORK * RELATION STEPPAS
YOUNG SOUND

VERY SPECIAL GUEST TRIA
MARK RONSON
A TRAK
KENNY "DOPE" GONZALEZ
RON & AVIS

DI HARVEY
ERIK DUMKAN (GROSS N TUN)
PRINS THOMAS
FORCE OF NATURE
DJUT BOYS

SEB CHEW & GREENHONEY
DIRE (LIVE) (ALL MUSIC ACADEMY NEW YORK ACADEMY)

THESE PITCHES ARE BY ENTERTAINMENTAL DJ & PRODUCER, TALENTY
ANNIE MAC * **JAMIE JONES** * **DISCLOSURE** * **SBTRKT** * **JULIO BASHMORE**
SOLOMUN * **HEIDI** * **FRANKIE KNUCKLES** * **DERRICK CARTER** * **DUKE DUMONT**
ART DEPARTMENT * **BREACH** * **BICEP** * **HIGH CONTRAST** * **CAMO & KROOKED** * **LEE FOSS** * **SUBB-AN**
RICHY AHMED * **MELE** * **DANNY BIRD** * **KRANKBROTHER** * **INFINITY INK** * **S.R.Y** * **KIM ANN FOXMAN** * **LUNG**
NU-LOGK * **METRIK** * **DOLAN BERGIN** * **MONKI** * **LONDON ELEKTRICITY** * **PBR STREETGANG** * **FRED V & GRAFIX**

FITCH PERIPLOT, CRYSTAL CLEAR OUTDOOR SOUND SYSTEMS
ANNIE MAC PRESENTS * **NOISEY** * **HOT CREATIONS** * **HOSPITALITY** * **LOVEBOX LIVE**
HEIDI PRESENTS THE JACKATHON

HEART, SOUL, ROCK & ROLL
WWW.MAMALIVE.COM/LOVEBOX

- A poster from a 2014 event in Bristol, which refers twice to Ram Jam:²²

OUTLOOK

— OUTLOOK FESTIVAL 2014 —
BRISTOL LAUNCH PARTY
 In association with THE BLAST, RAM JAM & PSYCHED

Room 1 - Ram Jam presents:
ALBOROSIE & SHENGEN CLAN
DAVID RODIGAN
CHANNEL ONE - RANDALL
GARDNA - DUB BOY - FIREMAN SAM

Room 2 - Jittabug presents:
DJ DIE - ICICLE
SAM BINGA & REDDERS
TS2W - KOAST

Room 3 - Hosted by Psyched:
CASKI - DISTRO - RUANE MAURICE
BARNY RUBBLE - BEN REMEMBER

Friday
 11 April 14
 22:00—06:00

UK

MOTION
 74-78 Avon Street
 Bristol BS2 0PX

Tickets: £16.50 / £18.50 / £20.50 - WWW.MOTIONBRISTOL.COM

— OFFICIAL PARTNER —
MOTION [B] THE BLAST STB RAM JAM PSYCHED
www.theblast.co.uk

060

²² Exhibit TJ17, page 141

- A poster from 2014 in which it can be seen that the 'Ram Jam' logo has the word 'Rodigan's' above Ram Jam:²³



²³ Exhibit TJ17, page 147

- A 2015 Southampton soundclash poster:²⁴



²⁴ Exhibit TJ18, page 163

- A poster for a concert in 2015 in London:²⁵



²⁵ Exhibit TJ18, page 164

- A poster for a 2015 event in Edinburgh:²⁶



- A 2016 tour poster, which shows the Ram Jam logo, with David Rodigan's name, in association with SEG music. SEG is referred to by Mr Rodigan in the interview for Fact magazine, as per the quotation I have reproduced above, referring to "John Bailey of SEG":²⁷

²⁶ Exhibit TJ18, page 165

²⁷ Exhibit TJ19, page 169

DAVID RODIGAN

SUMMER 2016 TOUR

- 28.5 COMMON PEOPLE, OXFORD
- 29.5 COMMON PEOPLE, SOUTHAMPTON
- 29.5 LOVE SAVES THE DAY, BRISTOL
- 02.6 CIRCOLO MAGNOLIA, MILAN, ITALY
- 03.6 DISTORTION, COPENHAGEN, DENMARK
- 04.6 DETONATE FESTIVAL, NOTTINGHAM
- 11.6 WILD LIFE, BRIGHTON
- 11.6 STRAWBERRIES & CREAM, CAMBRIDGE
- 12.6 PARKLIFE, MANCHESTER
- 28.6 HIDEOUT FESTIVAL, CROATIA
- 02.7 EL DORADO FESTIVAL, EASTNOR CASTLE
- 15.7 LOVEBOX, LONDON
- 16.7 LATITUDE, NORFOLK
- 22.7 TRAMLINES FESTIVAL, SHEFFIELD
- 24.7 SECRET GARDEN FESTIVAL, HUNTINGDON
- 29.7 CAMP FESTIVAL, DORSET
- 30.7 KENDAL CALLING
- 12.8 IBIZA ROCKS
- 19.8 GRETCHEN CLUB, BERLIN, GERMANY
- 26.8 LEEDS FESTIVAL
- 28.8 READING FESTIVAL
- 29.8 HOUSE OF COMMON, CLAPHAM
- 01.9 OUTLOOK FESTIVAL, CROATIA
- 04.9 SUNDOWN FESTIVAL, NORFOLK
- 09.9 BESTIVAL, ISLE OF WIGHT
- 16.9 IBIZA ROCKS


 @DAVIDRODIGAN
 RODIGAN.COM

BY ARRANGEMENT WITH SEG MUSIC

21. To succeed in its section 5(4)(a) claim, Music must show the three elements of passing off, as summarised by Her Honour Judge Melissa Clarke in *Discount Outlet v Feel Good UK* [2017] EWHC 1400 (IPEC):

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether “a substantial number” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

22. Guidance is given in paragraphs 184 to 188 of Halsbury’s Laws of England (4th Edition) Vol. 48 (1995 reissue) with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant’s use of a name, mark or other feature which is the same or sufficiently similar that the defendant’s goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot

be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.”

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

23. In a case where the contested mark is unused, it is the date when the application was made for the contested mark (in this case, 18 September 2016) which is the relevant date for the purposes of section 5(4)(a) of the Act. However, if the contested mark has been used prior to the date of application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about. If an applicant for registration was not passing off when it commenced use of the sign, a continuation of the same trade under the same sign is unlikely to amount

to passing off at the application date.²⁸ In these proceedings, RJL has filed evidence about its mark prior to 18 September 2016. I will make findings about Music's claim to goodwill before looking at RJL's evidence to ascertain what bearing, if any, RJL's evidence has on the relevant date(s).

24. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margerine Ltd* [1901] AC 217 at 223:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

25. Although Mr Rodigan's witness statement is relatively short, there are a substantial number of exhibits. Not all of them are relevant. RJL has also filed many examples of posters and fliers where there is no mention of Ram Jam; however, as mentioned above, RJL's evidence about Music/Mr Rodigan includes several examples of posters and fliers which do refer to Ram Jam prior to 18 September 2016. Looking at all of the evidence in the round, including where separate parts of it corroborate other parts, I find that a picture emerges.

26. David Rodigan is a DJ who has had a career in the UK of some longevity in the genre of reggae, with regular and long-running slots on mainstream radio stations. He has a distinguished reggae DJ pedigree, having interviewed Bob Marley on his radio show, and has played regularly at mainstream festivals, as well as at smaller events. Mr Rodigan is known for sound clashes. He has been recognised as an ambassador for reggae music, having been awarded the MBE as well as an award by the Jamaican government for services to music. Ram Jam is a long-standing personal nickname which has from 2003 been referred to in the press and in the titles of interview articles, although the body of the articles tend to refer to 'Rodigan'.²⁹ This is a journalistic

²⁸ *Advanced Perimeter Systems Limited v Multisys Computers Limited* [2012] R.P.C. 14, Mr Daniel Alexander QC, sitting as the Appointed Person.

²⁹ The 2003 article is the one in *The Independent*, Exhibit DMR3, page 356

convention and does not necessarily mean that Mr Rodigan is not synonymous with Ram Jam in his particular field of activity. However, with one exception, Ram Jam is flanked in the articles by 'David' and 'Rodigan' (i.e. David 'Ram Jam' Rodigan).³⁰ Thus, in the articles, Ram Jam is always found in the context of David Rodigan, not alone. From 2013, the year in which Music was incorporated, there is frequent mention of Ram Jam on event posters, but not before that. The one exception in terms of an event billing is the 20 November 2012 Sheffield students union event. 2013 is the year in which the Fact magazine interview was uploaded to YouTube, but there are no details as to when the interview took place (this was part of RJL's evidence). In the interview, Mr Rodigan talks about new plans for creating Ram Jam Presents, which is how the use is presented in the posters from 2013 onwards.

27. There is no doubt in my mind that the name David Rodigan was distinctive of Mr Rodigan's business as a reggae DJ for decades (and still is). RJL does not dispute that. The question is whether RAM JAM was distinctive of his business as a reggae DJ and, if it was, when it became distinctive of such a business.

28. There is little caselaw about reliance upon nicknames in passing off cases, but one such authority is *Peter Waterman v CBS* [1993] E.M.L.R. 27. 'Hit Factory' was a nickname given to the claimant's recording studio by the public and the media, but it was not the claimant which had given itself the nickname. The claimant's recording studio was prolific in the 1980s, and the public and media perception was that it regularly churned out hit records of a particular formula, with less artistic merit than other artists' hits; hence, it was a 'factory'. The court found that the claimant had at no time traded in any way by reference to the trade name The Hit Factory: "The name 'The Hit Factory' in relation to PWL was and is a nickname or accolade or mantle conferred on PWL by the public, not a name adopted by PWL under which it traded." However, the court also found that there were two possible exceptions to that; the first being that the claimant did, in 1987, issue a compilation of hits it had produced and it chose The Hit Factory as the name of the album. Secondly, the claimant adopted cataloguing for its albums with the prefix HF, standing for Hit Factory. The court

³⁰ Exhibit DMR3, page 365, but this doesn't appear to be a UK article because the writer refers to New York areas and the date is presented in the US style of month followed by day.

decided that the latter had little impact in conferring upon the claimant the trade name of The Hit Factory.

29. A key issue was whether the claimant had established by the evidence that in the minds of the public, or a section thereof, the name The Hit Factory distinguished the claimant's business from those of others. Amongst the considerations was that the name was descriptive as a (wry) reference to the quality of the services provided. The court said:

“The fact that PWL has not itself adopted the name as its trading name is not in law in any way fatal to a claim to the name being distinctive. In the *Dolly Blue* case, *Edge & Sons Ltd v Gallon & Son (1900) 17 RPC 557*, it was the washerwomen and not the manufacturers who originally called the manufacturer's product Dolly Blue. But in that case the product was asked for and sold in the shops under the name Dolly Blue. Here there is no sufficient evidence that the name 'The Hit Factory' is used either by those in the recording industry or the eventual retail buyer for the purpose either of engaging PWL's services or buying records. The name is a nickname used as a term of reference, not a trading name. The highest the evidence goes is that, within certain recording companies, employees refer to PWL amongst themselves as 'The Hit Factory'. In the realm of retail sales there was no evidence of current trading practices. The most I have is the recollections (now, I suspect, rather dim) of Mr Waterman and Mr Howells as to their days in the retail trade when the next generation, or the next generation but one, would come into the record shop and, having seen something on television, ask for something by the name of what they had seen in order to buy it for their child or grandchild. I have no evidence that that is still the practice. I have no evidence that anybody has ever asked for the latest Hit Factory record. I certainly infer that many thousands of people have been in to ask for 'The Hit Factory' album but that is because it is the name of the record not because it is the name of the organisation.

There is no doubt at all in my mind that both in the media and by individuals PWL has been referred to as 'a' and on occasions 'The' Hit Factory. To a substantial number of people in this country the phrase 'The Hit Factory' means

PWL. But those words have in the past been applied to other recording enterprises, all of which were or are of the same special type as PWL, that is to say, one-stop recording organisations producing a house style or sound and which have been labelled 'a hit factory'. In particular the evidence discloses that Tamla Motown has been known by a substantial number of people as a hit factory. There were 11 witnesses who have heard the phrase applied to Motown. In addition, various other organisations are spoken of by a few witnesses as having been referred to as 'a hit factory': Stax, Philadelphia International, Phil Spectre. There is a single press cutting referring to Zomba, a currently successful organisation, as 'a hit factory'. The application of the description 'Hit Factory' to Motown and Stax took place when they were both currently successful; so with Zomba and PWL, we have two organisations currently successful being referred to, though Zomba only on a very minor scale, as 'a hit factory'. We therefore have in this situation the use of a phrase which has in the past been applied to other organisations, some of which have lost it completely, and for others of which there is a sort of residual folk memory of them being referred to as 'a hit factory'."

30. The claim failed because the court found that the name was not distinctive of the claimant, the evidence showing that the relevant public regarded the descriptive phrase as not being distinctive of the claimant alone.

31. The present case is not on all fours with the *Peter Waterman* case because Ram Jam is not descriptive. That said, there are similarities in that the evidence which both parties have provided shows that Ram Jam was a nickname given by others to Mr Rodigan. Whilst he has adopted that sign as a trading name since 2013, on the evidence, there is little or no evidence of Mr Rodigan's own use of Ram Jam, in trade prior to 2013, to distinguish his business from those of others. When Ram Jam is referred to, it is always in the context of David Rodigan, and flanked by 'David' and 'Rodigan'. As was the case in *Pete Waterman*, there is insufficient evidence that, prior to 2013, RAM JAM was used by those in the music industry, listeners or gig-attendees to purchase Mr Rodigan's services. RAM JAM, when it was referred to, was not a trading name, but a term of reference. Without being sandwiched between David and Rodigan, and seen in that context, RAM JAM was not, prior to 2013, the attractive

force which brought in custom. The four comments on the YouTube clips are insufficient to suggest otherwise; moreover, they were not uploaded until 2012 and 2017 and the comments were made in 2013, 2018 and 2020, by which time RAM JAM was being used as a distinguishing sign. The trenchtrenchtrench.com interview, which is undated, whilst mentioning Ram Jam club nights, also refers to all of the radio stations on which Mr Rodigan states he has had shows, including the station Radio 1Xtra which were post-2013 shows. This interview must date from at least 2013. The FACT interview was uploaded in 2013 and refers to a new venture to be called Ram Jam Presents. 2013 was when Music was incorporated.

32. Although the Grand Theft Auto game, 'Episodes from Liberty City, was released in 2009 and included the fictional RamJam FM, any goodwill would have accrued to the games company, RockStar games. The official game website, dated 11 April 2013, refers to fans being able to download playlists from the various fictional Grand Theft Auto radio stations. It is possible that Mr Rodigan's reputation as a reggae DJ extended following the inclusion in the game of RamJam FM, but there is a difference between reputation and goodwill.³¹ I do not find that Music's claim to goodwill can extend to video games.

33. Apart from the claim to goodwill in relation RAM JAM for video games, it is also claimed in relation to entertainment services, broadcasting services, personal appearances by a musical performer, printed matter, downloadable and non-downloadable audio and audio-visual recordings, musical events and promotional materials. I find that there was goodwill from 2013 in relation to RAM JAM, but not prior to that date and that Music, Mr Rodigan's business, owns that goodwill. The 2013 and subsequent posters identify events as RAM JAM, and feature Mr Rodigan's name (and photograph in some cases) alongside. If the Sheffield student union gig is included in that assessment, that only moves the date to 20 November 2012. However, that use was sandwiched in between David and Rodigan. I do not consider that Music can lay claim to goodwill in the complete list of services identified at the start of this paragraph (nor for video games). The entertainment is of a particular kind. There is no evidence that RAM JAM has been used as a distinctive sign in relation to

³¹ *Lonrho Plc v Fayed (no. 5)* [1993] 1 W.L.R. 1489

audio or visual recordings: the Ministry of Sound album was entitled “Masterpiece Created by David Rodigan”. RAM JAM has not been used as a sign on promotional materials for third parties: advertising one’s own business is not use of a trade mark or sign for promotional materials.

34. Although the ‘turnover’ might seem small in the context of conventional trade mark disputes, the £80,000 plus per annum is actually what Mr Rodigan earns for the services he provides under the sign RAM JAM, as Music’s director. There is clearly an attractive force bringing in custom from 2013 onwards in the form of attendees at the RAM JAM events at major cities, towns and music festivals, both mainstream and niche. I find that Music has shown goodwill in the sign RAM JAM from 2013 in relation to *personal appearances by a musical performer being a DJ; pop music events*. I have considered whether musical events should be limited to those concerned with reggae music. However, the use from 2013 onwards points to an expansion into other genres, such as rap and garage, so this seems unduly narrow. There is no goodwill in relation to radio shows (as in real radio shows, not shows or stations within a video game) because these are not RAM JAM radio shows.

35. As mentioned earlier in this decision, there may be a second relevant date, other than the date on which RJL’s application was filed, if actionable use of the contested mark had begun used prior to the date of application, making it necessary to consider what the position would have been at an earlier date.

36. Mr Jackson’s first witness statement is dated 9 December 2020. His second witness statement, dated 4 March 2021, solely concerned whether Music had used the sign relied upon, which I have dealt with, above.

37. Mr Jackson states that RJL was incorporated on 8 February 2010 and that he is the sole director and shareholder (there was a second director until 1 February 2011). Mr Jackson explains that RJL is a Brighton-based digital animation studio specialising predominantly in augmented reality and virtual reality games and animation, music videos, HTML5 games and apps. He states that RJL has a range of clients across a spectrum of digital platforms and includes interactive music videos, use of a projector

for concerts, augmented music apps, visuals for entertainment events, and projected visuals.

38. Mr Jackson states that one area of RJL's work is animated music videos, whereby an artist or their management company will contact RJL to request that RJL supplies them with an animated video to go with the artist's music track. "In or around 2010", a London-based producer and DJ, named Richy Pitch, asked RJL to create a music video for a track called Blackstar. Mr Jackson states that Exhibit TJ1 is a print from RJL's website about this project. The website article says that the music video was also turned into a video game by RJL. The bottom of each of the web page prints gives a website address of www.ramjam.co.uk/project/blackstar; the copyright date is 2020 Ramjam, and next to the copyright date is "Quietly getting on with it since 2010".

39. Mr Jackson states that "In or around" 2012, the hip hop group ArtOfficial asked RJL to create a music video for their 2011 music track called Black Birds. Mr Jackson states that Exhibit TJ2 is a print from RJL's website about the project. The same website address appears at the bottom of each of the web page prints, but with the project name as "blackbirds". The top of the second page of the exhibit says that the client was the University of Sussex. A testimonial quotation is reproduced on this page: ""We're excited to work with Ramjam. We're blown away by the video and the way it brings the track to life." – Carlos Framil, SONY." The bottom of the page says that the video was nominated for 'Best Urban Music Video' in the 2013 UKMVA awards. The copyright dating is the same as for the previous exhibit.

40. Mr Jackson states that "In or around 2013", RJL created a music video called 'Escape from '85' for Spoek Mathambo, an 11-track hip hop album. Exhibit TJ3 comprises prints from the ramjam website, which say that Spoek Mathambo got in touch with RJL after seeing Richy Pitch's Blackstar video, and asked RJL to create a music video for his album. The information on the website says that, in a month, RJL designed and produced a unique 80s-themed music video that is also an HTML5 playable game. This was nominated for the 'Best Interactive Music Video' at the UKMVA awards in 2013.

41. Mr Jackson states that, in 2016, a music group called Black Orchid Empire asked RJL to create a music video for their track 'This City'. He states that Exhibit TJ4 is a print from RJL's website about the project. This states that the client was Black Orchid, and the web address appears at the bottom of each page, as with the previous two exhibits. A testimonial quotation says "The guys at Ramjam did an incredible job, and we've been absolutely blown away by the results all the way through the process"—Paul Visser, Black Orchid Empire."

42. Mr Jackson refers to an augmented reality music video for a band called The Asteroid Galaxy Tour. He states that Exhibit TJ5 is a print from RJL's website about this project. He does not say when this was. The web page prints refer to "RamJam's Party Animals and The Asteroids Galaxy Tour's worlds collide in an augmented reality mash-up for iOS and Android". The page is entitled "RamJam Asteroids Augmented Reality Music App". The copyright date is 2020, as before. There is no dating within the text on the pages (which were downloaded on 9 December 2020). It appears to be a combination of a video game and a music video.

43. Mr Jackson states that RJL also makes games and apps using proprietary software called Unity. RJL is approached by an advertising agency, acting for a large brand, to create a game or app as a promotional tool for the brand's product. He states that, as an example, in 2020, RJL produced an app for a large global brand which will be available to download on the App Store and Google Play. Mr Jackson states that, for reasons of client confidentiality, he cannot disclose the brand's identity, but it is of a similar size to Microsoft, Apple, Google, Amazon, Nike and Coca-Cola.

44. Mr Jackson states RJL produced a Smart Wheels game app for the car insurance company, More Than, but does not provide a date or any supporting exhibits. He also states that RJL "recently" produced an app for a luxury cosmetic brand called Chantecaille in which the app user can see a giraffe standing in front of them. There are no dates and no supporting exhibits.

45. Mr Jackson states that RJL also does projection mapping which involves using a powerful projector to project onto a 3D image such as a building to give the impression that the building has turned into something else, such as an animal. He explains that

the technique is used in advertising and marketing for launch events, frequently linked up with music. Mr Jackson states that the services in the contested registration, which he further describes as animation production services, are not purchased by or do not target the general public, although the general public may be the end user (such as fans of a band, or customers of a brand).

46. Mr Jackson states that, typically, RJL is approached by an agency retained by a brand or music group and then RJL has a contractual relationship with the agency, rather than directly with the ultimate client. He states that RJL has a large global advertising agency client, with large brand clients, which sends RJL a lot of repeat work, but gives no other details. Mr Jackson states that RJL's work mainly comes from recommendation, referral and repeat work and that it does not advertise, although it does have a website with a portfolio showreel and does occasionally post on LinkedIn. He states that RJL does not pay for digital marketing campaigns.

47. Mr Jackson states that it is his experience that companies who supply the services covered in RJL's registration typically also provide some or all of the services applied for by Music in classes 38 and 41. He gives an example of complementary and competitive services as being RJL's *digital video, audio and multimedia entertainment publishing services* and Music's *production, distribution and publishing of music*.

48. Mr Jackson explains that he chose the name RamJam one evening with the second director "in January or February 2010". He states that at that time he was trading as Stringmouse, as an unincorporated business, before incorporating RamJam Limited (on 8 February 2010). Mr Jackson states that at some point prior to that evening he had seen a film called "The Wrestler". Exhibit TJ6 is a Wikipedia print about the film which says that it is a 2008 film about a wrestler, describing one part of the plot as "Randy climbs the top rope for his signature finishing move, a diving headbutt called the "Ram Jam"...his fans chanting for him to perform his signature move, the "Ram Jam"." Mr Jackson states that he put forward the name suggestion to the other director and they both liked its sound. Mr Jackson states that they checked to see if there was a website. RamJam.com was taken, but RamJam.co.uk was available, so he and the other director bought it.

49. The final part of Mr Jackson's evidence concerns his statements about lack of confusion between the parties' businesses. He states that in the "10 years trading as RamJam", no one has ever asked if RJL is RamJam Rodigan or anything of the sort.

50. Mr Jackson concludes by stating that RJL's services have been on the market for over ten years by reference to the RamJam name and that, in that time, over 250 projects have been completed for clients generating a turnover of around £750,000.

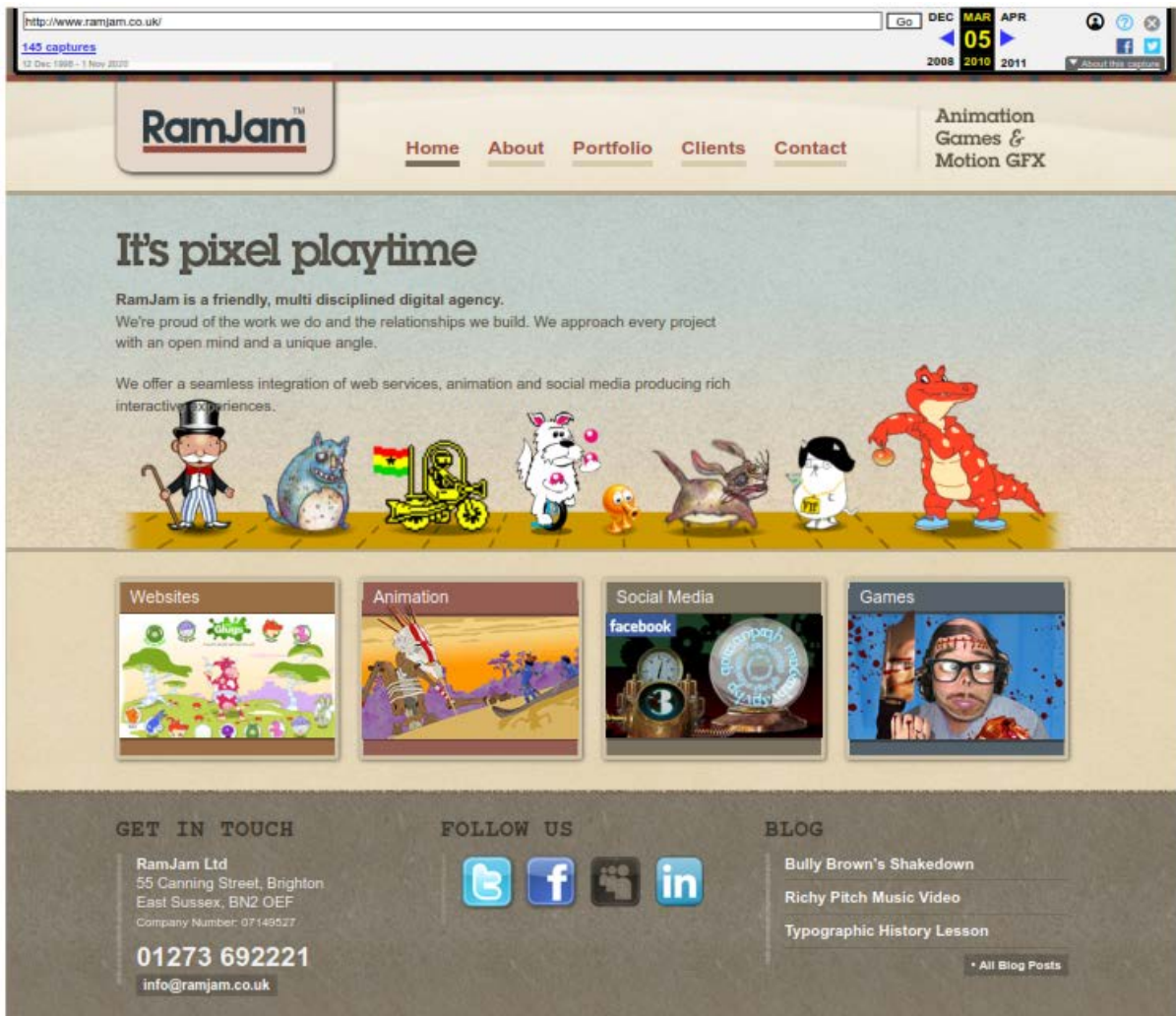
51. Mr Wood's evidence is in reply to Mr Jackson's evidence, forming the basis for his cross-examination of Mr Jackson at the hearing. I found Mr Jackson to be a straightforward witness who did not obfuscate or sidestep any of the questions put to him. On the few occasions when his answers did not seem altogether clear, this seemed to me to be down to his own confusion as to the question being put to him. Mr Wood himself said that he did not perceive Mr Jackson to have knowingly set out to mislead the tribunal.

52. Mr Wood begins his witness statement by referring to paragraph 9 of Mr Jackson's witness statement which dealt with the 'Blackstar' project for Richy Pitch; specifically quoting the following:

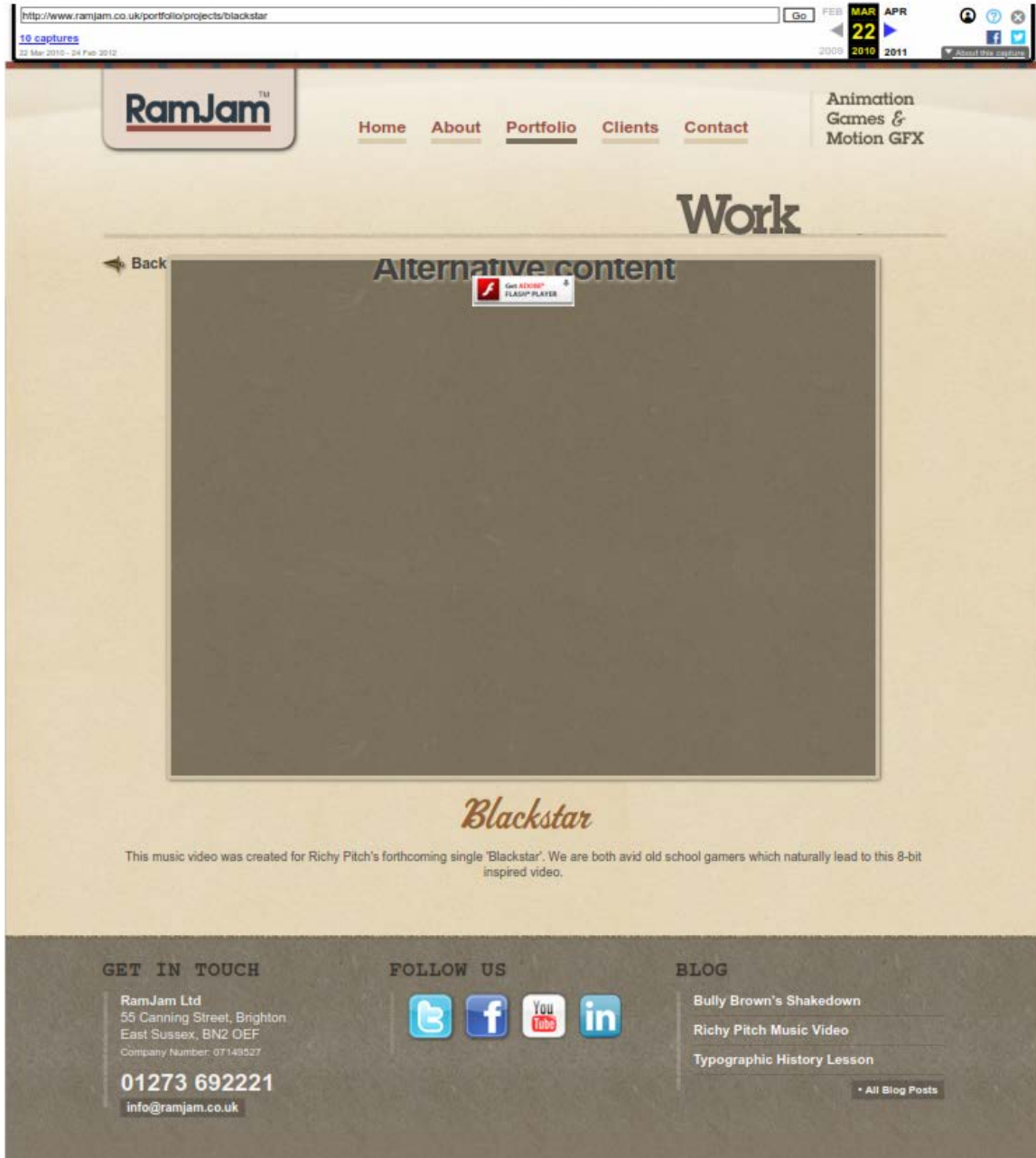
"In or around 2010 London-based producer and DJ Richy Pitch asked us to create a music video for a track called Blackstar".

53. Mr Wood states that he read that as suggesting that "RamJam" had been approached by the DJ without any prior knowledge or involvement of Mr Jackson and that this occurred when the company was called RamJam. Mr Wood states that he did some research on RJL's website, at www.ramjam.co.uk, using the Internet Archive so that he could see how the website looked at particular dates. He exhibits the following prints:

- Exhibit ARW1 which is a copy of the website entry for 5 March 2010 which Mr Wood states is the earliest instance he could find on the Internet Archive for RJL's website:



- Exhibit ARW2 which is a print of the portfolio page on the website as at 22 March 2010, describing the Blackstar work:



- Exhibit ARW3 which is a print of the portfolio page of the website as at 6 September 2011 which explains in more detail how Mr Jackson came to meet up with the client:



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- [About](#)
- [Portfolio](#)
- [Clients](#)
- [Contact](#)

Animation
Games &
Motion GFX

Work



← Back

Blackstar

This music video was created for the single 'Blackstar' by Richy Pitch.

Tom had been a fan of Richy for many years and used one of his favourite tracks 'The Bed' (Live at Home) for our showreel. This led to Tom and Richy meeting up to discuss the possibilities of a video for 'Blackstar'. They were both big fans of old school games and after Tom discussed the ideas he'd about the song being married to a classic side scrolling video game it lead to this ZX Spectrum inspired animation.

GET IN TOUCH

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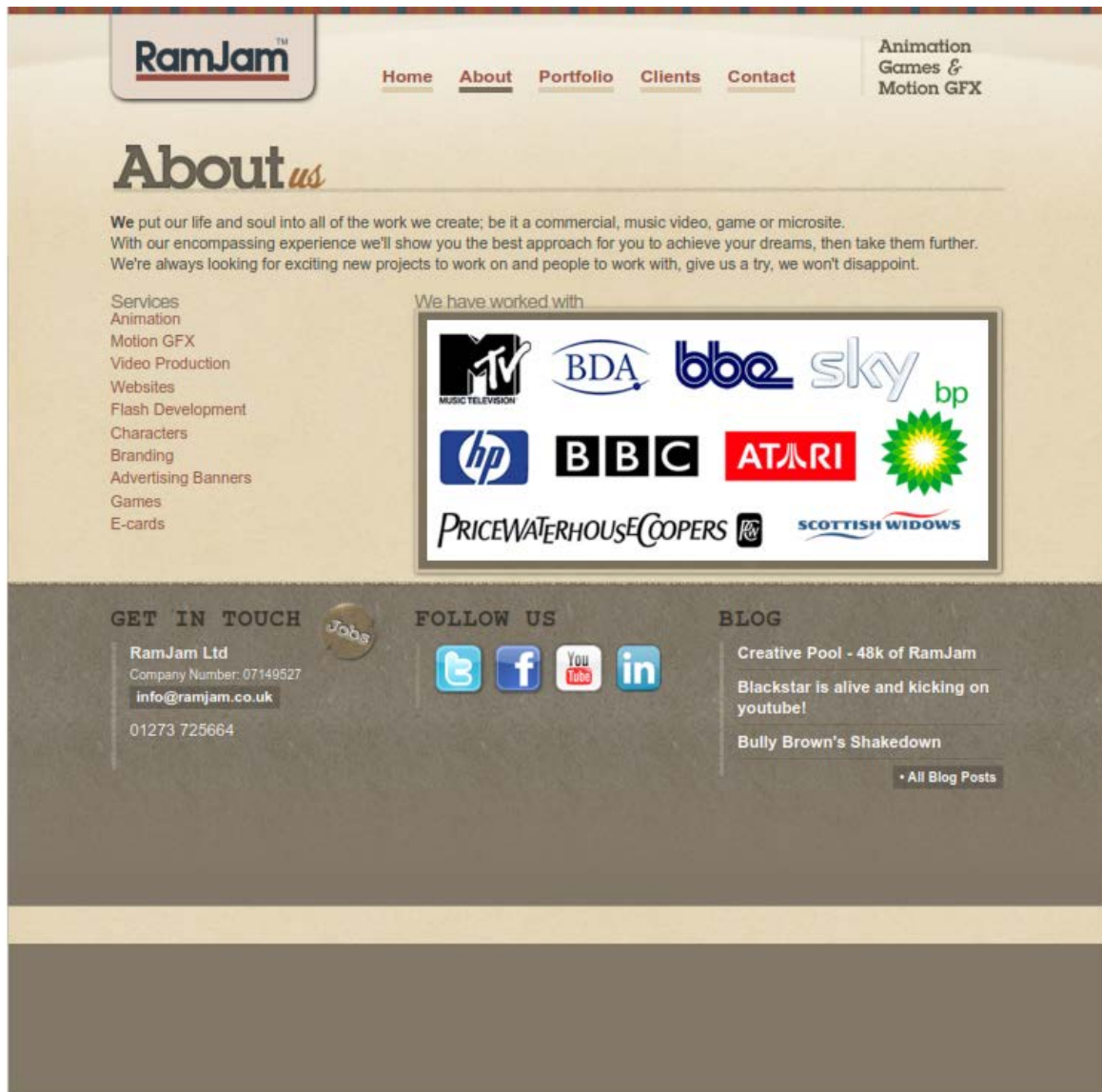
BLOG

Creative Pool - 48k of RamJam

Blackstar is alive and kicking on youtube!

Bully Brown's Shakedown

• All Blog Posts



<https://web.archive.org/web/20110906134409/http://www.ramjam.co.uk/about>

1/1

- Exhibit ARW4 which is a copy of the explanation of the track by Richy Pitch on his Soundcloud account, dated 2010, in which Richy Pitch explains “The video was produced by the amazing Tom Jackson (Stringmouse/Ramjamuk).”

54. In cross-examination, it transpired from Mr Jackson’s answers that it was Mr Jackson that had approached Richy Pitch because Mr Jackson wanted to use one of Richy Pitch’s music tracks in his ‘show reels’. This was prior to the adoption of the RamJam name. As a result of that contact, RJL, or Mr Jackson as Stringmouse, was hired by Richy Pitch to produce the music video for the single, Blackstar. Mr Jackson stated that when it was released, the logo was updated to include RAMJAM because RJL had been set up by then.

55. Mr Wood refers to the part of Mr Jackson's evidence which deals with the 2012 Blackbirds project and the testimonial quotation in Exhibit TJ2 (reproduced earlier in this decision) from Carlos Framil. Mr Wood shows at Exhibit ARW5 a copy of Mr Framil's LinkedIn profile, including previous companies he has worked for. Between August 2008 and February 2010 he was Marketing Administrator at Sony Music Entertainment; between March 2010 and April 2014 he was Product and Marketing Manager at Eleven11: Entertainment; also during this time, between May 2012 and April 2012 he was in a temporary position as a Development Coordinator at MTV Networks.

56. In cross-examination, Mr Jackson stated that RJL made a pitch for the Blackbird work on a music video website around 2012, and won the pitch, working directly with ArtOfficial. Mr Wood asked Mr Jackson why the latter's exhibit regarding the Blackbird work said that the client was the University of Sussex.³² Mr Jackson stated that this was incorrect, it appearing to be the first time he had been aware of it. Mr Wood then asked Mr Jackson about Carlos Framil; Mr Jackson replied that Mr Framil was ArtOfficial's manager and that he did not know the exact date of Mr Framil's testimonial quotation, but it was 2012 or 2013. Mr Wood pointed out the various roles in the LinkedIn print about Mr Framil and that he could not have been at Sony, as indicated in Mr Jackson's Exhibit TJ2, because he did not work at Sony in 2012. Mr Jackson did not reply to Mr Wood's accusation that this part of the evidence was false, but Mr Jackson appears to have been confused at this point, rather than being evasive. He was also interrupted by Mr Wood when he was explaining when RJL put Mr Framil's quotation into the website.

57. Mr Wood refers to Mr Jackson's statement about RJL having developed the Party Animals app for a The Asteroid Galaxy Tour. Exhibit ARW6 comprises details of the Party Animals app taken from the Apple Store, with a copyright date of 2018 to RamJam. Exhibit ARW7 is in relation to the Smart Wheels game referred to in Mr Jackson's evidence; Mr Wood says that he understands the contents of this exhibit to be a reference to the Smart Wheels game app in the press. The dating for the press review of the game for a forthcoming promotional campaign for Smart Wheels car

³² Exhibit TJ2, page 41

insurance is 21 October 2017, on a website called 'The Drum'. Mr Wood refers to the Chantecaille game app, for which Mr Jackson gives no date details. Exhibit ARW8 is a print about the app from Google Play, with nine reviews, the earliest of which is from September 2019, and "1000+ installs".

58. This part of the cross-examination appeared to be aimed at proving that RJL was not approached directly for work. For example, the press review about the Smart Wheels app credits "VCCP". Mr Jackson stated that RJL created the app for VCCP and that it would be VCCP which gained most of the credit for it. He explained that the Internet of Elephants contacted RJL and asked RJL to develop the Chantecaille app, having seen RJL's Party Animals app. Mr Jackson reiterated what he had said in his witness statement about a lot of RJL's work coming from agencies, recommendations and repeat work. There was no contradiction in any of his answers. Mr Jackson stated that the Blackbird artist wanted to do a music video looking like a game and that RJL also did the whole album, both of which were nominated for an award at the UK Music Video Awards in 2013 as RamJam.

59. The final part of the cross-examination comprised questions put to Mr Jackson about whether he accepted that Mr Rodigan had used RAM JAM prior to RJL's use. Mr Jackson is not a trade mark lawyer. His answer that David Rodigan had used RAM JAM 'as a thing' does not mean that Music or Mr Rodigan had goodwill in the services claimed sufficient to found a passing off action. Mr Jackson referred to his own evidence-in-reply as showing that the pre-2016 posters all show David Rodigan, not RAM JAM. So, I do not regard his answers as being any sort of admission that Music had goodwill in RAM JAM prior to 2013 or prior to 18 September 2016.

60. Whilst it is Music which must show that it had the necessary goodwill at the date on which RJL's actionable use began, RJL's evidence must be sufficiently cogent to support its claim to a date of first use earlier than 18 September 2016. I note that in *Casablanca* Trade Mark, BL O/349/16, Mr Thomas Mitcheson QC, sitting as the Appointed Person, observed:

"35. I think it is clear from the remainder of §165 of the judgment of Kitchin LJ that generation of goodwill *by the applicant* is not required. This is because

he goes on to explain that it is the opponent who must show that he had the necessary goodwill and reputation to render that use actionable *on the date that it* (i.e. the applicant's use) began.

36. This is entirely consistent with the more lengthy discussion of the topic in the decision of Daniel Alexander QC in the *Multisys* case (*Advanced Perimeter Systems Ltd v Keycorp Ltd* [2012] R.P.C. 14). See the passage at §§35-45 which reviews many of the authorities which were cited to me, including the earlier Croom decision of Geoffrey Hobbs QC. It is correct that, as the Opponent pointed out, §49 of Croom refers to the build up of goodwill (rather than mere use) as justifying the designation of senior user, but it does not appear that the precise point in issue in *Multisys* or the present case was in issue there, and in any event I consider that I am bound by *Assos* and I would have followed the later *Multisys* case anyway.

37. Accordingly the relevance of the activities of the applicant is limited to establishment of the date that the actionable use began. Once that date is established, the only question of goodwill arises in respect of the opponent's activities. As the Applicant in the present case pointed out, self-evidently it would only be in very exceptional circumstances that a party would have established goodwill at the point in time at which it commenced the use complained of. The establishment of goodwill would take much longer. But the authorities recognise that it is the date that the activity commenced which is the crucial one, and so in my judgment it cannot be necessary for goodwill to have been accrued at that time.

38. That does not mean that it is irrelevant what happens after the first alleged date of commencement. Clearly if the activity ceased or changed materially between the date of commencement and the date of application for the trade mark then this must be taken into account, as it may mean that the true date of commencement of the activity complained of is later or that the activity complained of cannot properly be said to have properly commenced at all (if it was later abandoned). This is all a matter of fact and degree and is no doubt why Kitchin LJ expressed it as "*a matter which must be taken into account*"

rather than as being determinative of the issue. However it does not mean that what is required is anything more than the commencement of the activity which is carried on in such a way as to fix the date of assessment. There is no greater requirement to prove goodwill on that date.”

61. Applying this to the evidence about RJL, supplied by both parties, I find that RJL did commence using RamJam in 2010 at the time that the Blackstar video was released. It does not matter that this was an infant company and that this was the first project released by RamJam because RJL is not required to show goodwill; it is required to show when the activities complained about first commenced. It also does not signify that the project commenced under Stringmouse because it was released commercially under Ram Jam. The Blackstar project was not a one-off because two years later, the Blackbird music video was created and was nominated for a UK industry-wide award in 2013. This video had the look of a game app. Mr Jackson’s evidence is lacking in dating thereafter, but Music has provided evidence which shows that RJL’s various projects were dated as follows:

- The Blackstar music video was released under the RamJam mark in early 2010;
- The Blackbirds music video was released under the RamJam mark in 2012 or at least in 2013;
- The ‘Escape from ‘85’ music video/game for Spoek Mathambo was released in 2013 under the RamJam mark;
- The music video for Black Orchid Empire was created in 2016 under the RamJam mark;
- The Smart Wheels app was created for VCCP by RamJam and released in October 2017;
- The Party Animals game app was released in 2018 under the RamJam name;
- The Chantecaille game app dates from at least September 2019.

62. The date when the use complained about commenced was therefore early 2010 in relation to the creation of music videos, with two further such projects in 2012 and 2013, in the form of a combination of a music video and game. A further music video was created in 2016, and game apps followed in 2017, 2018 and 2019, having been

commissioned by clients. Approaching this evidence with *Casablanca* in mind, it does not seem to me material whether RJL obtained its work directly from end-clients or from agencies: if the agencies chose RJL, that is still business won because of the mark RamJam. The activity did not cease or change materially between 2010 and 2016, and the post-2016 evidence shows a continuum of trade stretching from 2010. I find that RJL commenced activity which was carried on in such a way as to fix the date of assessment as being in early 2010.

63. On the evidence, RJL first used its mark in relation to the creation of music videos in 2010 and games in 2013 with the result that Music would not have been in a position, its own protectable goodwill dating from 2013, to have prevented RJL from using its mark in relation to such services either in 2010 or on 18 September 2016. Even if I am wrong about the 2010 and 2012 use, by 2013 RJL was nominated for a music video industry-wide award, the same year as from when Music's protectable goodwill dates.

64. However, RJL did not commence its use of RamJam in 2010 or thereafter in relation to all of the services of its registration. Although Mr Jackson refers to other, more recent activity, such as projection onto buildings, there are no supporting exhibits and the recent activity appears to post-date 18 September 2016. The next step in the assessment of Music's passing off claim is to decide which services in RJL's registration may remain, because Music could not have prevented their use as above; and, if any other services fall outside of RJL's earlier use, to decide whether their use, on a notional basis, would constitute misrepresentation. Misrepresentation does not depend upon an intention to deceive; therefore, RJL's evidence about how it came up with the name RamJam does not affect the assessment.

65. I have found that RJL's actionable use began, prior to Music's protectable goodwill, in relation to music video services and video games services. Therefore, Music's section 5(4)(a) claim fails in relation to the following services in the specification of RJL's contested registration:

Animated musical entertainment services; Animation production services; Computer and video game amusement services; Creating animated cartoons; Digital video,

audio and multimedia entertainment publishing services; Electronic game services and competitions provided by means of the internet; Electronic games services provided from a computer database or by means of the internet; Electronic games services provided via a global computer network; Electronic games services, including provision of computer games on line or by means of a global computer network; Film production for entertainment purposes; Game services provided by means of communications by computer terminals or mobile telephone; Game services provided on-line from a computer network; Game services; Interactive entertainment; Internet games (non-downloadable); On-line gaming services; Production of animated cartoons; Production of animated motion pictures; Production of animated programmes for use on television and cable; Production of animated programmes; Production of animation; Production of musical videos; Providing a computer game that may be accessed by users on a global network and/or the internet; Providing a computer game that may be accessed network-wide by network users; Providing an on-line computer game; Providing games; Providing interactive multi-player computer games via the internet and electronic communication networks; Providing on-line computer games; Providing on-line videos, not downloadable; Provision of entertainment services through the media of video-films; Provision of games by means of a computer based system; Provision of on-line computer games; Special effects animation services for film and video; Video game arcade services; Video game entertainment services.

66. This leaves RJL's *Business training provided through a game; Film production for educational purposes; Film production services; Production of training videos; Production of videos*. These services either relate to a different subject matter to the videos and games for which RJL had commenced use of RamJam at a date earlier than Music's protectable goodwill, or are terms which are broader than that subject matter. This makes the relevant date for assessment 18 September 2016, the date on which RJL's contested trade mark registration was filed. I bear in mind that Music's goodwill at that date was limited, as it was in 2013, to *personal appearances by a musical performer being a DJ; pop music events*. The test for misrepresentation was set out in *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473. Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc. [1990] R.P.C. 341 at page 407* the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in *Halsbury's Laws of England 4th Edition Vol.48 para 148* . The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd. (1941) 58 R.P.C. 147 at page 175* ; and *Re Smith Hayden's Application (1945) 63 R.P.C. 97 at page 101.*”

67. None of the services in the previous paragraph are similar to those in which Music had a protectable goodwill at the relevant date. It is not fatal to Music's case that there is no common field of activity, but it is relevant.³³ There appears to be no reason why Music's customers and potential customers would assume that Music is responsible for educational and business videos and games, and educational film production. In relation to the wider film production and production of videos, potentially these could be music videos. However, these are the services for which RJL had commenced use at a date earlier than Music's protectable goodwill existed, and so there is no passing off. Again, there is no reason why there would be misrepresentation for production of films and videos of any other kind. There would be no assumption that the services were provided by Music, nor even any wondering as to whether they were.³⁴

68. Accordingly, the passing off claim fails. RJL's registration remains registered for all the services in its specification. This outcome means that RJL can rely upon its earlier registration in its opposition against Music's application, to which I now turn.

³³ *Harrods Limited v Harroddian School Limited [1996] RPC 697*

³⁴ *W.S. Foster & Son Limited v Brooks Brothers UK Limited, [2013] EWPC 18 (PCC)*

RJL's opposition to Music's trade mark application

69. RJL withdrew its reliance upon sections 5(1) and 5(2)(b) of the Act in its skeleton argument. The only ground of opposition is section 5(2)(a). The relevant date for the opposition is the date on which Music filed its trade mark application: 5 December 2019. RJL's mark had not been registered for five years prior to the filing date of Music's application, so is not subject to proof of use. This means it is entitled to rely upon the normal and fair use of all the services notionally covered by its specification, regardless of whether it has used them.

70. Section 5(2)(a) of the Act states:

“5. - (2) A trade mark shall not be registered if because –

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or

(b) [...]

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

71. Section 5A of the Act states:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

72. 5(2)(a) requires that the parties' marks are identical. Music has admitted in its counterstatement that the parties' marks are identical. For convenience, I will refer to the earlier series of marks in the singular.

73. As Music has admitted that the marks are identical, there is no need to set out case-law relating to the comparison of marks. In terms of the other factors relevant to the likelihood of confusion, I note the following well-established principles from of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, and *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98:³⁵

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant;

(c) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(d) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(e) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(f) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

³⁵ Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

(g) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

74. In its defence and counterstatement, Music admitted that some of the parties' goods and services are identical and similar, setting these out in a table. Originally, RJL pleaded section 5(1) of the Act which requires that marks, goods and services are identical (in this case, services as RJL's registration is only for services). However, in withdrawing its section 5(1) ground in its skeleton argument, RJL said that it

“[...] now concedes that there are no IDENTICAL services in Music's application, and so this section does not apply.”

75. The conundrum is that Music has admitted that there are some identical services, setting these out in its counterstatement, but, since then, RJL has said that it no longer claims that there are any identical services. It seems to me that, given RJL's later concession, it is not open to me to find any identical services, despite Music's earlier admission. Furthermore, RJL has now limited its grounds of opposition to section 5(2)(a) of the Act only, which does not provide for a situation in which there are identical services, only those which are similar.

76. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

77. In *Kurt Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“82 ... there is a close connection between [the goods], in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking...”.

78. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

79. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

80. In *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

81. I note that R JL, in its skeleton argument, submitted:

“65. The RP [R JL] has forty (40) different items in its class 41 specification. To speed up the comparison, the RP is prepared to take its best case – say the top 3 - so that if they don’t succeed then nothing else will.

66. The RP therefore says that there is a likelihood of confusion as regards all of the services in Music’s application in classes 9, 38, and 41 and some or all of the RP’s registration for:³⁶

- (1) “Digital video, audio and multimedia entertainment publishing services; and/or
- (2) “Interactive entertainment” and/or
- (3) “Production of musical videos”.

67. Music’s class 25 application is now not opposed.”

68. At a granular level the RP’s position is as follows: [the table below]”

³⁶ Class 9 is a goods class.

The RP's class 41 registration UK00003186244	Services which the RP says are similar in Music's class 41 application
Digital video, audio and multimedia entertainment publishing services;	providing digital music from Internet websites; downloading of radio and television programmes, films, videos, sound, images or data from the Internet or other computer network; booking agencies concert tickets; reservation services for concert tickets; All of Music's application in class 38 and class 9
Interactive entertainment;	entertainment services, namely providing online non-downloadable pre-recorded musical sound and video recordings via a global computer network; entertainment, namely a continuing music and entertainment show distributed over radio, television, satellite, audio, and video media; live entertainment in the nature of live concerts and performances by djs, musical artists and groups; entertainment services, namely personal appearances by djs, musical groups, musical artists and celebrities; entertainment services in the nature of musical performances rendered by djs, musical artists through the medium of television, radio, and audio and video recordings entertainment services, namely recorded performances by djs and/or musical artists; entertainment services namely live, televised and movie appearances by djs and/or musical artists; conducting entertainment exhibitions in the nature of music festivals; conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; organising, arranging, managing and staging musical events, shows, concerts, festivals, gigs and live band performances; advisory and information services relating to all the aforesaid
Production of musical videos;	Nightclub and discotheque services; dj and compere services; dance club services; hosting of musical events; production, distribution and publishing of music; production of radio programs; distribution of radio programs for others;
	fan clubs;

82. I will proceed on the basis that RJL has made a concession in its skeleton argument that this represents its best case and that if it can't succeed in its comparison above then none of its other services will be similar to Music's goods and services. I

note that Music undertook a comparison table exercise in its counterstatement, at that time in the absence of any particularisation from RJL in its notice of opposition as to which goods and services were identical or similar. As above, it seems to me that I should not take into account any case that Music made at that stage that was better for RJL than RJL now makes for itself. In making my assessment as to what is similar and to what extent, I will group together goods and services where they are susceptible to the same reasoning.³⁷ I will start with Music's class 41 services according to the comparison in RJL's table, above.

Providing digital music from Internet websites; downloading of radio and television programmes, films, videos, sound, images or data from the Internet or other computer network; booking agencies concert tickets; reservation services for concert tickets

83. RJL submits that these services are similar to its own 'digital video, audio and multimedia entertainment publishing services'. I agree that RJL's audio entertainment publishing services are highly similar to Music's *Providing digital music from Internet websites*. Publishing is making something available and audio entertainment covers music in all forms. It is not open to me to make a finding of identity for the reasons given earlier, but these services have the same nature, purpose, users, method of use and the same trade channels. Downloading is also making something digitally available, as a form of publishing. RJL's publishing service relates to digital video, audio and multimedia entertainment, which covers Music's radio and television programmes, films, videos, sound, image or data. These services are highly similar.

84. It is not obvious to me why RJL's digital video, audio and multimedia entertainment publishing services would be similar to Music's *booking agencies concert tickets; reservation services for concert tickets*. They do not share nature, or purpose or method of use. RJL's service publishes entertainment content. Booking agencies and ticket reservation agencies or the venues themselves provide ticket booking services. These are not in competition, do not share trade channels and are not complementary.

³⁷ *Asia Standard Management Services Limited v Standard International Management LLC* [2020] EWHC 28 (Ch) at paragraphs 8 and 9.

In the absence of any explanation as to why these are said to be similar, I decline to find any similarity. These services are not similar.

Entertainment services, namely providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; entertainment, namely a continuing music and entertainment show distributed over radio, television, satellite, audio, and video media; live entertainment in the nature of live concerts and performances by djs, musical artists and groups; entertainment services, namely personal appearances by djs, musical groups, musical artists and celebrities; entertainment services in the nature of musical performances rendered by djs, musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by djs and/or musical artists; entertainment services namely live, televised and movie appearances by djs and/or musical artists; conducting entertainment exhibitions in the nature of music festivals; conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; entertainment, namely a continuing music and entertainment show distributed over radio, television, satellite, audio, and video media; live entertainment in the nature of live concerts and performances by djs, musical artists and groups; entertainment services, namely personal appearances by djs, musical groups, musical artists and celebrities; entertainment services in the nature of musical performances rendered by djs, musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by djs and/or musical artists; entertainment services namely live, televised and movie appearances by djs and/or musical artists; conducting entertainment exhibitions in the nature of music festivals; conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; organising, arranging, managing and staging musical events, shows, concerts, festivals, gigs and live band performances; advisory and information services relating to all the aforesaid.

85. RJL submits that these services are similar to its own 'interactive entertainment'. Not all of Music's entertainment services are interactive, such as recorded performances. However, interactive entertainment is not limited to computer games. Interactive entertainment could include an audience-participation event. This makes

RJL's service highly similar to Music's *organising, arranging, managing and staging shows*, which could be interactive shows (shows being for entertainment). With the exception of advisory and information services, all of Music's services in this list are entertainment services, including the organisation thereof. Whatever format the entertainment takes, the purpose of the parties' services is to entertain. There is a choice as to whether entertain oneself using an interactive type of entertainment, or to listen to or watch a recording, or to attend a live event. I find that there is at least a low to medium degree of similarity with the other entertainment and organisation thereof services in Music's list. The similarity of advisory and information services is usually found to stand or fall with the similarity of the good or service itself. I adopt that approach here.

Nightclub and discotheque services; dj and compere services; dance club services; hosting of musical events; production, distribution and publishing of music; production of radio programs; distribution of radio programs for others; fan clubs

86. RJL submits that these services are similar to its own 'production of musical videos'. There appears to me to be no similarity with Music's *Nightclub and discotheque services; dj and compere services; dance club services* which are of an entirely different nature and purpose. Music's services are for dancing, meeting others at a club and for providing the DJ and compere aspect at such venues and events. RJL's services put together recorded music videos. The channels of trade differ and the parties' services are not substitutable. There are no submissions as to why they are similar. I find that they are not similar.

87. However, there is a degree of similarity with Music's *hosting of musical events*. It is common for concerts and musical events to be put on by a production company. Such an undertaking may also record a musical event and produce a video of it. The channels of trade will coincide and there is a degree of complementarity. I find these services to be of a low degree of similarity.

88. There is a high degree of similarity between RJL's production of music videos and Music's *production, distribution and publishing of music*, which covers or is at least very similar to music in the form of a music video. The undertaking responsible for the

production of the music/music video is also likely to be the undertaking distributing and publishing it. There is complementarity, shared trade channels and shared nature and purpose.

Production of radio programs; distribution of radio programs for others

89. Radio is the opposite of video. Radio programs cannot be seen. The undertakings producing and distributing radio programmes are unlikely to be the same as those producing videos; or, at least there is no evidence that they are commonly the same. Their nature and purpose differ. In the absence of any explanation as to why they are similar and to what degree, I find that they are dissimilar.

Fan clubs

90. 'Fan clubs' means the organisation and running of an association for like-minded people who are interested in something in particular (e.g. a music group/artist or a celebrity of some kind). This service does not share the same nature or purpose as production, or putting together, of musical videos. The method of use differs, and the services are not substitutable or complementary. A fan club may produce a musical video to fans of the subject of the fan club, such as a musical artist or group. I find a low degree of similarity on the basis of a shared channel of trade.

91. RJL submits, by way of its table, that all of Music's class 9 goods and class 38 services are similar to its own 'digital video, audio and multimedia entertainment publishing services'. It made no submissions at the hearing as to why similarity exists, merely saying that it wanted a hearing officer, "without waiving privilege", to make a ruling on the comparison between the goods and services. RJL said that it was "happy with the broad brush" and whatever method I (as the hearing officer) decided to adopt. That is unhelpful to the Tribunal. Parties should particularise and make submissions as to why they consider goods and services to be similar. If they do not, they run the risk that the Tribunal will find no similarity unless it is obvious.

92. RJL's skeleton argument said this about Music's class 9 goods and its class 38 services:

“69. As regards the comparison between Music’s application for “telecommunications services” and the RP’s “interactive entertainment” services, the average consumer will consider that the responsibility for those services lies with the same undertaking.

70. As regards Music’s class 9 application, although the nature is not the same (goods and services are not of the same nature), there is a level of sharing of purpose between the equipment and an interactive entertainment service. There is a level of similarity between Music’s class 9 equipment and the RP’s interactive entertainment services, albeit a low one.

71. There is shared nature, purpose and channels of trade; they are in competition and are complementary.”

93. There is a tension between these submissions, which are based upon RJJ’s ‘interactive entertainment’ services, and its table, where it submits that the similarity is between its ‘digital video, audio and multimedia entertainment publishing services’. Given that RJJ has effectively submitted that its ‘interactive entertainment’ and its ‘digital video, audio and multimedia entertainment publishing services’ are similar to Music’s class 9 goods and class 38 services, I will approach the comparison on that footing, but applying the ‘broad brush’ because RJJ has not provided anything other than the briefest submissions reproduced above. I will also not find a level of similarity between RJJ’s services and Music’s class 9 goods which is any higher than low because that is the highest that RJJ puts it.

94. Music’s class 9 specification is *Apparatus and instruments for recording, reproducing and/or transmitting sound and/or video and/or data and/or information and/or visual information; programs and tapes; pre-recorded disks; recording disks; compact discs; floppy disks; sound recordings; enhanced sound and/or visual recordings; interactive sound and/or visual recordings; pre-recorded disks; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; interactive compact discs; CD ROMs; super audio compact discs; DVDs; podcasts; digital music (downloadable); audio apparatus and instruments; MP3 players; personal digital*

assistants; downloadable electronic games; telephone ring tones; mobile telephones; devices for storing information, data, images and sound (included in this class); sound, text or graphics supplied in electronic form and/or downloadable; sound and/or visual recordings; sound and/or visual recording media; computer games; video games; virtual reality systems; computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data; sound, video and data recordings; apparatus for the downloading, transmitting, encoding, decoding, editing, playing and storage of data including audio and video recordings; interactive computer software; digital music and / or publications (downloadable) provided on-line from databases, from the Internet or from any other communications network including wireless, cable or satellite; parts and fittings for all the aforesaid goods.

95. There is no similarity between RJL's services and Music's *apparatus and instruments for recording, reproducing and/or transmitting sound and/or video and/or data and/or information and/or visual information; audio apparatus and instruments; MP3 players; personal digital assistants; mobile telephones; devices for storing information, data, images and sound (included in this class); sound and/or visual recording media; apparatus for the downloading, transmitting, encoding, decoding, editing, playing and storage of data including audio and video recordings.* RJL's services are entertainment and publishing of entertainment; i.e. are content-based. There is no sharing of nature or purpose with apparatus for recording, reproducing, transmitting or storing. They are not substitutable or complementary and the same undertakings which make or sell apparatus will not provide entertainment services or the publishing thereof, nor will the average consumer expect them to come from the same undertaking.

Programs and tapes; pre-recorded disks; recording disks; compact discs; floppy disks; sound recordings; enhanced sound and/or visual recordings; interactive sound and/or visual recordings; pre-recorded disks; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; interactive compact discs; CD ROMs; super audio compact discs; DVDs; podcasts; digital music (downloadable); downloadable electronic games; telephone ring tones; sound, text or graphics supplied in electronic form and/or downloadable; sound and/or visual recordings; computer games; video

games; sound, video and data recordings; digital music and/or publications (downloadable) provided on-line from databases, from the Internet or from any other communications network including wireless, cable or satellite.

96. The goods are the physical manifestation of entertainment and the product of entertainment publishing. They are the recorded versions of entertainment, be it music, film, TV, games or any other type of entertainment. The undertaking providing or publishing the entertainment content will be seen as responsible for the goods carrying the entertainment content. These goods include recorded media; there are none specified as blank media. I find that there is a low level of similarity, which is the highest level of similarity that RJL submits exists, between these services and RJL's 'interactive entertainment' and 'digital video, audio and multimedia entertainment publishing services'.

Virtual reality systems; computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data; interactive computer software.

97. These goods include applications (software) for entertainment, such as interactive games. There is a low degree of similarity since these are complementary and consumers are likely to believe that the software app, interactive software or virtual reality system for playing the game are the responsibility of the same undertaking.

Parts and fittings for all the aforesaid goods.

98. These stand or fall in terms of similarity with the degree of similarity found for the goods for which they are the parts and fittings.

99. Music's class 38 specification is *Telecommunications services; broadcasting services; television and radio broadcasting, transmission and communication services; broadcasting and transmission of radio or television programmes; transmission of sound and/or pictures; broadcasting services, namely, uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network;*

news agency services; webcasting services; providing digital program distribution of audio and video broadcasts over a global computer network; providing access to a video sharing portal for entertainment and education purposes; electronic communication services; radio broadcasting, digital radio broadcasting and television broadcasting services; televisual communication services; television programming; broadcasting over the Internet or other computer network; electronic transmission of streamed and downloadable audio and video files via electronic and communications networks as well as by means of a global computer network; electronic mail services; providing of access to on-line chat rooms and bulletin boards; telecommunication of information including web pages, computer programs, text and any other data; transmission of messages, data and content via the Internet and other computer and communications networks; providing access to online forums, chat rooms, journals, blogs, and listservers for the transmission of messages, comments and multimedia content among users; providing access to digital music websites on the Internet or other computer network; delivery of digital music by telecommunications; webstreaming being the transmission of data, information and audio-visual data via the Internet or other computer network; news agency services; transmission of written and digital communications; leasing and rental services in connection with telecommunications apparatus and equipment; operation of chat rooms; provision of news and news information via a computer network and/or the Internet; provision of on-line forums; really simple syndication (rss) feeds relating to music, news, films, celebrities and television programmes; advisory and consultancy services relating to the aforesaid.

100. In its counterstatement, Music accepts similarity between what it classes as RJL's 'entertainment services', which includes RJL's 'interactive entertainment', and some of its class 38 services. The other services of RJL's registration which Music submits are 'entertainment services' and which are similar to some of its class 38 services are 'animated musical entertainment services; providing on-line videos, not downloadable; provision of entertainment services through the media of video-films.' It seems to me that these other services are no more similar to the class 38 services specified as similar by Music in its counterstatement than RJL's 'interactive entertainment'. Since both Music and RJL submit that RJL's 'interactive entertainment' is similar to Music's class 38 services (Music only accepts some of its

services are similar), I will begin by finding a degree of similarity with the services for which Music accepts, and RJL alleges, that there is similarity:

Broadcasting services; television and radio broadcasting, transmission and communication services; broadcasting and transmission of radio or television programmes; transmission of sound and/or pictures; broadcasting services, namely, uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; webcasting services; providing digital program distribution of audio and video broadcasts over a global computer network; providing access to a video sharing portal for entertainment and education purposes; radio broadcasting, digital radio broadcasting and television broadcasting services; televisual communication services; television programming; broadcasting over the Internet or other computer network; electronic transmission of streamed and downloadable audio and video files via electronic and communications networks as well as by means of a global computer network; providing access to digital music websites on the Internet or other computer network; delivery of digital music by telecommunications; webstreaming being the transmission of data, information and audio-visual data via the Internet or other computer network.

101. Additionally, advisory and consultancy services relating to the aforesaid stands or falls with the outcome for the other services to which the advice relates. As to the degree of similarity, I find this is low. It is a feature of the broadcasting industry that mainstream networks both broadcast content and are responsible for the content which they broadcast; such as the BBC, ITV, Channel 4, Netflix and Amazon Prime. There is complementarity and shared channels of trade, but there is not a shared purpose or nature to the services, and they are not in competition. Music has not included RJL's 'advisory and consultancy services relating to the aforesaid', which relates to all of the class 38 services. I find that they stand with the similar services above and have a low degree of similarity with RJL's services.

102. I agree with Music that the following class 38 services are not similar to RJL's 'interactive entertainment' and 'digital video, audio and multimedia entertainment publishing services':

Telecommunications services; news agency services; electronic communication services; electronic mail services; providing of access to on-line chat rooms and bulletin boards; telecommunication of information including web pages, computer programs, text and any other data; transmission of messages, data and content via the Internet and other computer and communications networks; providing access to online forums, chat rooms, journals, blogs, and listservers for the transmission of messages, comments and multimedia content among users; news agency services; transmission of written and digital communications; leasing and rental services in connection with telecommunications apparatus and equipment; operation of chat rooms; provision of news and news information via a computer network and/or the Internet; provision of on-line forums; really simple syndication (rss) feeds relating to music, news, films, celebrities and television programmes; advisory and consultancy services relating to the aforesaid.

103. These are transmission/telecommunications services without any link to the content or to entertainment. These are services which enable users to communicate and deliver information. There is no reason why the average consumer would consider that the provider of these services would also be responsible for the information itself. In the absence of any submissions from RJL, I find that these services are not similar. There is no similarity between RJL's services and Music's leasing and rental services of telecommunications apparatus and equipment.

The average consumer and the purchasing process

104. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. The parties' specifications cover a variety of goods and services (those which I have found to be similar). Whether the purchase is visual or aural will make little, if any, difference to the overall assessment as to whether there is a likelihood of confusion because the marks are identical – visually and aurally. The perception will be the same, whether the marks are perceived on a website, physical premises, a brochure, poster or through verbal consultation or

recommendation. In terms of the attention levels paid by the average consumer, some of the goods and services will be bought by the general public and some by business or professional users. None of the goods and services are bought with little care; at least an average degree of attention will be paid to the purchasing process. For business users choosing e.g. video production services, a reasonable amount of attention will be paid to the selection.

Distinctive character of the earlier mark

105. There is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either *per se* or because of the use that has been made of it.³⁸ I will begin by considering the inherent distinctive character of the earlier mark *per se*, taking into account the guidance of the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*.³⁹ RJL's mark will be perceived by average consumers as an invented word. It has no meaning for the services of the registration. The earlier mark has a high degree of inherent distinctive character.

106. RJL's skeleton argument contains a submission that it did not file evidence of use of its mark "so there is no question of whether it is entitled to an enhanced degree of distinctive character gained through use." However, RJL did file evidence of use. In any case, I would not have found that RJL's evidence entitles it to claim an enhanced level of distinctive character. By the relevant date for the opposition, the evidence shows a modestly growing business, but without a large turnover for the registered services and, specifically, for the services which RJL submits are similar to Music's goods and services.

Likelihood of confusion

107. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles

³⁸ *Sabel BV v Puma AG*, Case C-251/95.

³⁹ Case C-342/97.

states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. Where the goods and services are dissimilar, there is no likelihood of confusion (*Canon*).

108. For highly similar services, there is no doubt that there is a likelihood of confusion. I also consider that there is a likelihood of confusion where the similarity between goods and services, or between services, is low. RamJam/RAMJAM is highly distinctive. The use of the mark will be put down to more than co-incidence because the marks are invented, identical and for goods and services which have a degree of similarity, even a low degree. The assumption will be that they are provided by the same undertaking.

109. The section 5(2)(a) ground succeeds for all the goods and services which are similar, and fails for those which are not similar.

110. In its defence and counterstatement, Music claimed that if any services remained in RJL's specification, having survived Music's invalidation action, there is, nevertheless, no likelihood of confusion, citing *Budejovicky Budvar Narodni Podnik v Anheuser-Busch Inc* [2012] EWCA Civ 880. I consider this defence to be ill-founded. In *IPC Media Ltd v Media 10 Ltd* [2014] EWCA Civ 1439, Kitchen LJ referred to *BudeJovickyý Budvar NP v Anheuser-Busch Inc* [2012] RPC 11, Case C-482/09 (CJEU), stating:

“46. The Court then explained (at [75]) that it was to be noted that the use by Budvar of the Budweiser mark had not had and was not liable to have an adverse effect on the essential function of the Budweiser mark owned by Anheuser-Busch. It proceeded to point out that the facts of the case were exceptional in five respects:

“77. First, the referring court states that Anheuser-Busch and Budvar have each been marketing their beers in the United Kingdom under the word sign 'Budweiser' or under a trade mark including that sign for almost 30 years prior to the registration of the marks concerned.

78. Second, Anheuser-Busch and Budvar were authorised to register jointly and concurrently their Budweiser trade marks following a judgment delivered by the Court of Appeal (England & Wales) (Civil Division) in February 2000.

79. Third, the order for reference also states that, while Anheuser-Busch submitted an application for registration of the word 'Budweiser' as a trade mark in the United Kingdom earlier than Budvar, both of those companies have from the beginning used their Budweiser trade marks in good faith.

80. Fourth, as was stated in para.10 of this judgment, the referring court found that, although the names are identical, United Kingdom consumers are well aware of the difference between the beers of Budvar and those of Anheuser-Busch, since their tastes, prices and get-ups have always been different.

81. Fifth, it follows from the coexistence of those two trade marks on the United Kingdom market that, even though the trade marks were identical, the beers of Anheuser-Busch and Budvar were clearly identifiable as being produced by different companies.”

111. As can be seen from the above extract, such cases are ‘exceptional’. Since that is the case, it follows that the evidential hurdle or burden is relatively high. Music’s evidence does not come anywhere near to satisfying such a high hurdle. Music’s goodwill in a narrow range of services dates from 2013, only three years prior to the relevant date. There is no evidence that the same consumers have been exposed to the parties’ use of their marks or that, if they have, they differentiate between them. This defence fails.

Overall outcome

112. Music’s invalidation application against RJL’s mark fails. Registration 3186244 remains registered in full.

113. RJL's opposition against Music's application 3449492 partly succeeds under section 5(2)(a) for the following goods and services, for which the application is refused:

Class 9: Programs and tapes; pre-recorded disks; recording disks; compact discs; floppy disks; sound recordings; enhanced sound and/or visual recordings; interactive sound and/or visual recordings; pre-recorded disks; gramophone records; audio tapes; tape cassettes; video tapes; laser discs; interactive compact discs; CD ROMs; super audio compact discs; DVDs; podcasts; digital music (downloadable); downloadable electronic games; telephone ring tones; sound, text or graphics supplied in electronic form and/or downloadable; sound and/or visual recordings; computer games; video games; virtual reality systems; computer software for use in downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organising data including audio and video data; sound, video and data recordings; interactive computer software; digital music and/or publications (downloadable) provided on-line from databases, from the Internet or from any other communications network including wireless, cable or satellite; parts and fittings for all the aforesaid goods.

Class 38: Broadcasting services; television and radio broadcasting, transmission and communication services; broadcasting and transmission of radio or television programmes; transmission of sound and/or pictures; broadcasting services, namely, uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; webcasting services; providing digital program distribution of audio and video broadcasts over a global computer network; providing access to a video sharing portal for entertainment and education purposes; radio broadcasting, digital radio broadcasting and television broadcasting services; televisual communication services; television programming; broadcasting over the Internet or other computer network; electronic transmission of streamed and downloadable audio and video files via electronic and communications networks as well as by means of a global computer network; providing access to digital music websites on the Internet or other computer network; delivery of digital music by telecommunications; webstreaming being the

transmission of data, information and audio-visual data via the Internet or other computer network; advisory and consultancy services relating to the aforesaid.

Class 41: Hosting of musical events; production, distribution and publishing of music; Entertainment services, namely providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; fan clubs; entertainment, namely a continuing music and entertainment show distributed over radio, television, satellite, audio, and video media; live entertainment in the nature of live concerts and performances by djs, musical artists and groups; entertainment services, namely personal appearances by djs, musical groups, musical artists and celebrities; entertainment services in the nature of musical performances rendered by djs, musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by djs and/or musical artists; entertainment services namely live, televised and movie appearances by djs and/or musical artists; conducting entertainment exhibitions in the nature of music festivals; conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; entertainment, namely a continuing music and entertainment show distributed over radio, television, satellite, audio, and video media; live entertainment in the nature of live concerts and performances by djs, musical artists and groups; entertainment services, namely personal appearances by djs, musical groups, musical artists and celebrities; entertainment services in the nature of musical performances rendered by djs, musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely recorded performances by djs and/or musical artists; entertainment services namely live, televised and movie appearances by djs and/or musical artists; conducting entertainment exhibitions in the nature of music festivals; conducting exhibitions in the field of music and the arts; organizing exhibitions for entertainment purposes featuring music and the arts; Providing digital music from Internet websites; downloading of radio and television programmes, films, videos, sound, images or data from the Internet or other computer network; organising, arranging, managing and staging musical events, shows, concerts, festivals, gigs and live band performances; advisory and information services relating to all the aforesaid.

114. RJL's opposition against Music's application 3449492 fails for the following goods and services (bearing in mind that the opposition against the class 25 goods was withdrawn), for which the application may proceed to registration:

Class 9: Apparatus and instruments for recording, reproducing and/or transmitting sound and/or video and/or data and/or information and/or visual information; audio apparatus and instruments; MP3 players; personal digital assistants; mobile telephones; devices for storing information, data, images and sound (included in this class); sound and/or visual recording media; apparatus for the downloading, transmitting, encoding, decoding, editing, playing and storage of data including audio and video recordings; parts and fittings for all the aforesaid goods.

Class 38: Telecommunications services; news agency services; electronic communication services; electronic mail services; providing of access to on-line chat rooms and bulletin boards; telecommunication of information including web pages, computer programs, text and any other data; transmission of messages, data and content via the Internet and other computer and communications networks; providing access to online forums, chat rooms, journals, blogs, and listservers for the transmission of messages, comments and multimedia content among users; news agency services; transmission of written and digital communications; leasing and rental services in connection with telecommunications apparatus and equipment; operation of chat rooms; provision of news and news information via a computer network and/or the Internet; provision of on-line forums; really simple syndication (rss) feeds relating to music, news, films, celebrities and television programmes; advisory and consultancy services relating to the aforesaid.

Class 25: Clothing, footwear, headgear.

Class 41: Nightclub and discotheque services; dj and compere services; dance club services; Production of radio programs; distribution of radio programs for others; booking agencies concert tickets; reservation services for concert tickets; advisory and information services relating to all the aforesaid.

Costs

115. R JL's measure of success is greater than that of Music. Music submits that costs should be awarded on the published scale.⁴⁰ R JL submits that an award at the top of the scale should be made in its favour. It reasons for doing so are 1) that Music's challenge to R JL's registration was pointless; 2) that the gig posters should have been adduced by Music and that R JL had to do a lot of work putting together evidence of Mr Rodigan's activities; and, 3) that the cross-examination of Mr Rodigan was irrelevant and of no benefit.

116. I do not accept any of these points as meriting an award at the top of the scale. Firstly, the issues in the invalidation action were not so clear cut as to be pointless. Secondly, both parties have benefited from the evidence adduced by one party about the other. Thirdly, it is not unreasonable to request cross-examination of a witness when evidence raises questions. In this case, the witness accepted that there was an anomaly in the exhibit which shows the University of Sussex to have been R JL's client. It was not unreasonable for Music to wish to test the probity of the evidence.

117. As regards the expenses of the witness, I approach this in a way which I consider to be proportionate. R JL is based in Brighton, as are its professional representatives in these proceedings. The hearing, and the cross-examination, were conducted remotely over Microsoft Teams. Mr Jackson, the witness, was at the office of his representatives; i.e. had travelled within Brighton. Travel expenses would have been minimal. The cross examination took less than an hour. Applying the rate of £19 per hour, and allowing for an hour's travel and an hour for cross-examination; that is, two hours out of Mr Jackson's business day, I award R JL £38 for Mr Jackson's attendance for cross-examination.⁴¹

118. I put R JL's success across the two consolidated sets of proceedings as being about 80%. I award costs as follows, reducing what would have been awarded for total success by 20% (save for Mr Jackson's expenses):

⁴⁰ Tribunal Practice Notice 2/2016

⁴¹ The Litigants in Person (Costs and Expenses) Act 1975; the Civil Procedure Rules set the rate at £19 per hour (Practice Direction 46, 3.4).

Statutory fee for the opposition:	£100
Preparing the opposition and reviewing Music's counterstatement	£200
Reviewing Music's invalidity application and preparing the counterstatement	£200
Preparing and reviewing evidence (consolidated)	£800
Preparing for and attending the hearing	£800
Total, with 20% reduction	£1680
Total , with the addition of Mr Jackson's £38	£1718

119. I order Ram Jam Music Limited Limited to pay to RamJam Ltd the sum of **£1718**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 2nd day of September 2021

Judi Pike
For the Registrar,
the Comptroller-General