

O/642/22

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3597907
IN THE NAME OF JOINT OWNERS DANIEL RICHARD MERTON, JAMES
RICHARD WALDO AND GILES ROGER LAVERY
IN RESPECT OF THE TRADE MARK**

ALCATRAZZ / Alcatrazz (series of two)

IN CLASS 9

AND

**OPPOSITION THERETO UNDER NO. 425603
BY GRAHAM BONNET**

Background and pleadings

1. Daniel Richard Merton, James Richard Waldo and Giles Roger Lavery (“the applicants”) applied to register the trade marks ALCATRAZZ/Alcatrazz (series of two) under the application number 3597907 in the UK on 19 February 2021. The application was accepted and published in the Trade Marks Journal on 16 April 2021 in respect of the following goods:

Class 9: Compact discs; Video compact discs; Recorded compact discs; Audio compact discs; Prerecorded music compact discs; Pre-recorded compact discs; Discs (Compact -) [audio-video]; Compact discs [audio-video]; Compact discs featuring music; Prerecorded compact discs featuring music; Pre-recorded video compact discs; DVD discs; Audio discs; Discs (Optical -); Disc records; Video discs; Holographic discs; Laser discs; Sound discs; Recording discs; Optical discs; Digital versatile discs; Digital video discs; Optical disc recordings; Pre-recorded discs; Laser-readable discs; Audio digital discs; Digital video discs [DVDs]; Optical discs featuring music; Recorded discs bearing images; Pre-recorded laser discs; Records [sound recordings]; Pre-recorded phonograph records; Musical recordings; Video recordings; LP records; Phonographic records; Recorded films; Recorded media; Phonograph records; Music recordings; Audiovisual recordings; Recorded film; Digital recordings; Vinyl records; Magnetic recordings; Audio recordings; Sound recordings; Recorded tapes; Sound records; Recorded content; Recorded tape cassettes; Pre-recorded cassettes; Pre-recorded DVDs; Pre-recorded CDs; Recorded video tapes; Audio visual recordings; Musical sound recordings; Downloadable video recordings; Multi-media recordings; Musical video recordings; Pre-recorded videos; Pre-recorded films; Downloadable sound recordings; Downloadable digital music; Digital audio tapes; Audio digital tapes; Digital music downloadable provided from MP3 internet websites; Downloadable digital music provided from MP3 Internet websites; Digital music downloadable provided from MP3 internet websites; Digital music [downloadable] provided from mp3 web sites on the internet.

2. Graham Bonnet (“the opponent”) opposes the trade mark on the basis of Section 5(4)(a) of the Trade Marks Act 1994 (“the Act”). This is on the basis of his alleged



Data carriers; sound carriers; optical sound carriers; recorded content; CDs; recorded CDs; DVDs; pre-recorded DVDs.

Clothing; headwear; caps; t-shirts; tennis shirts; jackets.

Entertainment services; musical entertainment; musical performances; live performance services; live musical performances; live band performances; music recording; production of sound recording and music recordings.

3. The opponent claims to hold rights under the mark due to his position as singer and front man of a band under the sign since in 1983. He claims use of the trade mark applied for would give rise to a misrepresentation to the public that the goods derive from him, and that this will result in damage to the aforementioned goodwill distinguished by the sign relied upon.

4. The applicant filed a counterstatement putting the opponent to proof of his "...exclusive ownership of the necessary trading goodwill in the UK sufficient to support a passing off action and to prove that use as part of a band, of which two of the three applicants are the standing members, is sufficient for the trading goodwill to have inured to the benefit of the Opponent". The applicants also put the opponent to proof of the misrepresentation and damage caused by their use of the applied for mark.

5. Both sides filed evidence in these proceedings. No hearing was requested but both parties filed written submissions in lieu of a hearing. These will not be summarised but will be referred to as and where appropriate during this decision. This decision is taken following a careful perusal of the papers.

6. The applicant is represented in these proceedings by Indelible IP Limited. The opponent is represented by Law & Tech s.r.o.

Evidence

7. I do not intend to summarise contents of the evidence at the outset of this decision. However, as several witness statements have been filed on either side, I will briefly provide details of those statements including the identity of the witness and the date of the same, and the title of any exhibits provided therewith.

Opponent's evidence in chief

8. The opponent, Mr Bonnet, filed his evidence in chief in the form of a witness statement in his own name, alongside five exhibits labelled Exhibit JS1 – Exhibit JS5. The statement is dated 11 May 2021.

Applicant's evidence

9. The applicant's evidence comprises 9 witness statements in total. These are provided from a range of witnesses, including two of the three joint applicants, namely James Richard Waldo and Giles Lavery. These statements are dated 8 December 2021,¹ and 21 December 2021 respectively. A third witness statement is provided by Gary Shea dated 20 December 2021. There is a statement from Michelle Ward, chartered trade mark attorney, founder, and director of the applicant's representative firm, dated 6 January 2022. A further statement is provided by Serena Furlan, identified as Company Secretary of Silver Lining Music Limited ("Silver Lining") and dated 28 December 2021. Four further statements are provided from a Peter McLean, Steve Vai, Ciaran Campbell, and Steven Rosen dated 20 December 2021, 24 December 2021, 17 December 2021, and 20 December 2021, respectively. A single exhibit was provided with the statement of Mr Waldo (Exhibit JRW1) and with the statement of Mr Campbell (Exhibit CC1), whilst four were provided with the statement of Ms Ward (Exhibits MAW1 – MAW4), and eight exhibits were provided with the statement of Mr Lavery (Exhibits GL1 – GL8).

¹ The witness holds a US address and I take the date 12/08/21 to be in US format based on this and the applicant's evidence deadline of 10 January 2022.

Opponent's evidence in reply

10. The opponent's evidence in reply comprises four further witness statements.²

11. The first witness statement is from Paul Trueman, who states he is the son of the original manager that Mr Bonnet collaborated with to create Alcatrazz. The statement is dated 21 January 2022. The second witness statement is from a Mirai Kawashima, label manager at Ward Records in Tokyo, Japan. Ms Kawashima states Ward Records released the album "Born Innocent" in 2020 by Alcatrazz,³ and the statement is dated 18 February 2022. A third witness statement is filed in the name of Beth-Ami Heavenstone and is dated 28 January 2022. Ms Heavenstone states she first became acquainted with Mr Bonnet when he was "heavily touring with his band Alcatrazz". She describes Mr Bonnet as her "best friend". The statement introduces two exhibits labelled Exhibit JS1 and Exhibit JS2. A fourth statement is provided by Conrado Pesinato and dated 31 January 2022. Mr Pesinato states he was hired by Mr Bonnet between 2014 – 2017 to play guitar in the Graham Bonnet Band "...as well as Alcatrazz." He states he was rehired by My Bonnet in 2020 to "work on various projects".

Preliminary issues

12. Before I proceed with my decision based on section 5(4)(a), I will firstly address the comments made in the opponent's final written submissions in lieu of a hearing as follows:

"2. In these written submissions we are submitting on behalf of the Opponent three issues of this Trade Mark dispute, first concerning the use of the Trade Mark (the "First Issue"), the second, concerning the allocation of ownership of the use to the Trade Mark between the mem[b]ers (the "Second Issue") and the

² A fifth witness statement, namely a second witness statement in the name of Mr Bonnet was originally filed with the opponent's evidence in reply but was subsequently withdrawn.

³ Within its final written submissions, the applicant submits this entirely contradicts the evidence filed that shows the album was released by Silver Lining and that this witness statement is of no probative value.

third, concerning the Applicants acting with bad faith in filing the Trade Mark application (the “Third Issue”).”

13. The ‘Third Issue’ outlined above, namely that the application was filed in bad faith falls under section 3(6) of the Act. However, section 3(6) of the Act has not been pleaded, nor has it been mentioned prior to the filing of these final written submissions. There has been no request from the opponent to amend its pleadings, and it is my view it is not appropriate to invite the opponent to add an additional ground to the proceedings at this stage. I will therefore continue to assess the case as it was pleaded based on section 5(4)(a) of the Act.

14. The second matter I wish to address at the outset of this decision concerns the statements made in the evidence by both parties and their witnesses that amount to hearsay, that being details provided in a witness statement from an individual relating to statements made by a third party, where there is no witness statement directly from that third party itself attesting to the same. Whilst hearsay evidence is often considered inadmissible in legal proceedings, it is admissible in civil proceedings, including proceedings before the Registry. However, it is for me to determine the relevance and weight given to these statements, and I will do so as appropriate throughout the decision.

Legislation

15. 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.”

16. 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.”

Section 5A

17. Section 5A of the Act is as follows:

“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.”

General principles of Section 5(4)(a)

18. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“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).”

THE RELEVANT DATE

19. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, as the Appointed Person, endorsed the registrar’s assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

“43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

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

20. In the same case, Mr Daniel Alexander QC as the Appointed Person considered the relevant date for the purposes of s.5(4)(a) of the Act where one or both of the parties have used the mark(s) at issue prior to the date of the application to register the contested mark(s). He explained that:

“41. There are at least three ways in which such use may have an impact. The underlying principles were summarised by Geoffrey Hobbs QC sitting as the Appointed Person in *Croom’s TM* [2005] RPC 2 at [46] (omitting case references):

- (a) The right to protection conferred upon senior users at common law;
- (b) The common law rule that the legitimacy of the junior user’s mark in issue must normally be determined as of the date of its inception;

(c) The potential for co-existence to be permitted in accordance with equitable principles.

42. As to (b), it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v. Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: “date of commencement of the conduct complained of”. If there was no right to prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.

21. In this instance, it is apparent from the evidence that the opponent was part of a band under the opposed mark with one of the applicants during 2020. Mr Bonnet himself states that the band mutually agreed not to perform together in November 2020, and that after this time, the rest of the band engaged another singer and made use of the mark without his consent.⁴ However, I note from the evidence that there is nothing to show that there was use of the applied for mark in the UK by the applicants between November 2020 and the application date. I therefore consider that it is the position at the application date of 19 February 2021 that will be the relevant date in this instance.

Goodwill

22. Goodwill is described in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at 233 as below:

“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

⁴ See paragraph 4 of the witness statement of Mr Graham Bonnet.

which distinguishes an old-established business from a new business at its first start.”

23. Band disputes such as this one often raise a particular set of issues under section 5(4)(a), relating not only to whether goodwill exists but also as to where the ownership of any goodwill as distinguished by the sign relied upon lies. *Saxon Trade Mark* [2003] FSR 39 is generally considered to be a leading authority on these issues, and the late Laddie J. stated as follows:

“25 Absent special facts such as existed in *Burchell*, the rights and obligations which arise when a group of musicians, performing in a band as a partnership, split up can be explained as follows. It is convenient to start by considering the position when two, entirely unrelated bands perform under the same name. The first performs from, say, 1990 to 1995 and the second performs from 2000 onwards. Each will generate its own goodwill in the name under which it performs. If, at the time that the second band starts to perform, the reputation and goodwill of the first band still exists and has not evaporated with the passage of time (see *Ad-Lib Club Ltd v Granville* [1972] R.P.C. 673) or been abandoned (see *Star Industrial Co Ltd v Yap Kwee Kor* [1976] F.S.R. 256) it is likely to be able to sue in passing off to prevent the second group from performing under the same name (see *Sutherland v V2 Music* [2002] EWHC 14 (Ch); [2002] E.M.L.R. 28). On the other hand, if the goodwill has disappeared or been abandoned or if the first band acquiesces in the second band's activities, the latter band will be able to continue to perform without interference. Furthermore, whatever the relationship between the first and second bands, the latter will acquire separate rights in the goodwill it generates which can be used against third parties (see *Dent v Turpin and Parker & Son (Reading) Ltd v Parker* [1965] R.P.C. 323). If the first band is a partnership, the goodwill and rights in the name are owned by the partnership, not the individual members, and if the second band were to be sued, such proceedings would have to be brought by or on behalf of the partnership.

26 The position is no different if the two bands contain common members. If, as here, they are partnerships at will which are dissolved when one or more partners leave, they are two separate legal entities. This is not affected by the fact that some, even a majority, of the partners in the first band become members of the second. A properly advised band could avoid the problem that this might cause by entering into a partnership agreement which expressly provides for the partnership to continue on the departure of one or more members and which expressly confirms the rights of the continuing and expressly limits the rights of departing partners to make use of the partnership name and goodwill. This is now commonplace in the partnership deed for solicitors' practices.”

24. In *Burdon v Steel*, BL O/369/13, (The Animals), a case in which one of the ex-members of a band applied to register the band's name as a trade mark without having any better claim to the name than another ex-band member, Mr Geoffrey Hobbs QC as the Appointed Person found that:

“33. It was, as I have said, open to the opponent as one of ‘the last men standing’ to invoke the law of passing off for the protection of the goodwill and reputation to which they were collectively entitled. The fact that the applicant was also one of ‘the last men standing’ did not enable him to lay claim individually to the whole of the benefit of their goodwill and reputation by registering THE ANIMALS as his trade mark for live and recorded performances. The evidence on file does not show that he was free by virtue of devolution or dissipation or on the basis of any relevant authorisation or consent to apply for registration of the trade mark in this own name .”

25. However, it is relevant to note that the case of *Burdon v Steel* concerned an application filed on 11 February 2004, prior to the introduction of the Trade marks (Relative Grounds) Order 2007 (“the Relative Grounds Order”) which restricted the right to bring opposition proceedings on relative grounds to owners of earlier

marks or rights.

26. Before proceeding with my analysis of the evidence keeping in mind the principles and the case law above, I consider the facts that have been agreed on by both parties in these proceedings, in addition to the facts that remain in dispute. These are as follows:

Facts agreed on:

- A band named 'Alcatrazz' was formed in 1983, with the three original members of that band being Mr Bonnet (the opponent), Mr Waldo (one of the joint applicant's) and Mr Shea.⁵
- The band dissolved in 1987.⁶
- The opponent, Mr Bonnet made some attempt to tour using the name Alcatrazz (as 'Graham Bonnet's Alcatrazz' according to Mr Bonnet, and as 'Alcatrazz featuring Graham Bonnet' according to Mr Waldo) in 2007.⁷
- Mr Bonnet and others also toured to some extent under a sign including 'Alcatrazz' until at least 2013.⁸
- There was a reunion tour including the three original band members in Japan in 2017.⁹
- A new formulation of the band including Mr Bonnet and Mr Waldo from the original line up, in addition to three others, one being Ms Heavenstone, performed some UK tour dates in 2019 under the sign 'Alcatrazz' and the stylised mark relied upon.¹⁰

⁵ As confirmed in paragraph 2 of the witness statement of Mr Graham Bonnet for the opponent and in paragraph 2 Mr James Richard Waldo for the applicants.

⁶ As confirmed in paragraph 3 of the witness statement of Mr Bonnet and paragraph 4 of the witness statement of Mr Waldo.

⁷ As confirmed in paragraph 3 of the witness statement of Mr Bonnet and paragraph 4 of the witness statement of Mr Waldo

⁸ See paragraph 2 of Mr Lavery's statement confirming this and Mr Lavery's Exhibit JS3 showing tours under Alcatrazz featuring Mr Bonnet including three dates in 2007, 2009 and 2013.

⁹ As confirmed in paragraph 7 in Mr Lavery's statement and Mr Bonnet's Exhibit JS3.

¹⁰ As confirmed in paragraph 4 of the witness statement of Ms Serena Furlan of Silver Lining and paragraph 5 of the witness statement of Ms Beth-Ami Heavenstone combined with Exhibit JS5 provided by Mr Bonnet detailing the 2019 line up of the band.

- Ms Heavenstone resigned from the formation of the band above in January 2020 and was replaced by Mr Shea.¹¹ All three original members of the band Alcatrazz were therefore reunited alongside two further band members in 2020 and gained a record deal and released an album that year with Silver Lining.¹²
- Mr Lavery was the band's manager or agent¹³ at the time of signing of the deal.
- Mr Lavery sent a resignation email to Mr Bonnet in June 2020.¹⁴
- Mr Bonnet was no longer part of the band as of Autumn 2020.¹⁵

Facts in dispute

- The level of involvement each band member had in the original band and the extent of the use of the sign by Mr Bonnet up until the reforming of the band in 2019 and again in 2020.
- The nature of Mr Lavery's resignation (whether or not this was solely in relation to his position as Mr Bonnet's personal manager).
- Whether Mr Bonnet left the band on his own accord and/or wanted no further involvement in the same, whether the other band members resigned, or whether there was a mutual agreement in November 2020 that the band would no longer perform together under Alcatrazz.
- Whether the Licence Agreement signed by Mr Lavery when securing the band's record deal in March 2020 is binding on the opponent.

27. The agreed and disputed facts are relevant at this stage only to the extent that they go towards establishing the answer to the following questions:

- Did any goodwill reside under the sign Alcatrazz (and particularly the stylised sign as relied upon) at the relevant date?

¹¹ See paragraph 6 of the witness statement of Ms Heavenstone and paragraph 4 of the witness statement of Ms Furlan, paragraph 4 of the witness statement of Mr Bonnet and paragraph

¹² See paragraph 5 of the witness statement of Ms Furlan and paragraph 4 of the witness statement of Mr Bonnet.

¹³ Mr Bonnet describes Mr Lavery as an agent in paragraph 4 of his witness statement but Mr Lavery himself confirms he was/is the manager in paragraph 1 of his own statement.

¹⁴ See paragraph 10 of Mr Lavery's witness statement and paragraph 4 of Mr Bonnet's statement and paragraph 7 of Ms Heavenstone's statement, alongside Exhibit JS2 provided by both Mr Bonnet and Ms Heavenstone.

¹⁵ See paragraph 11 of Mr Lavery's statement, paragraph 8 of Ms Furlan's statement and paragraph 4 of Mr Bonnet's statement in which he states the band mutually agreed not to perform together.

- If so, who were the rightful owners of the goodwill distinguished by the sign?
And;
- Is Mr Bonnet, in his own right, entitled by virtue of ownership of any goodwill to bring proceedings under section 5(4)(a) of the Act.

The establishment and ownership of goodwill under the sign

28. Having reviewed the sum of the evidence, it appears the opponent's case begins with the argument that Mr Bonnet is the rightful owner of the goodwill in the sign relied upon based on his involvement as front man and singer of the band formed in 1983, and on his position as a constant and integral part of the band. The applicants have responded to this with their own contentions about who was responsible for which of the creative aspects of the band when it originally formed in 1983, and the submission that the band was a joint undertaking. Before I move any further in this decision, I note here that aspects of both parties' arguments, such as who came up with the name of the band, who wrote and performed on which of the original songs, and generally who had the most significant involvement in the creation of the band and the music it produced between 1984-1987 are not, in the present context, relevant to these proceedings. Further, whilst the ownership of copyright in a sign may provide a separate basis for an objection to the registration of that sign, it does not determine who owns the goodwill, which is relevant here. It seems clear to me from the evidence and submissions filed that when the band performed between 1983 – 1987 it was operating as a partnership-at-will made up of at least Mr Bonnet, Mr Waldo, and Mr Shea. It also appears other performers joined the band during this time, including Steve Vai and Jan Uvenas.¹⁶ There is no evidence that establishes that Mr Bonnet performed as Alcatrazz and that the others were 'hired musicians' or any such circumstances, and Mr Bonnet's witness statement all but confirms as such, stating:

“2. At present, I remain the lead vocalist of Alcatrazz. I formed Alcatrazz in 1983 with Gary Shea and Jimmy Waldo (James Richard Waldo). The band then dissolved in 1987.”

29. Further, the opponent's written submissions in lieu of a hearing state:

¹⁶ See paragraph 2 of the witness statement of Mr Vai.

“35. The registration filed by the Applicants ignores the principle of joint and equal ownership to goodwill between the establishing members of the band Alcatrazz – Graham Bonnet, Jimmy Waldo and Gary Shea.

36. As if often the case, there is no evidence of any contractual arrangements having been put in place between the individual band members. This is the usual practice for many musical bands. At the outset they were, in effect, a partnership at will. The establishing band members therefore hold the same share of the ownership to goodwill in the band name.”

30. It is also the applicant’s position that the original band were “...an equal band partnership”.¹⁷ It is clear that any goodwill established between 1983 – 1987 will have been owned jointly by the band, operating as a partnership-at-will, as it was at the point that the band dissolved.

31. I note on this point, that whilst during the four-year period the band were together it appears a number of songs/albums were written/recorded and performed around the world,¹⁸ and three albums were released,¹⁹ the evidence provided relating to the activities of the band in the UK during that time is limited. I have no information regarding UK record sales, the number or success of any UK based gigs or tours undertaken by the band during that period, or the promotional activity within the UK. I note the band was formed in Los Angeles²⁰ and the applicant’s final submissions describe the band’s “...reasonable level of success in the US...”²¹ during this time. Wikipedia pages provided by Mr Lavery mention the albums released during that period placing on the ‘Billboard charts’ but this does not seem likely to be a UK based chart. I do, however, note the reference to a video excerpt appearing on UK television

¹⁷ See paragraph 2 of Mr Waldo’s witness statement.

¹⁸ Exhibit JS1 provides a typed list of various tracks released by the band some of which fall within this time. Exhibit JS4 provides screenshots of albums and DVDs listed for sale on Amazon.co.uk under the stylised mark relied upon, some of which reference ‘1984’, and screenshots from YouTube (.com) at Exhibit JS3 form under the name Alcatrazz, several of which make reference to Japan and show a shot of ‘Alcatrazz’ performances dated 1984 and 1985.

¹⁹ Wikipedia pages discussing 4 Alcatrazz albums released in 1983, 1985, 1986 and 2020 are provided at Exhibit GL7

²⁰ See Exhibit JS5 to the witness statement of Mr Bonnet.

²¹ See paragraph 5

during this period and to the initial album having both a US and a European label. I also note the evidence provided by Mr Bonnet, which shows the band's original material from this period listed for sale on www.amazon.co.uk, albeit seemingly at a much later date. Finally, I note the articles and reviews provided at Exhibit GL8 to Mr Lavery's witness statement. These include a blog style article provided at Exhibit GL8 posted on 'www.friday13thmetal.co.uk' discussing the history of the band, which states:

"Their debut album 'No Parole for Rock & Roll' was released back in 83 with members Graham Bonnet, Yngwie Malmsteen (guitars), Jimmy Waldo (keyboards), Gary Shea (bass), Jan Uvena (drums).

This was a very successful album that pretty much made them superstars and playing in big venues in Japan ..."

32. The post goes on to discuss the success of a further two albums released in 85' and 86'. This exhibit also provides several other articles and reviews, including those which are clearly UK based. Whilst these all appear to post-date the relevant date, they refer back to the band's 80s material, with one article discussing a performance by Alcatrazz²² referring back to "1983's classis debut *No Patrol From Rock 'n' Roll...*".

33. Whilst it is clear from the sum of the evidence that much of the band's success during this time was within the US and Japan, I consider the evidence as a whole alongside the international nature of rock bands, and I find it is reasonable to assume that a level of UK goodwill will have been owned by the partnership as distinguished by the sign 'Alcatrazz', and the sign relied upon displayed clearly on their album covers from this time, when the partnership disbanded in 1987.

34. I consider next the use of 'Alcatrazz' in its varying forms by Mr Bonnet between 2007 – 2017. Based on the evidence provided, it seems likely there will have been residual goodwill owned by the original partnership in the UK at this stage, with the evidence from after this date continuing to refer back to the band's 80s material. There

²² This is discussing the 2021 line up without the opponent

is agreement between the parties that the opponent, Mr Bonnet, attempted to perform under the name again, or a variation of such combined with his own name, in 2007. It is apparent that applicant's position on this use is that they did not acquiesce to the same, making reference to the letter ordering the use to stop that was sent to Mr Bonnet at this time. The letter sent appears to be drafted with reference to US law,²³ and so it seems likely Mr Bonnet's use at this stage may again have been outside of the UK. Despite this letter, I note there appears to be a general agreement that Mr Bonnet continued to make some use of the sign, possibly alongside his own name until 2013, although again there is little to place any of this use in the UK, and it is not clear how many performances took place or if any new material was released during this time. Whilst Mr Bonnet's states that the band released new material between 2006 – 2015,²⁴ it is difficult to establish what he is referring to, and indeed the evidence provided by the applicant at Exhibit GL8 suggests otherwise. When discussing the release of a 2021 album, the reviews state:

“Alcatrazz is back with a fifth album, fittingly entitled ‘V’” (HARD ROCK, undated)

“After an absence of almost 25 years Alcatrazz had returned in grand style in 2020 with the album “Born Innocent”.” (Album review, 15 October 2021)

“‘V’ is Alcatrazz’s fifth studio album since the band was founded in 1983...” (Roppongi Rocks, 13 October 2021)

“In 86 the band released their third album ‘Dangerous Games’ with yet a new guitarist Danny Johnson. This would be their last album for some time until the band released their next album ‘Born Innocent’ in 2020...” (www.friday13thmetal.co.uk, 21 November 2021)

35. There is no reference to any material released by ‘Alcatrazz’ between 2006 – 2015, and it is clear that authors consider there to have been five albums released in total, comprising the three albums released by the band in the 80s, a further album released

²³ This letter is provided as Exhibit JRW1 to the witness statement of Mr Waldo.

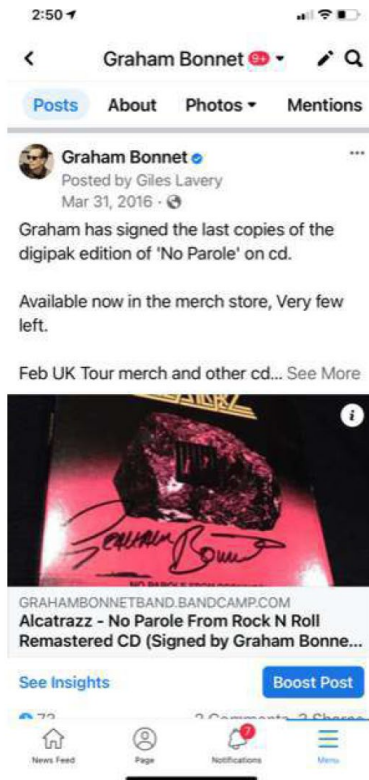
²⁴ See paragraph 2 of the witness statement of Mr Bonnet

in 2020, and the most recent album released in 2021 which is discussed in the reviews provided at Exhibit GL8. The reviews identify the 2021 album the release date as of 15 October 2021 and explain it was recorded and released following Mr Bonnet's replacement with Doogie White. The release of the fifth 2021 album is also confirmed at paragraph 16 of Mr Lavery's witness statement, and paragraph 3 of the witness statement of Mr Campbell.

36. From at least 2015, it appears Mr Bonnet made use of the sign relied upon within the UK by way of reference to 'sets' performed by the Graham Bonnet Band. At Exhibit JS5 Mr Bonnet has provided evidence including social media posts detailing performances 'featuring' sets under the sign relied upon as below:



37. Further, I note from the posts there were occasions during this time that Mr Bonnet sold some merchandise in the UK including signed copies of former albums under the mark as below:



38. It is my view that whilst the evidence provided for this period of time does not suffice to show that Mr Bonnet will have established goodwill under 'Alcatrazz' or an iteration of such separate to that owned by the original partnership in the UK during this time, the varying use of the mark by Mr Bonnet throughout these ten years will have assisted in maintaining the residual goodwill held by the original partnership. It is not evidenced that he was producing, performing or selling new material under the name ALCATRAZZ separate to that produced by the original partnership in the 80's, and even if some 'remastered' CDs or merchandise were sold to the UK consumer during this time, this was still material produced by the original band. However, the sale, performance and advertisement of the original 80's material within the UK will have no doubt assisted in keeping the sign alive in the minds of the UK consumer throughout this period.

39. Mr Lavery confirms in his witness statement that he organised a reunion tour for Alcatrazz with the three original members in Japan in 2017, and I note the reference in one article provided in GL8 to the 2017 Japan reunion show, and the live release of

“Parole Denied – Tokyo 2017” which is also visible for sale on www.amazon.co.uk in Exhibit JS4 of the opponent’s evidence. It appears that Mr Pesinato was also part of the line up at this time.

40. It is agreed that in 2019, a band including both the opponent Mr Bonnet, and one of the applicants, namely Mr Waldo were performing together under the sign in the UK alongside three additional members, Ms Heavenstone, Mr Benequechea and Mr Stump. Without evidence to the contrary, I find this to be a new partnership-at-will. In my view, through the UK tour, some dates of which are provided, this new partnership will have begun to accumulate goodwill under the name in its own right. I find there will have been some goodwill accrued and owned by this partnership at the time it disbanded, by virtue of the UK tours undertaken in 2019. I note for completeness that there appears from the evidence to have been no objection to this formation from any previous partnership members at the time, including Mr Shea who then replaced Ms Heavenstone in 2020, at which point another new partnership-at-will was formed. Ms Heavenstone confirms in her witness statement that she resigned from the band in January of 2020,²⁵ and her resignation from the partnership and acquiescence to the formation of the new partnership under the mark without her indicates an abandonment of her share of the goodwill in the 2019 partnership. It appears on the face of it that the other members of the previous partnerships also acquiesced to the ongoing use of the name between 2019 – 2021.

41. The new 2020 partnership-at-will was under the management of Mr Lavery and using the sign Alcatraz in addition to the sign relied upon. This was made up of the three original band members Mr Bonnet, Mr Shea, and Mr Waldo, alongside the two new members Mr Benequechea and Mr Stump. From this point onwards, goodwill will have been accruing through the use of the sign to the new partnership. This new partnership secured a three-album record deal with the London based music label Silver Lining. The evidence provided shows that the 2020 partnership-at-will all signed a Letter of Inducement with their manager Mr Lavery²⁶ agreeing to the provision of the Exclusive License²⁷ Mr Lavery signed with Silver Lining and the terms of the same.

²⁵ See paragraph 6 of the witness statement of Ms Heavenstone

²⁶ Provided at Exhibit GL3 to the witness statement of Mr Lavery

²⁷ Provided at Exhibit GL2 to the witness statement of Mr Lavery

The license was dated 1 March 2020,²⁸ and it is reasonable to assume that this new 2020 partnership dates back at least to this date.

42. Whether the terms Letter of Inducement and in turn the License Agreement remain binding on Mr Bonnet at this time remains a point of dispute between the parties. The final written submissions filed on behalf of the opponent submit as follows:

37. While the Applicant's have submitted the Silver Lining License Agreement (Exhibit GL2) this is not signed by all parties and therefore not binding on the Opponent. In addition we would like to underline that this Silver Lining License Agreement cannot be in effect anymore as Giles Lavery resigned to be a manager of Graham Bonnet (evidences Exhibit JS2 attached to the witness statement of Graham Bonnet and Beth-Ami Heavenstone and aforementioned witness statements) and the agreement does not contain explicit signature of the Opponent. The heading of the mentioned evidence actually states who is forming the Alcatraz band - and the Opponent is among the explicitly stated members. Nor Giles Lavery, nor Daniel Richard Merton (joint Applicants) are stated there.

43. Having considered the documents filed, it appears superficially that the agreement had not expired at the relevant date, and that Mr Bonnet, and all members of the band in March 2020 agreed to the same and agreed not to perform under a band named Alcatraz other than with Silver Lining for the duration of the agreement. However, it is my view that the question of whether the agreements are or were binding on Mr Bonnet at the relevant date is of little relevance to the decision I must make. The agreements make no reference to the transfer of ownership of any of the goodwill under Alcatraz or the sign relied upon. The question of whether Mr Bonnet has or has not breached the terms of the contract is separate to the question of whether he holds goodwill under the sign relied upon and may bring proceedings based on section 5(4)(a) of the Act in this instance. In any case, the agreements have been explicitly drafted in line with German law, and as such I am not in a position to comment on their legal effects without further information about German contract law. Whilst the agreements therefore provide useful narrative evidence in these proceedings, showing the mindset and the agreement between the band members at a particular date, they are in no way determinative in this matter.

²⁸ The actual date of signature of the members on the Letter of Inducement is not overly clear, but it appears to have been signed 9 April 2020.

44. I consider therefore the events that took place between March 2020 and the filing date of the application on 19 February 2021. As is common in disputes of this nature, the bulk of the evidence attesting to what took place after this date is commentary evidence offering opposing versions of the events. However, it is agreed that the 2020 partnership released an album. This is evidenced to have a release date of 31 July 2020 and makes use of the sign relied upon.²⁹

45. It does not appear to be in dispute that this partnership subsequently split in the autumn of 2020. It is my view that the goodwill held at this time will have still existed a few months later at the relevant date. Subject to the actions of Mr Bonnet equating to the abandonment of his share of the goodwill owned by the 2020 partnership and the previous partnerships of which he had been a member, I find that at the point the partnership split, the goodwill accrued under the mark will have been partnership property to which Mr Bonnet, Mr Shea, Mr Waldo, Mr Benequechea and Mr Stump were entitled to an equal share. This view is supported by the findings of Laddie J at paragraph 19 of *Byford v Oliver* at which he stated as follows:

"There is no dispute that the group was a partnership at will in the 1980s. The name and goodwill were assets of the partnership. All the partners have or had an interest in those and all other assets of the partnership, but that does not mean that they owned the assets themselves. Absent a special provision in the partnership agreement, the partners had an interest in the realised value of the partnership assets. On dissolution of the original partnership, which is what happened when Mr Dawson departed in 1985, *he and all the other partners were entitled to ask for the partnership assets to be realised and divided between them in accordance with their respective partnership shares. But none of them "owned" the partnership assets. In particular, none of them owned the name SAXON or the goodwill built up under it.* The position would be very different if all the members of the original group had been performing together, not as partners, but as independent traders. In such a case, each may well

²⁹ The album showing the sign relied upon on the cover is shown www.amazon.co.uk with a date of 31 July 2020 on provided at Exhibit JS4. The screenshot itself is undated but the album date is provided in the text.

have acquired a discrete interest in the name and reputation which he could use against third parties but *not against the other owners.*" (Emphasis added)".

46. This position was reinforced in the recent decision of *Thomas v Luv One Luv All Promotions Ltd & Anor* [2021] EWCA Civ 732 (20 May 2021).

47. I note the applicant is in agreement with this finding, setting out at paragraph 49.4 of its submissions in lieu as follows:

"49.

...

(1) When Graham Bonnet left the band in 2020 the goodwill generated to that point was owned by the partnership, not Graham Bonnet personally."

48. Having therefore established that subject to the abandonment of his share of the goodwill by Mr Bonnet, the goodwill in the name would have been a partnership asset owned by partnership at the relevant date, the question as to whether Mr Bonnet abandoned his claim to a share in this goodwill is largely academic. The reason for this will become clear later in this decision. However, briefly I will consider the evidence from the parties on this point. With regards to the split of the partnership, Mr Bonnet sets out in his witness statement the position as follows:

4. In 2020 the band reunited to release a studio album with Silver Lining Music. In November 2020, Giles Lavery, Alcatrazz's agent, resigned and Alcatrazz mutually agreed not to perform together. Attached at exhibit JS2 are emails and communications which indicate this intention in the band. Without my prior knowledge or permission, a new singer, Doogie White was hired in 2020.

49. Within her witness statement, Ms Heavenstone states:

7. In June of 2020, Giles Lavery tendered his resignation as manager of Alcatrazz, saying "this signals to me the end of the Alcatrazz project and no further need to solicit and further live work/tours or sessions." The email is attached at JS2. Graham accepted his resignation and contacted the musicians he had hired for his band Alcatrazz and asked if they wanted to tour to support the album that would be released in August of 2020. The hired musicians stated that they would only tour with Graham if Giles Lavery was coming as tour manager. For Graham, this signaled an en masse resignation. Shortly after Giles Lavery's resignation, I was contacted by Ward Records whom was to release the forthcoming Alcatrazz record Born Innocent in Japan. A representative from the label explained to me that they no longer wished to associate with Giles Lavery and that they didn't trust him. They said that they would only work with Alcatrazz if Graham was the vocalist/songwriter.
8. Graham then begin writing and recording a new Alcatrazz record that included his new superstar guitar player Jeff Loomis.
9. Unbeknownst to Graham, his former manager, Giles Lavery, as well as his former hired bandmate, James Waldo were surreptitiously attempting to trademark the Alcatrazz name and brand globally without his permission or inclusion, despite written evidence from Giles Lavery stating that Graham Bonnet owns the name and trademark Alcatrazz.

50. Within the opponent's final written submissions, the position is summarised slightly differently as follows:³⁰

5. In June 2020, Giles Lavery - one of recent Applicants resigned from the function of the manager - and then no formal discussion took place and the other members decided to carry on in performing music and using the name without any knowledge or consent of the Opponent. In November 2020 the Applicants filed for a trade mark for the word 'Alcatrazz', the name of the band that was formed by one member of the Applicants and the Opponent, and is the Trade Mark contested in this opposition. Because of the abovementioned situation, there are many personal and subjective comments contained in witness statements filed on behalf of Applicants that do not have any connection with the merits of this Trade Mark opposition dispute.

51. Exhibit JS2 referred to by Mr Bonnet above is the email extract below, dated 17 June 2020 sent from Mr Lavery to Mr Bonnet (and others). Within the opponent's evidence in reply, a full version of the email was provided as an exhibit to the witness statement of Ms Heavenstone, also labelled Exhibit JS2. The extract reads:

³⁰ The trade mark in dispute within these proceedings is that filed on 19 February 2021. The trade mark filed in November 2020 appears to be referenced in error.

Graham,

(Beth-Ami and Alan cc'd in here for the sake of clarity and so nothing gets misunderstood).

I am requesting Alans involvement here as i feel he is a fair and unbiased third party.

We have reached the end of the road,

I am aware of your plans to find new management and form a new band with Conrad.

This signals to me the end of the Alcatrazz project and no further need for me to solicit any further live work / tours or sessions.

52. The applicants set out their position regarding the series of events post March 2020 across several witness statements. The witness statement of Mr Lavery states that from May 2020, Mr Bonnet's communication and co-operation with the band activities became erratic. The full version of the email sent by Mr Lavery to Mr Bonnet was introduced into evidence within the opponent's evidence. This in fact supports Mr Lavery's assertion to an extent, showing Mr Lavery writing to Mr Bonnet as follows:

I am aware you have had some phone issues, but there are other ways of contacting me, you have made no effort to respond to many of my efforts to contact you... or to stay in touch.

53. Mr Lavery claims that his resignation in June 2020 was his resignation as Mr Bonnet's personal manager, a position it is evidenced he held prior to the reforming of the group.³¹ Mr Lavery also asserts in his witness statement that Mr Bonnet told him he was sick of the band and that they should find a new singer for the same.

54. The witness statement of Mr Shea claims that Mr Bonnet left the band unexpectedly. He states that Mr Bonnet said that he didn't want to be in Alcatrazz and he hated the music.

55. The witness statement of Ms Furlan of Silver Lining states that in the summer of 2020, Mr Lavery informed her that Mr Bonnet had suspended all communications with him and with the rest of the band. She states however, that Mr Bonnet remained in

³¹ See Exhibit GL4 to Mr Lavery's witness statement, in addition to his comments made within the witness statement itself.

communication with Silver Lining until Autumn 2020, at which stage his communication with Silver Lining ceased. She states that shortly after, Mr Bonnet changed the name of the Alcatrazz Facebook page back to Graham Bonnet and deleted all references promoting the latest Alcatrazz album. Mr Lavery sets out in his witness statement:

11. In October 2020 after numerous attempts to get back on track with Graham, myself, Jimmy and Gary decided to move forward with Doogie White as new vocalist, and this was agreed with Silver Lining. We have had no trouble at all securing bookings and tours, in some cases the offers have been greater with Doogie, proving that Alcatrazz is not Graham Bonnet alone.

56. I have mentioned previously, reviews of a 2021 'Alcatrazz' album are provided at Exhibit GL8. These articles post date the relevant date in these proceedings. However, they nonetheless refer back to the departure of Mr Bonnet from the band in 2020. Extracts from these reviews and articles commenting on this time state as follows:

"With Graham Bonnet having given way to Doogie White on vocals, this follow up to 2020's *Born Innocent* features only Jimmy Waldo (keyboards) and Gary Shea (bass) remaining from the original 80s line up – not that this matters ..."

"A very quick recap of the rundown to this album...after an absence of almost 25 years Alcatrazz had returned in grand style in 2020 with the album "Born Innocent". However, the buzz created by that album risked being wasted when founding member and lead singer Graham Bonnet [...] left to pursue a solo career. Alcatrazz quickly recruited Doogie White ..."

57. I consider that the evidence from both sides is limited. Ms Heavenstone's statement appears to be for the purpose of conveying a version of events that it is not clear she was witness to. It includes reference to conversations between Mr Bonnet and the rest of the band, and there is only so much weight I cannot attribute to these statements. However, even taking Ms Heavenstone's statement on face value, it is my view that the comments made about the musicians only wishing to tour with Mr Bonnet if Mr Lavery were to join as tour manager, does not constitute a "en masse resignation" from the band as stated. They clearly remained invested in the band and the continuation of the same, although it appears the members were having their

differences in relation to Mr Lavery at the time. What it does indicate, is that Mr Bonnet was in contact with the rest of the band in August following Mr Lavery's resignation.

58. There is also only so much weight I can attribute to the applicants' assertions that the opponent stated that they should find a new singer and that he was sick of the band, although it is true that there is no outright denial of these statements from Mr Bonnet in evidence. However, even taken on face value I consider that these statements appear to be 'heat of the moment' comments from Mr Bonnet, rather than formal, final and public statements of his resignation from the band. However, I consider the comments in the resignation email from Mr Lavery which has not been prepared for these proceedings and indeed not been filed by the applicant, stating that the Mr Lavery had become aware of Mr Bonnet's plans to seek new management and form a new band. Whilst this statement is unconfirmed by the opponent, it gives an indication of the conversations and tensions that appear to have been in place at the time and indicate that Mr Bonnet's focus may not have been with the partnership. I also note the subsequent press reporting of Mr Bonnet having left the band to pursue a solo career.

59. I reiterate here that neither side has evidenced a particularly convincing case for its version of events. Other than Mr Bonnet's statement, there is nothing to support his assertion that the band mutually agreed not to perform together in November 2020. On the other hand, the applicants have put forward no evidence of Mr Bonnet resigning from the partnership and agreeing the others could carry on without him as Alcatraz. I can therefore only weigh up, on balance, what seems like the most likely version of events, which in my view is this. Mr Bonnet and the bands manager Mr Lavery had their differences following the signing of the record deal. Mr Bonnet was difficult to contact during this time. In April 2020 Mr Bonnet hired Ms Heavenstone and started working with Mr Pesinato³² and was in the process of creating a new band. Becoming aware of this and increasingly frustrated with Mr Bonnet's focus being elsewhere, Mr Lavery sent Mr Bonnet a resignation email in June 2020, indicating his other projects must mean the end of Alcatraz. This statement does not appear to be sufficient to actually call time on the partnership itself, with Mr Lavery not actually being a member

³² See paragraph 6 of Mr Pesinato's witness statement.

of the same. Further, it seems unlikely that Mr Bonnet considered this to be the end of Alcatrazz, with his own evidence stating this ended when the band mutually agreed as such in November 2020. Mr Bonnet himself also appears to have made some offhand comments about no longer wishing to be in the band, but these informal statements alone also do not appear to constitute a formal resignation or consent for the band to go on without him. Following his falling out with Mr Lavery and Mr Lavery's resignation, additional tension between Mr Lavery and the rest of the band developed, with the other members siding with Mr Lavery, and continuing to view him as the manager of Alcatrazz. Mr Bonnet continued to communicate with Silver Lining, until his communication with the band and subsequently with Silver Lining ceased entirely in Autumn 2020 following the promotion cycle of the initial contracted album. Mr Bonnet began working with Jeff Loomis on his own 'Alcatrazz' material. Following the cessation of communication from Mr Bonnet, the rest of the band, still seemingly under contract with Silver Lining, sought a new front man, and Doogie White was hired without consultation with Mr Bonnet. The other band members along with Doogie white decided to move on as Alcatrazz without Mr Bonnet.

60. The evidence provided does, in my view, suggest that Mr Bonnet lost interest and contact with the 2020 partnership, and in the end went off to do his own thing. It shows, at the very least, that he had given the impression to the rest of the partnership that he no longer wished to be part of the same. The combination of the statements Mr Bonnet is said to have made about hating the band and being replaced, alongside Ms Heavenstone's and Mr Pesinato's statements that he was working on other projects and hiring other musicians, and Ms Fulan's comments that he ceased all communication with Silver Lining and removed all reference to previous Alcatrazz material from his Facebook page also indicate that Mr Bonnet intended to leave the band and distance himself from the same. His knowledge that the rest of the band remained in an agreement with Mr Lavery to fulfil a three-album deal he had agreed with Silver Lining, with whom he had been in contact with following the resignation email of Mr Lavery, suggests that he was aware it was possible they may wish to carry on without him, whether or not the contract remained binding on Mr Bonnet. However, it does not indicate that he had consented to the same. Further, there is no evidence that the applicants informed Mr Bonnet of the decision to carry on as Alcatrazz without him before they filed the trade mark application, which meant that he had no need to

declare his position on that proposition. Rather, the applicants appear to have relied on Mr Bonnet's disengagement from the band as signalling his resignation, **and** effectively abandoning his share in the assets of the partnership, including the band's goodwill. Considering to the position at the relevant date, I find the evidence does not establish Mr Bonnet had acquiesced to the further use of the name by the new 2021 partnership at that stage. Whilst I therefore consider that both sides' evidence could have been clearer, it is my view that the applicants have not managed to establish from the evidence provided that Mr Bonnet abandoned his stake in the goodwill of the partnership at the relevant date.

Entitlement to bring a claim under section 5(4)(a) of the Act

61. It has been established that Mr Bonnet was entitled to a share of the goodwill in the partnership at the time that it dissolved in Autumn 2020 and that remained the position at the relevant date. However, it has not been established that he owned the goodwill himself. I note Mr Bonnet has brought these proceedings in his own name, and not in the name of, or on behalf of, the 2020 (or any previous) partnership. This appears to be founded on Mr Bonnet's belief that he owned the band's goodwill because he was the frontman, lead singer and songwriter. It is explained at paragraph 25 of *Byford v Oliver* as previously set out in this decision that in cases such as this one, that where the asset is owned by the partnership, any attempt to sue another party, whether or not those parties contain common members, must be brought in the name of, or on behalf of, the partnership. Therefore, Mr Bonnet has no right to bring passing off proceedings on the basis that he personally owns the goodwill under the sign he relies on. The result of article 2 of the Relative Grounds Order is that an opposition against a trade mark application must also be brought by the proprietor of the earlier right, which is defined in the Act as someone who is entitled to bring proceedings to enforce it. In this case, the proprietor of the earlier right is the autumn 2020 partnership, or failing that, the 1987 or 2019 partnership, and not Mr Bonnet alone. The opposition brought by Mr Bonnet as the supposed owner of the earlier right under section 5(4)(a) of the Act must therefore fail.

62. As mentioned within the preliminary issues, an opposition on section 3(6) of the Act was not pleaded or advanced prior to the opponent's written submissions in lieu, and as such I do not need to consider this further.

Final remarks

63. The opposition has failed, and subject to any successful appeal, the application will proceed to registration in its entirety.

COSTS

64. The opposition has failed and the applicant is entitled to a contribution towards its costs. In the circumstances I award the applicant the sum of £1450 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement	£350
Preparing evidence and considering and commenting on the other side's evidence	£700
Preparing and filing written submissions in lieu of a hearing	£400
Total	£1450

65. I therefore order Graham Bonnet to pay Daniel Richard Merton, James Richard Waldo, and Giles Roger Lavery the sum of £1450. The above sum should 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 28th day of July 2022

Rosie Le Breton

For the Registrar,

The Comptroller-General