

O-205-15

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION NO 3004367

**IN THE NAME OF STEVE KELLY
OF THE FOLLOWING TRADE MARK IN CLASSES 20 & 35:**

Cloud 9

AND

**AN APPLICATION FOR INVALIDITY
UNDER NO 500152
BY SLEEP ON LTD**

Background and pleadings

1. This dispute concerns trade mark registration 3004367 which consists of the trade mark Cloud 9 (“the registration”). It was filed by Steve Kelly (“the proprietor”) on 1 May 2013. The mark was published on 14 June 2013 and subsequently registered on 25 August 2013. The mark is registered in respect of the following goods and services:

Class 20: Mattresses; Bed mattresses; Beds incorporating inner sprung mattresses; Fire resistant mattresses; Foam camping mattresses; Foam mattresses; Mattress toppers; Mattresses; Bed mattresses; Beds incorporating inner sprung mattresses; Fire resistant mattresses; Foam camping mattresses; Foam mattresses; Mattress toppers; Furniture; Beds; Sofa beds; Bedside cabinets; Wardrobes; Chest of drawers; Dressing tables; Cabinets [furniture]; Book stands [furniture]; Children’s furniture; Corner units [furniture]; Drawers for furniture; Fitted bedroom furniture; Personal computer work stations [furniture]; Seating furniture; Shelf units [furniture]; Shelves [furniture]; Stackable furniture; Storage cabinets [furniture]; Storage furniture; Tables; Toy boxes [furniture]; Vanity units [furniture].

Class 35: Advertising; Business management; Trade fairs; Organisation, operation and supervision of loyalty and incentive schemes; Retail and wholesale services connected with the sale of pillows, mattresses, mattress protectors and bedding; Online retail services and mail order retail services connected with the sale of mattresses; Wholesale services connected with the sale of mattresses for export.

2. On 12 September 2013, an application for invalidation was filed by Sleep On Ltd (“the applicant”). The applicant requested invalidation of the registration under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This ground is relevant in invalidation proceedings on account of the provisions of section 47(2) of the Act.

3. The applicant initially relied upon two trade marks but later withdrew one of the registrations citing procedural economy reasons. The applicant is relying upon the following mark (“the earlier registration”):



UK Trade Mark Registration No: 2469215

Filing date: 11 October 2007

Publication date: 7 December 2007

Date on register: 14 March 2008

Class 20 Goods: Beds, mattresses, divan sets, futons and sofabeds.

4. The applicant argues that the respective goods/services are identical or similar, and that the marks are “the same”.

5. The proprietor filed a counterstatement denying the claims made by the applicant. They also claim that the applicant was not the proprietor of the earlier registration at the time of filing the application. Further, the proprietor has requested that the applicant provides proof of use of its earlier trade mark registration.

Evidence

Applicant’s evidence

6. The applicant filed written submissions which I shall refer to where necessary.

Witness Statement of Peter Gair with exhibits PG1 - PG7

7. The applicant’s evidence consists of a witness statement from Peter Gair. Mr Gair is a director of the applicant, a position he has held since 24 July 2013. Prior to his existing position, Mr. Gair was a director of Norian (UK) Limited. Mr. Gair states that Norian (UK) Limited owned, *inter alia*, the earlier registration. Norian (UK) Ltd later went into administration and the applicant purchased various trade mark registrations, including no. 2469215, from the administrators of Norian (UK) Limited. Mr. Gair claims that the original assignment took place on 29 November 2012 following an oral agreement, and then it was entered into a written agreement on 4 March 2014.

8. Mr. Gair states that between May 2007 and November 2011, beds, mattresses and soft furnishings were sold exclusively by Norian to Argos for distribution and sale via their retail outlets. He provides the following turnover figures for sales of CLOUD NINE branded goods:

2007 - £6,789,899.45
2008 - £10,731,961.84
2009 - £10,024,591.04
2010 - £7,992,285.96
2011 - £5,201,357.41

- Exhibit PG1 is a “written agreement” which Mr. Gair states is dated 4 March 2014. The document has “Dated:...2014” in the top right hand corner and states that “The effective date of this assignment is 29 November 2012”. The document appears to show the purchase of six trade marks, including no. 2469215. The assignment document is discussed later in this decision, together with a copy of the assigning document.
- Exhibit PG2 is a sales schedule detailing the various goods sold to Argos between 1 April 2007 and 13 October 2011. The schedule refers to mattresses, divans and a “guestbed trundle”.

- Exhibit PG3 consists of extracts from Argos catalogues dated Autumn/Winter 2007 and 2012, plus Spring/Summer 2009-2011. The catalogues consistently show the mark as registered.
- Exhibit PG4 is a schedule of marketing and advertising payments that the applicant has made to Argos to promote the earlier mark. Mr. Gair states that between November 2009 and 21 September 2011, Norian paid £201,696.12 to Argos. The exhibit also includes various invoices intended to corroborate the marketing spend.
- Exhibit PG5 are eBay listing print outs for “Double divan bed & Mattress”. Whilst the advert is dated after the relevant date, the exhibit also consists of historical sales of each product. It shows that there was one sale of double divan bed and mattress on 31 January 2013, and two further sales on 3 and 8 February 2013. The exhibit also includes historical sales of “King size bed and orthopaedic mattress” on 5 February 2013. Numerous pre-relevant period sales of “Single chair bed”, “Divan bed single”, “Single, double or king size mattress”, “Double futon mattress”, “Pocket sprung mattress”
- Exhibit PG6 is a table of “Cloud Nine Paypal sales 7th May 2013 – 24 April 2014”. They are after the relevant date.
- Exhibit PG7 is an undated photograph of the packaging of CLOUD NINE products.

Registered proprietor’s evidence

9. The proprietor filed written submissions which shall be referred to when appropriate.

Witness Statement of Rebecca Tew with exhibits RT1 - RT3

10. Ms Tew is a registered trade mark attorney for Marks and Clerk LLP. They are the professional representatives of the proprietor. Ms Tew makes various submissions in relation to Mr Gair’s witness statement. These shall be taken into account and referred wherever necessary.

- Exhibit RT1 is an eBay user ID history. It states that prior to 12 June 2013, the eBay seller site was operated under the name Comfy Living UK. The ID history also states that from 12 June 2013 the ID member user is “cloud_nine_furniture”. Ms Tew claims that this proves that the name Cloud Nine has only recently been adopted by the applicant.
- Exhibit RT2 are extracts from the eBay store. MS Tew submits “that it can be seen from the current screen shots included in Exhibit RT2 that use of the mark in the registered format was short-lived.”
- Exhibit RT3 is a list of customer feedback left by the seller. It shows that on 5 August 2013 the seller name was “Comfy Living”, then later that day the seller name was “Cloud_Nine_Furniture”. Ms Tew claims that this illustrates that

the sales were made by “Comfy living” until it changed their name “Cloud_Nine_Furniture”.

Applicant’s evidence in reply

Witness Statement of Paul Andrew Cox with exhibits PAC 1 - PAC 3

11. The applicant’s evidence in reply consists of a witness statement from Mr Paul Andrew Cox. Mr Cox is a solicitor and partner of Clarke Willmott LLP. They are the applicant’s representatives. The witness statement focuses on the “assignment” of the earlier mark. I shall address this independently later in this decision.

- Exhibit PAC1 is an exchange of emails between Mr. Tucker of Albert Goodman (administrators) and Ms. Loveday of Sleep On’s accountant. The emails are dated 5 and 6 December 2012. The subject header is “RE: Norian (UK) Ltd – In Administration” and state as follows:

5 December 2012 - Mr. Tucker to Ms. Loveday: “Jodie, Have you made payment yet? Kind regards, Steve Tucker”

Response from Ms. Loveday of the even date, “Yes, on 29th November as promised.”

6 December 2012 – “Jodie, Thanks for arranging that. Please find enclosed the change of ownership forms. There are six forms, one for each trademark, but they are all the same apart from the trademark number in box 1. I would be grateful if someone authorised to do so by Sleep On Ltd could complete section 9b (signature, name in block capitals, status and date).

The forms should then be posted back to me for signing by the administrator and I will then send them to the Intellectual Property Office.

I look forward to hearing from you and should you have any queries let know.”

- Exhibit PAC2 is a copy of Form TM16 (Application to record a change of ownership). One of the forms relates to the earlier registration. It is dated 16 October 2014 and states in box 5 that the date the new proprietor (Sleep On Ltd) took over ownership as being 29 November 2012.
- Exhibit PAC3 is a Court of Appeal decision¹ relating to a design right infringement. Mr. Cox refers to paragraphs 25, 26 and 28 of the decision that “Thus an equitable assignment was sufficient for a party to become the “proprietor” of a design. By analogy, an equitable proprietor is capable of bringing an invalidity action.”

¹ *Victor Ifejika v Charles Ifejika and Lens Care Limited* Case No. A3/2009/2472 & 2472(A) dated 25 May 2010

The assignment

Background

12. The TM26(I) (Application to declare invalid a registration or a protected international trade mark (UK)) and statement of grounds were filed on 12 September 2013, in the name of the applicant. As stated above, the applicant requested invalidation of the registration based on their earlier mark under section 5(2)(b) of the Act.

13. The earlier mark was filed on 11 October 2007 and completed registration on 14 March 2008. It was filed, and subsequently registered, under the name of Norian (UK) Ltd (“Norian”). Norian later went into administration, and the applicant purchased the earlier registration from the administrators.

14. The applicant states that on 29 November 2012 the trade mark registration was “orally assigned” to the applicant. The assignment was formalised on 4 March 2014, and retrospectively given an effective date of 29 November 2012.

15. The proprietor states that upon “making the invalidation application on 12 September 2013, Sleep On Limited was not the owner of Registration No. 2469215 and was not therefore entitled to bring the action relying upon Section 5(2)(b) of the Trade Marks Act 1994”. They go on to state that the invalidation action should be refused and an award of costs made.

The law

16. Section 47 of the Act states:

“(1)...

(2)The registration of a trade mark may be declared invalid on the ground-

a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b)...

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

17. Section 5(2)(b)² of the Act states:

5. - (1)....

(2) A trade mark shall not be registered if because –

² * Note: This section has been amended by virtue of The Trade Marks (Relative Grounds) Order 2007 which came into force 1st October 2007

(a)...

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

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

18. Section 6 of the Act defines an “earlier trade mark” as follows:

6. - (1) In this Act an “earlier trade mark” means -

(a) a registered trade mark, international trade mark (UK), Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(b) a Community trade mark or international trade mark (EC) which has a valid claim to seniority from an earlier registered trade mark or international trade mark (UK), (ba) a registered trade mark or international trade mark (UK) which-

(i) has been converted from a Community trade mark or international trade mark (EC) which itself had a valid claim to seniority within paragraph (b) from an earlier trade mark, and

(ii) accordingly has the same claim to seniority, or

(c) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention or the WTO agreement as a well known trade mark.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.

(3) A trade mark within subsection (1)(a) or (b) whose registration expires shall continue to be taken into account in determining the registrability of a later mark for a period of one year after the expiry unless the registrar is satisfied that there was no bona fide use of the mark during the two years immediately preceding the expiry.

19. The Trade Marks (Relative Grounds) Order 2007 (“the Order”) states:

Refusing to register a mark on a ground mentioned in section 5 of the Trade Marks Act 1994

“2. The registrar shall not refuse to register a trade mark on a ground mentioned in section 5 of the Trade Marks Act 1994 (relative grounds for refusal) unless objection on that ground is raised in opposition proceedings by the proprietor of the earlier trade mark or other earlier right.

3. Section 37(2) of the Trade Marks Act 1994 (search of earlier trade marks) shall cease to have effect.

4. The registrar may, in connection with an examination under section 37(1) of the Trade Marks Act 1994, carry out a search of earlier trade marks for the purpose of notifying the applicant and other persons about the existence of earlier trade marks that might be relevant to the proposed registration.

5.—(1) Only the persons specified in paragraph (2) may make an application for a declaration of invalidity on the grounds in section 47(2) of the Trade Marks Act 1994 (relative grounds).

(2) Those persons are—
in the case of an application on the ground in section 47(2)(a) of that Act, the proprietor or a licensee of the earlier trade mark or, in the case of an earlier collective mark or certification mark, the proprietor or an authorised user of such collective mark or certification mark; and
in the case of an application on the ground in section 47(2)(b) of that Act, the proprietor of the earlier right.

(3) So much of section 47(3) of that Act as provides that any person may make an application for a declaration of invalidity shall have effect subject to this article.”

Chronological series of key events

20. In order to provide some context, a chronological list of the key dates and action taken are outlined below:

- 11 October 2007: application date of the earlier registration (filed in the name of Norian (UK) Ltd).
- 29 November 2012: the date that the earlier mark was “orally” assigned from Norian (UK) Ltd to the applicant, Sleep On Ltd.
- 1 May 2013: application date of the registration (in the name of Steve Kelly).
- 12 September 2013: invalidation action filed in the name of the applicant, against the registration.
- 4 March 2014: whilst the assignment document³ does not include a specific date, Mr Cox’s witness statement states that it was executed on 4 March 2014. This has not been challenged by the proprietor.

³ See Annex A

Key date

21. In order for the applicant to challenge the validity of the registration under section 5(2)(b), they must be the proprietor of an earlier mark, i.e. earlier than 1 May 2013 (application date of the subject registration).

22. It can be seen from the chronological list of events that the earlier registration was applied for before the registration. The earlier registration was “orally” assigned to the applicant on 29 November 2012, which is also prior to 1 May 2013. However, the registration was not assigned in writing until 4 March 2014, claiming a retrospective “effective” date. Accordingly, a number of questions are raised with regard to whether the applicant had the *locus standi* to apply for invalidation, i.e. were they the “proprietor...of the earlier mark” as required under Article 5(2) of the Order.

Was the applicant the proprietor of the earlier registration at 1 May 2013?

23. No. At 1 May 2013 the earlier registration was in the name of Norian (UK) Ltd. Accordingly they were not the “proprietor...of the earlier mark” as required under the Order and, therefore, not entitled to rely upon the mark under Section 6 of the Act.

Can the earlier mark be orally assigned?

24. Section 24 of the Act relates to assignments of registered trade marks. The relevant sub-section states (emphasis added in bold):

“24. - (1) A registered trade mark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property.

It is so transmissible either in connection with the goodwill of a business or independently.

(2) An assignment or other transmission of a registered trade mark may be partial, that is, limited so as to apply-

(a) in relation to some but not all of the goods or services for which the trade mark is registered, or

(b) in relation to use of the trade mark in a particular manner or a particular locality.

(3) **An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing** signed by or on behalf of the assignor or, as the case may be, a personal representative.

Except in Scotland, this requirement may be satisfied in a case where the assignor or personal representative is a body corporate by the affixing of its seal.

(4)...

(5)...

(6)..."

25. Section 24(3) expressly states that "An assignment of a registered trade mark...is not effective unless it is in writing". This is a clear requirement of the Act which, in my view, is sufficiently clear that it requires no further explanation.

Can a registered trade mark be assigned in writing with a retrospective effective date, i.e. when the oral assignment took place?

26. Again, the answer is no. Given the express provision within section 24 of the Act, it is clear to me that in order for a trade mark registration to be assigned, it must be executed in writing. It will then become effective once it is signed or at an agreed subsequent date, and not retrospectively.

Design decision

27. It has been argued by the proprietor that it is permissible to orally assign a trade mark, and they have referred to the designs decision of *Victor Ifejika v Charles Ifejika and Lens Care Limited* Case No. A3/2009/2472 & 2472(A) dated 25 May 2010. In particular, Mr Cox refers to the following paragraphs:

"Design rights like another form of chose in action can be assigned either at law or in equity" paragraph 25

"For property to be assigned in equity what is needed is the sufficient expression of an intention to assign in the contextual of a transaction from which it can be inferred that the property was intended to pass..." paragraph 26

"...The judge's suggestion that s1(2) was not complied with seems to be based on a point about timing: i.e. that the rights must have become vested by assignment in CCL prior to the making of the application. But that is not correct. The Application for registration has to be made by the person claiming to be the proprietor. That requirement is satisfied, in my view, when the applicant will, as a result of the registration, acquire the necessary rights by equitable assignment or by operation of law. There does not have to be some *scintilla temporis* as between the completion of the assignment and registration" paragraph 28

28. The circumstances of this invalidation action differs. In this instance Norian (UK) Ltd applied for and registered their mark. They were subsequently placed into administration who then sold the trade marks to the applicant. In the referred to design decision, the design was created then applied for by another party. It was deemed that prior to the application there was an "equitable assignment" of the unregistered design. If the design was applied for and subsequently registered then

it appears to me, as is the case with trade marks, that the design registration would need to be assigned in writing as required under section 15B(3) of the Registered Designs Act 1949⁴.

TM16 and email exchanges

29. Mr Cox's witness statement claims that the exchange of emails between Mr Tucker of Albert Goodman (the administrators), and Ms Loveday (Sleep On's accountant) constitute an effective assignment. These were evidenced in exhibit PAC1 which have been summarised earlier in this decision. The email exchange is dated December 2012. There are no references to the trade marks, their application/registration numbers, owner details or confirmation that there was consideration (and how much). Accordingly, there is no doubt that these emails cannot constitute a valid assignment of the trade mark registration.

30. Mr Cox states that following the assignment, the parties signed the "change of ownership" forms. These were evidenced in exhibit PAC2. The referred to form is a UK Intellectual Property Office TM16 "Change to record a change of ownership". This is an administrative form which requests a change of the Register. The Form TM16 is not a formal assigning document, nor is it proof of a valid assignment. In fact, the form includes the following note: "This form is not a substitute for the assignment document or other proof of the transaction"

31. Further, it is noted that the document is dated 16 October 2014 which is after the proprietor applied to register their registration, i.e. 1 May 2013.

Beneficial ownership

32. In Mr Cox's witness statement he argues that:

"12. Under English law there is a distinction between legal and beneficial ownership. Legal ownership of an asset or property implies actual ownership whereas equitable ownership refers to the enjoyment of an asset or property and a person with beneficial or equitable title has a right to obtain full ownership of the property by calling on the legal owner to assign the right to them.

13. Therefore, under English law, the equitable ownership of a trade mark can be transferred by operation of the law even where the formal requirements of section 24(3) are not complied with. Section 24(1) expressly states that a trade mark is transferable by operation of law and this was approved by the Court of Appeal in the case referred to in paragraph 15 below (attention is drawn in particular to paragraphs 25, 26 and 28).

14. At the very least, Sleep On became the equitable and beneficial proprietor of the Trade Marks on 29 November 2012. The beneficial owner of a trade

⁴ (3) An assignment of, or an assent relating to, a registered design or application for a registered design is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative.

mark can call upon the administrator to assign the legal title (which is what lead to the confirmatory assignment on 4 March 2014).”

Mr Cox goes on to state that:

“17. Article 5 of the Trade Marks (Relative Grounds) Order 2007/1976 provides that the only persons that may make an application for a declaration of invalidity on the grounds in section 47(2) of the Trade Marks Act 1994 are:

“the proprietor or licensee of the earlier trade mark...”

18. Article 5 does not distinguish between legal or beneficial ownership nor does it refer to the registered proprietor of a trade mark.”

33. The applicant does not claim to be a licensee. With regard to the question of whether the applicant was the proprietor of the earlier registration at the time in which the invalidation action was filed, in my view they were not. The word proprietor must be interpreted as the legal proprietor, i.e. the legal owner of the registration. As outlined above, an oral assignment of a trade mark registration does not constitute a legally binding transfer of proprietorship. Therefore, the transfer did not occur until the assignment was in writing.

34. I can envisage the position being different if the applicant were challenging the registration based on the law of passing off whereby the goodwill in the “unregistered” right was transferred. However, in this instance, the applicant is relying upon an earlier registered trade mark.

35. In order for an applicant for invalidity to rely upon an earlier mark in the context of section 5(2)(b), at that point in time they must be the legal owner, i.e. the proprietor. At the date of filing the invalidation, the applicant was not the owner. An exchange of emails between the administrators and the applicant’s accountants prior to the invalidation being filed does not constitute a valid transfer of ownership. This is particularly the case since the emails do not include specific details of the marks.

36. Even if I were to accept that the applicant was the beneficial or equitable owner of the registration at the time of filing the invalidation action (which I do not), this would not qualify them as being the “proprietor”⁵ of the trade mark.

Conclusion

37. In order for an applicant for invalidity to challenge a registration under section 5(2)(b)⁶ of the Act the applicant must be the proprietor of the “earlier right”, as defined by section 6. In this instance, at the time of filing the invalidation action, the applicant was not the registered owner of the earlier registration in which they rely upon. Therefore, the applicant does not have the *locus standi* to apply for invalidation. Accordingly there is no requirement upon me to consider this matter any further.

⁵ As required under Article 5 of the Trade Marks (Relative Grounds) Order 2007/1976

⁶ Pursuant to section 47(2) of the Act

Outcome

38. The application for invalidity is dismissed.

39. The Register currently states that registration no. 2469215 has an effective date of assignment as 29 November 2012. In accordance with Rule 74 of the Trade Mark Rules (as amended) 2007, the register (subject to appeal) shall be amended to 4 March 2014.

Costs

40. Since the applicant for invalidity does not have the *locus standi* to maintain their invalidation claim, the registered proprietor has been successful and is entitled to a contribution towards its costs. In the circumstances I award the proprietor the sum of £1400 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering the other side's statement and preparing a counterstatement	£400
Preparing evidence and considering and commenting on the other side's evidence	£1000
Total	£1400

41. I therefore order Sleep On Ltd to pay Steve Kelly the sum of £1400. The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 1st day of May 2015

MARK KING
For the Registrar,
The Comptroller-General

ANNEX A

NORIAN (UK) LIMITED
(IN ADMINISTRATION)
MARY STREET HOUSE
MARY STREET
TAUNTON
TA1 3NW
("the Seller")

VAT REG NO: 406 7274 54

Invoice: 01

Dated: 2014

To:

Sleep On Limited ("the Buyer")
Crypton Business Centre
Bristol Road
Bridgwater
Somerset
TA6 4SY

In respect of purchase of:

The following trade marks: -

2358769 Cloud Nine
2469215 Cloud Nine
2537760 Comfykids
2537759 Comfyrest
2348245 Dreamaway
2469216 Dreamaway

£1,800

Terms and Conditions:

The effective date of this assignment is 29 November 2012 (the "Effective Date").

In consideration of the sum of £1,800 (receipt of which the Seller expressly acknowledges), the Seller hereby, from the Effective Date, assigns to the Buyer such right, title and interest (if any) of the Seller in and to the above named trade marks (the "Trade Marks"), including:

- a) any absolute entitlement of the Seller to any registered trade marks granted pursuant to any of the applications comprised in the Trade Marks;
- b) any statutory and common law rights of the Seller attaching to the Trade Marks, together with any goodwill of the Seller in the business relating to the goods or services in respect of which the Trade Marks are registered or used; and
- c) any right of the Seller to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action (including passing off) arising from ownership of any of the Trade Marks occurring on or after the Effective Date.

All representations, warranties, conditions and other terms, (including without limitation warranties, conditions as to title, possession, quality and fitness for purpose and description) expressed or implied by statute or otherwise in respect of the Trade Marks are (save as is required by law) excluded. No representations or warranties are made about the right of the Seller or the administrator to use or transfer any of the Trade Marks.