

O-189-16

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION No. 3067712
STANDING IN THE NAME OF
FERHAT ANUSH
AND**

**IN THE MATTER OF A REQUEST FOR A DECLARATION
OF INVALIDITY THERETO UNDER No.500824
BY
RENOVEST GAYRİMENKUL GELİŞTİRME RESTORASYON SANAYİ VE TİCARET
ANONİM ŞİRKETİ
AND**

**IN THE MATTER OF INTERNATIONAL REGISTRATION
No. 1230572
AND THE REQUEST BY
RENOVEST GAYRİMENKUL GELİŞTİRME RESTORASYON SANAYİ VE TİCARET
ANONİM ŞİRKETİ
TO PROTECT THE TRADE MARK**

HUQQA

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 404492
BY
FERHAT ANUSH**

BACKGROUND

1) The following trade mark is registered in the name of Ferhat Anush (hereinafter FA):

Mark	Number	Filing & registration date	Class	Specification
	3067712	08.08.14 14.11.14	34	Tobacco products, Tobacco smokers and articles matches for shisha; shisha accessories namely shisha pipes hand held mixers for shisha tobacco, replacement stems, shisha hoses, shisha bases, tobacco bowls, charcoal tongs, mouthpieces, shisha foil, wind covers, charcoal screens, flip caps, hose plugs, base protectors, grommet sets, charcoal holders and cleaning kits.
			41	Live musical performance and musical entertainment.
			43	Services for providing food and drink; restaurant, bar services; preparation of food and drink for consumption inside or outside of the restaurant. Cafe services for the provision of tobacco smoked in a pipe (shisha), provisions of shisha lounges.

2) By an application dated 13 April 2015 Renovest Gayrimenkul Gelistirme Restorasyon Sanayi Ve Ticaret Anonim Sirketi (hereinafter RGG) applied for a declaration of invalidity in respect of this registration. The grounds are, in summary:

- a) that RGG operates upmarket alcohol-free restaurants, shisha bars and entertainment venues in Turkey. It opened its first venue in 2013 in Istanbul, with the second opening in Ankara in November 2014. The restaurants have met with considerable success and have received substantial coverage in the Turkish media, which it is claimed is widely read by the Turkish community in the UK. The restaurants attract high profile clients such as politicians, artists and other Turkish celebrities. In order to capitalise on the growing trend for shisha bars in London the applicant plans to open a HUQQA shisha bar and restaurant in London. These plans have, since 2013, attracted media attention with several Turkish press articles referring to RGG's plans. RGG uses its HUQQA mark on the exterior and interior signage as well as the website, menus etc. It is claimed that the mark in suit is in fact a photograph of the exterior of RGG's restaurant in Istanbul. However, the comparison photographs are so poorly reproduced that any comparison is impossible. It is claimed that the Turkish community in the UK were aware of RGG's reputation under its mark and its plans to expand into the UK. RGG must have known that the mark belonged to RGG and that it planned to bring its mark to the UK. As such the application was filed in bad faith. The mark in suit therefore offends against section 3(6) of the Act.
- b) RGG had its HUQQA mark designed by a Turkish company and ownership in the logo was transferred from the designer to RGG by an assignment dated 5 April 2013. The mark in suit is a copy of RGG's mark and as such infringes its copyright. The mark in suit therefore offends against section 5(4)(b) of the Act.

3) FA provided a counterstatement, dated 10 June 2015, he denies any knowledge of RGG or its business in Turkey and states that the term HUQQA is used globally by a number of businesses as it is a common word. He states that he has never been to Istanbul. FA states that he is also the director of Huqqa Ltd registered at Companies House and that in July 2014 he instructed his solicitors to acquire a lease on a property in London which he was going to open a sisha bar with alcoholic beverages and entertainment services which he was going to call "Hookah". However, he found that there were a number of "hookah" marks on the IPO Register and so the name HUQQA was used instead, He states that he engaged a logo designer Ms Elif Bozdogan to design his logo. She produced a number of designs out of which he chose the one which is the mark in suit. He provides copies of the range of designs produced at exhibit 4 to the counterstatement. The majority of the pages of this exhibit are so poorly reproduced that they are effectively blank. On none of the pages with anything visible can I find the mark sought to be registered. Of the designs which can be seen they consist of standard images of the word, not a photograph of an actual sign.

4) On 18 August 2014, RGG, of EGS Business Park Blokları Atatürk Cad. No: 12/1 B1-Blok No:454 Kat 15 BAKIRKÖYİSTANBUL, Turkey on the basis of its international registration based upon its registration held in Turkey, requested protection in the United Kingdom of the trade mark HUQQA (as shown on the front page of this decision) under the provisions of the Madrid Protocol. The International registration date and Designation date are both 18 August 2014. Protection was sought for the following services in Class 43:

Arranging and providing temporary accommodation; arranging hotel accommodation; arranging temporary housing accommodations; bar and bistro services, bar and restaurant services; cafe and cafeteria services; cafe and restaurant services; canteens; catering services for the provision of food and drink; coffee and juice bar services; coffee and tea bar services; coffee-house and snack-bar services; coffee shop services; day-care services; day-nurseries [crèches]; fast-food restaurant services; hotel and restaurant services; preparation and provision of food and drink for consumption in retail establishments; providing food and drink; providing food and drink in restaurants; providing restaurant services; reservation of restaurants; services for providing food and drink, and temporary accommodation; serving food and drink in restaurants and bars; teahouse services.

5) The United Kingdom Trade Marks Registry considered that the request satisfied the requirements for protection in accordance with Article 3 of the Trade Marks (International Registration) Order 1996 and particulars of the international registration were published in accordance with Article 10 in Journal 2015/016 on 17 April 2015.

6) On 10 June 2015 FA filed notice of opposition to the conferring of protection on this international registration. The grounds of opposition are in summary that because of his earlier registration 3067712 (see above) RGG's mark offends against sections 5(1), 5(2)(a) and 5(2)(b) of the Act.

7) On 20 October 2015 RGG filed a counterstatement basically denying the grounds.

8) Only RGG filed evidence. Both sides ask for an award of costs. The matter came to be heard on 14 March 2016 when RGG was represented by Mr Bryson of Messrs J.A. Kemp & Co.; Mr Anush chose not to attend.

EVIDENCE OF RGG

9) RGG filed three witness statements. The first, dated 2 September 2015, is by Cihan Kamar the Chairman of RGG a position he has held since 2013. He is also active in a number of other companies in Turkey. He states that RGG was set up to administer a chain of upmarket alcohol free restaurants and entertainment venues. In addition to providing food and entertainment the restaurant also provides shisha tobacco water pipes for restaurant patrons to smoke. He states that the word HUQQA was chosen as it alludes to the word HOOKAH which is a translation of the Arabic word for the kind of water pipes used in the restaurant. The version of the word HUQQA used on the restaurants was designed by a specialist designer and the copyright assigned to RGG in 2013. At exhibit CK2 he includes a photograph of the exterior of the restaurant in Istanbul which opened in 2013. It is identical to the mark sought to be registered by FA, even down to the low level bushes.

10) Mr Kamar provides, at exhibit CK3, examples of the coverage his restaurants received in the Turkish press. It is clear that because of his involvement with other companies and in particular the Fenerbache football team that his name ensures publicity in Turkey. Other examples of press articles, at exhibit CK4, specifically mention plans to expand overseas with London being one of the places mentioned. They are dated in 2013. He states that the restaurants in Turkey have received a lot of publicity on social media and sites such as Trip Advisor (exhibits CK7 & 8 refer). He states that his company pursues legally any use of its mark by others as soon as they become aware of the infringement.

11) The second witness statement, dated 2 September 2013, is by Yesim Demir the founder partner and chief graphic artist of the company known as Demir Tasarim. He has held this position since 2003 when the company was founded. He states that in early 2013 his company was commissioned to produce a logo for RGG. He produced a number of designs and RGG chose the one which is shown on the front sheet of this decision. He states that the copyright was assigned to RGG on 5 April 2013. A copy of the documentation and invoice for the design work is provided at exhibit YD2.

12) The third witness statement, dated 2 September 2015, is by Atif Dogan Erterzi a trade mark attorney in Turkey. His statement does not help my decision as it simply refers to an exchange he had with FA regarding the mark in suit.

13) That concludes my review of the evidence. I now turn to the decision.

DECISION

14) At the hearing a preliminary issue was raised regarding the request to file late evidence made by RGG. The evidence consists of a witness statement by Yasim Demir, dated 3 March 2016 in which he confirms that he is and was a citizen of Turkey and resident there. He confirms this was the case in April 2013 when he designed the mark relied upon by RGG. I do not believe that FA is disadvantaged by this simple statement of

fact. I shall first consider the invalidity action in respect of trade mark 3067712 which is brought under two grounds. The first of which is under section 3(6) which reads:

“3.(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

15) The law in relation to section 3(6) of the Act (“bad faith”) was summarised by Arnold J. in *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch):

“130. A number of general principles concerning bad faith for the purposes of section 3(6) of the 1994 Act/Article 3(2)(d) of the Directive/Article 52(1)(b) of the Regulation are now fairly well established. (For a helpful discussion of many of these points, see N.M. Dawson, “Bad faith in European trade mark law” [2011] IPQ 229.)

131. First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see *Case C- 529/07 Chocoladenfabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH* [2009] ECR I-4893 at [35].

132. Secondly, although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date: see *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2008] EWHC 3032 (Ch), [2009] RPC 9 at [167] and cf. *Case C-259/02 La Mer Technology Inc v Laboratoires Goemar SA* [2004] ECR I-1159 at [31] and *Case C-192/03 Alcon Inc v OHIM* [2004] ECR I-8993 at [41].

133. Thirdly, a person is presumed to have acted in good faith unless the contrary is proved. An allegation of bad faith is a serious allegation which must be distinctly proved. The standard of proof is on the balance of probabilities but cogent evidence is required due to the seriousness of the allegation. It is not enough to prove facts which are also consistent with good faith: see *BRUTT Trade Marks* [2007] RPC 19 at [29], *von Rossum v Heinrich Mack Nachf. GmbH & Co KG* (Case R 336/207-2, OHIM Second Board of Appeal, 13 November 2007) at [22] and *Funke Kunststoffe GmbH v Astral Property Pty Ltd* (Case R 1621/2006-4, OHIM Fourth Board of Appeal, 21 December 2009) at [22].

134. Fourthly, bad faith includes not only dishonesty, but also “some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined”: see *Gromax Plastics Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 and *DAAWAT Trade Mark* (Case C000659037/1, OHIM Cancellation Division, 28 June 2004) at [8].

135. Fifthly, section 3(6) of the 1994 Act, Article 3(2)(d) of the Directive and Article 52(1)(b) of the Regulation are intended to prevent abuse of the trade mark system: see *Melly's Trade Mark Application* [2008] RPC 20 at [51] and *CHOOSI Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) at [21]. As the case law makes clear, there are two main classes of abuse. The first

concerns abuse vis-à-vis the relevant office, for example where the applicant knowingly supplies untrue or misleading information in support of his application; and the second concerns abuse vis-à-vis third parties: see *Cipriani* at [185].

136. Sixthly, in order to determine whether the applicant acted in bad faith, the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case: see *Lindt v Hauswirth* at [37].

137. Seventhly, the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant's conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant's own standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry: see *AJIT WEEKLY Trade Mark* [2006] RPC 25 at [35]-[41], *GERSON Trade Mark* (Case R 916/2004-1, OHIM First Board of Appeal, 4 June 2009) at [53] and *Campbell v Hughes* [2011] RPC 21 at [36].

138. Eighthly, consideration must be given to the applicant's intention. As the CJEU stated in *Lindt v Hauswirth*:

"41. ... in order to determine whether there was bad faith, consideration must also be given to the applicant's intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant's intention at the relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 48)."

16) The date of the application 14 November 2014 is the relevant date. FA claims that the mark in suit was designed for him by a designer. However, it is clear that the mark in suit is not a design it is a photograph. More importantly it is a photograph of RGG's restaurant in Istanbul. This restaurant opened in 2013 and the photograph at exhibit CK2 is identical to the mark in suit (see annex 1). FA has clearly appropriated RGG's trade mark. Even

though RGG has not shown goodwill in the UK, in terms of sales it has shown that its restaurants are known in the UK and that plans to open a London branch were publicised. I believe that the actions of FA are such that it is clear that the mark was filed in bad faith, either to attract the Turkish community in the UK who would know of the reputation of RGG or possibly in an attempt to prevent RGG expanding its operation into the UK. **The invalidity action under section 3(6) therefore succeeds in full.**

17) I next turn to the second ground of invalidity under section 5(4)(b) of the Act which reads:

“5(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)

(b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.

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.”

18) In order for copyright to subsist in an artistic work it must be “original” - Section 1 of the Copyright, Designs and Patents Act 1988 (CDP). In *Bookmakers Afternoon Greyhound Servicers v. Wilf Gilbert (Staffs) Limited* [1994] FSR 723, Mr Justice Aldous (as he then was) said that:

“It is settled law that the word “original” does not require original or inventive thought but only that the work should not be copied and should originate from the author.”

19) FA has not disputed RGG’s claim that the sign on the restaurant in Istanbul was originally created by Yesim Demir, a Turkish designer, and assigned to RGG in 2013. I note that Section 4 of the CDP includes within the definition of “artistic work” a “graphical work.....irrespective of artistic quality”. I conclude that this artistic work (the word HUQQA, its styling and presentation) is capable of copyright protection in the UK.

20) However, Section 153 of the Copyright, Design and Patents Act 1988 sets out certain qualification requirements relating to the author of the work (Section 154), or the country of first publication (Section 155) which must be satisfied before any copyright can subsist. Section 153 reads as follows:

“153. - (1) Copyright does not subsist in a work unless the qualification requirements of this Chapter are satisfied as regards –

(a) the author (see section 154), or

(b) the country in which the work was first published (see section 155), or

(c) in the case of a broadcast or cable programme, the country from which the broadcast was made or the cable programme was sent (see section 156).

(2) Subsection (1) does not apply in relation to Crown copyright or Parliamentary copyright (see sections 163 to 166) or to copyright subsisting by virtue of section 168 (copyright of certain international organisations).

(3) If the qualification requirements of this Chapter or section 163, 165 or 168, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.”

21) Clearly subsections 1(c) and 2 are not applicable in this case. Sections 154 and 155 read as follows:

“154. - (1) A work qualifies for copyright protection if the author was at the material time a qualifying person, that is -

(a) a British citizen, a British Dependent Territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person within the meaning of the [1981 c.61.] British Nationality Act 1981, or

(b) an individual domiciled or resident in the United Kingdom or another country to which the relevant provisions of this Part extend, or

(c) a body incorporated under the law of a part of the United Kingdom or of another country to which the relevant provisions of this Part extend.

(2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), a work also qualifies for copyright protection if at the material time the author was a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which the Order relates.

(3) A work of joint ownership qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1) or (2); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of –

section 11(1) and (2) (first ownership of copyright; entitlement of author or author’s employer),

section 12(1) and (2) (duration of copyright; dependent on life of author unless work of unknown authorship), and

section 9(4) (meaning of “unknown authorship” so far as it applies for the purposes of section 12(2)), and

section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).

(4) The material time in relation to a literary, dramatic, musical or artistic work is -

(a) in the case of an unpublished work, when the work was made or, if

the making of the work extended over a period, a substantial part of 17 that period;

(b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(5) The material time in relation to other descriptions of work is as follows –

(a) in the case of a sound recording or film, when it was made;

(b) in the case of a broadcast, when the broadcast was made;

(c) in the case of a cable programme, when the programme was included in a cable programme service;

(d) in the case of the typographical arrangement of a published edition, when the edition was first published.

155. - (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it is first published -

(a) in the United Kingdom, or

(b) in another country to which the relevant provisions of this Part extend.

(2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), such a work also qualifies for copyright protection if it is first published in a country to which the Order relates.

(3) For the purposes of this section, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous 30 days shall be treated as simultaneous.”

22) These Provisions of the Copyright, Designs and Patents Act 1988 were amended by the Copyright (Application to Other Countries) Order 1999 (S.I. 1999 No.1751) which extended aspects of the protection granted by the 1988 Act to countries party to specified international conventions and agreements, that are part of the European Community or considered to have adequate legislation. The extension is subject to certain provisions set out in paragraph 2(2) of the Order. The relevant paragraphs read as follows:

“2. - (1) In relation to literary, dramatic, musical and artistic works, films and the typographical arrangements of published editions, sections 153,154 and 155 of the Act (qualification for copyright protection) apply in relation to-

(a) persons who are citizens or subjects of a country specified in Schedule 1 to this Order or are domiciled or resident in the United Kingdom;

(b) bodies incorporated under the law of such a country as they apply in

relation to bodies incorporated under the law of a part of the United Kingdom; and

(c) works first published in such a country as they apply in relation to works first published in the United Kingdom; but subject to paragraph (2) and article 5 below.

(2) Copyright does not subsist-

(a) in a literary, dramatic, musical or artistic work by virtue of section 154 of the Act as applied by paragraph (1) above (qualification by reference to author) if it was first published-

(i) before 1st June 1957 (commencement of Copyright Act 1956 [2]); or

(ii) before 1st August 1989 (commencement of Part 1 of the Act) and at the material time (as defined in section 154(4)(b) of the Act) the author was not a relevant person; or

(b) in any work by virtue of paragraph (1) above if-

(i) a date is, or dates are, specified in Schedule 1 to this Order in respect of the only country or countries relevant to the work for the purposes of paragraph (1) above, and

(ii) the work was first published before that date or (as the case may be) the earliest of those dates;

and for the purposes of sub-paragraph (a)(ii) of this paragraph, a “relevant person” is a Commonwealth citizen, a British protected person, a citizen or subject of any country specified in Schedule 1 to this Order, or a person resident or domiciled in the United Kingdom, another country to which the relevant provisions of Part 1 of the Act extend or (subject to article 5 below) a country specified in Schedule 1 to this Order.”

23) It is clear from the evidence that the author of the work Yesim Demir and the design company Demir Tasarim are both located in Turkey and were acting for RGG a company registered and active in Turkey. The evidence also confirms that the author is and was domiciled in Turkey and was also a citizen of this country at the time of the design being conceived. It is also clear that the work was originated in Turkey. Turkey is named in the schedule to the Copyright and Performances (Application to Other Countries) Order 2012.

24) The question I must therefore consider is whether FA's use of its mark would infringe RGG's copyright. The correct approach to the determination of copyright infringement is well established and was set out in *Designers Guild Ltd v. Russell Williams (Textiles) Ltd* [2001] FSR 113 at 124 where Lord Hope of Craighead stated:

“The first step in an action for infringement of artistic copyright is to identify those features of the defendant's design which the plaintiff alleges have been copied from the copyright work. The court undertakes a visual comparison of the two designs,

noting the similarities and the differences. The purpose of the examination is not to see whether the overall appearance of the two designs is similar, but to judge whether the particular similarities relied upon are sufficiently close, numerous or extensive to be more likely the result of copying than of coincidence. It is at this stage that similarities may be disregarded because they are commonplace, unoriginal, or consist of general ideas. If the plaintiff demonstrates sufficient similarity, not in the works as a whole but in the features which he alleges have been copied, and establishes that the defendant had prior access to the copyright work, the burden passes to the defendant to satisfy the judge that, despite the similarities, they did not result from copying.”

25) In that case the claim of copyright infringement related to only part of the defendant's overall design, and it is in this context that Lord Hope stated that the purpose of the enquiry is not to see whether there is similarity as a whole but in the features alleged to have been copied. In the instant case the design of the word HUQQA produced for RGG was turned into a sign which was placed upon the exterior of its restaurant in Istanbul. The sign applied for by FA is clearly a photograph of this exterior sign and indeed includes part of the building and even the bushes outside the restaurant. There can be no doubt that the design of the word HUQQA produced for RGG is included in the mark applied for and therefore the copyright of RGG has been infringed. **The ground of invalidity under section 5(4)(b) therefore succeeds.**

Conclusion

26) RGG has been successful under both grounds of its invalidity. Trade mark 3067712 will be deemed to have never been registered. As such FA does not have an earlier trade mark to rely upon in its opposition which is based on sections 5(1), 5(2)(a) and 5(2)(b) all of which require the opponent to have an earlier right. The opposition must therefore fail.

COSTS

27) RGG succeeded in its invalidity action and has defeated the opposition by FA. Therefore, RGG is entitled to a contribution towards its costs. RGG sought costs off the scale. They were given a week from the hearing to submit their costs schedule and FA was provided with the opportunity to reply. Having received submissions from both parties I can now comment on the costs award. The position on costs was set out by the Hearing Officer in BL O- 140-15 where he stated:

“5. The registrar's authority to award costs is based on s.68 of the Act and Rule 67 of the Trade Mark Rules 2008.

“Costs of proceedings; section 68

67. The registrar may, in any proceedings under the Act or these Rules, by order award to any party such costs as the registrar may consider reasonable, and direct how and by what parties they are to be paid.”

The Registrar normally awards costs on a contribution basis within the limits set out in the published scale. The latest version of the scale is included in Tribunal Practice Notice 4/2007. However, as this Notice indicates, the Registrar has the power to award reasonable costs on a different basis where the circumstances

justify it. The courts have long recognised this: see *Rizla Ltd's Application* [1993] RPC 365. The Practice Notice recognises that unreasonable behaviour may justify costs on a compensatory basis. The Appointed Person follows a similar approach and sometimes awards costs on a compensatory basis: see, for example, *Ian Adams Trade Mark* BL-O-147-11.”

28) RGG referred me to the comments of the Hearing Officer in this case

“7. A losing party should not be considered to have acted unreasonably simply because it lost. That general proposition is less true when it comes to findings that a party registered a mark in bad faith because such a finding necessarily means that the party should have realised that what it was doing was wrong, even if it did not do so. Nevertheless, there are degrees of behaviour which constitute bad faith ranging from outright dishonesty to behaviour which, although not dishonest, falls below the standards of acceptable commercial behaviour observed by reasonable people in the relevant field of activity. It does not therefore follow that a finding of bad faith automatically justifies an award of costs off the usual scale.

8. However, in my view, the initial behaviour of AB UK in this case, which led to the finding of bad faith, was compounded by its efforts to cover up its bad faith with denials and stories concocted in order to give credence to its denials and shift any blame onto third parties. This put Babaker to significant additional cost. This was unreasonable behaviour and I am therefore prepared to order AB UK to pay Babaker costs off the usual scale equivalent to its full reasonable costs.”

29) In the instant case FA filed a photograph of the outside of RGG’s restaurant as his trade mark. He claimed that it had been created for him by a designer, and also that he was unaware of the restaurant and claimed that he had never been to Istanbul where the restaurant is located. Clearly, these statements were false. By maintaining this stance he caused considerable work for RGG and its legal advisors and therefore using the logic outlined at paragraph 28 above I am prepared to order costs off the usual scale.

30) J.A. Kemp have provided a detailed breakdown of the costs incurred, which amount to £18,574 including official fees. The charges do not appear to be excessive and work would appear to have been carried out at the appropriate level. I take into account the need to obtain statements from third parties in order to corroborate the copyright claim.

31) I order Ferhat Anush to pay the sum of £18,574 to Renovest Gayrimenkul Gelistirme Restorasyon Sanayi Ve Ticaret Anonim Sirketi. This sum to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 15th day of April 2016

**G W Salthouse
For the Registrar
the Comptroller-General**

ANNEX 1

