

O-488-16

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO 3 084 505 IN THE
NAME OF YODAN TROPHY LIMITED TO REGISTER THE TRADE MARK



IN CLASS 41

AND

IN THE MATTER OF OPPOSITION THERETO BY HALLAM FOOTBALL CLUB

Background and pleadings

1. Youdan Trophy Limited applied to register trade mark No 3 084 505



in the UK on 04/12/2014. It was accepted and published in the Trade Marks Journal on 19/12/2014 in respect of the following services in Class 41: *Organization of soccer games.*

2. Hallam Football Club (“the opponent”, hereafter referred to as Hallam FC) oppose 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 its alleged earlier rights in THE YOU DAN CUP. It claims to have been selling goods and/or providing services under this sign since 1867 and has acquired goodwill. Use of the trade mark applied for would therefore be a misrepresentation to the public and result in damage to the aforementioned goodwill. The opponent also opposes on the basis of Section 3(6) of the Act and alleges that the applicant was aware of the earlier rights in the YOU DAN CUP and as such, its application has been made in bad faith.
3. The applicant filed a counterstatement denying the claims made. Specifically, the applicant denies that the opponent has any legitimate reason to claim intellectual property and or any other lawful reason to challenge the registration of “YOU DAN TROPHY”.
4. Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary.
5. A Hearing took place on 27th July 2016, with the opponent represented by Dr Scott Loveluck of the IP Sub-Committee of Hallam FC and the applicant by Mr Ashley Roughton of Counsel, instructed by Nabarro LLP.
6. The ground of opposition based upon Section 5(4)(a) will be considered first.

Legislation

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

“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, or

(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.”

Evidence

8. I do not intend to summarise the evidence in full. This is due to the scatter gun approach that has been adopted by both parties (and the opponent in particular). There is also a huge amount of repetition. The result being a confusing mix of the relevant and irrelevant. Rather, this section will outline any information considered to be directly relevant to the issues in hand together with any other material which I consider requires comment for the sake of completeness.

Opponent's evidence in chief

Historical Background

9. In essence, the opposition is brought by Hallam Football Club on the following basis:

- It is the oldest football club in the world;
- It is the (only) winner of the oldest football cup in the world;
- This football cup is called THE YOUDAN CUP;
- The name of the cup is derived from the organiser (and sponsor) of the tournament, a local man named Thomas Youdan;
- The opponent is the owner of goodwill in the name THE YOUDAN CUP as a result of the foregoing.

10. The opponent has filed a number of witness statements. These have all been perused and considered and the following is a summary of the key points contained therein:

Witness statements of Dr Scott Loveluck

11. The first witness statement, dated 22nd October 2015 contains a large amount of submissions which will not be summarised here but have been taken into account in reaching this decision. It also contains a number of allegations against the behaviour of the applicant (and its associates). In effect, the content of the witness statement can be summed up as follows:

- Dr Loveluck makes a number of allegations regarding the behaviour of the applicant in respect of interviews carried out at Bramall Lane (where the YOUDAN CUP is currently displayed). This is referred to as trespass by Dr Loveluck. There is in evidence an interview with Dr Glyn Youdan, the great nephew of the aforementioned Thomas Youdan. Dr Loveluck is of the opinion

that this demonstrates the bad faith of the applicant as, according to him, the interviews were conducted only to undermine the opposition and to (falsely) indicate a link between the current tournaments and the original. It is unclear as to why Dr Loveluck holds this view as on perusal of the video, I note that Hallam FC are clearly named as the winner of THE YOUDAN CUP and the activities of the applicant are described as a re-enactment of the original tournament. I cannot accept that the video and interview aimed to use Hallam FCs position (as alleged by Dr Loveluck) as regards the trophy against it. In fact the content of the interview wholly acknowledges Hallam FC's place in history and is in no way presented in a manner leading to the belief that the applicant is attempting to engender an advantageous association with it and Hallam FC. I will return to this point later below.

- Dr Loveluck refers to a number of exhibits which he purports demonstrate the opponent's unregistered rights in THE YOUDAN CUP. These include Wikipedia entries, newspaper articles and so-called examples of confusion from the public, though it is unclear as to what they are confused about. It is noted that in respect of the former, these all, without exception, link Hallam FC to THE YOUDAN CUP in terms of its history and the fact that it was the first (and only) winner of the trophy. In respect of the latter, it is noted that there are no witness statements from any of the people allegedly confused. Further, it is difficult to place any of these incidents into context due to the lack of detail provided. Finally, as Dr Loveluck himself accepts, members of the public may be aware of the dispute the subject of these proceedings and so in the light of any further detail, it has not been possible to distinguish which of these are confused and which are merely aware of the dispute.
- Dr Loveluck makes much of two pieces of evidence which he claims demonstrate goodwill: one is a copy of a season ticket from the late 1980s which includes on its cover information regarding Hallam FC being the first winners of THE YOUDAN CUP; the second is an entry in the Guinness Book of Records which corroborates that the opponent won the first (and only) YOUDAN CUP. Dr Loveluck claims that this demonstrates goodwill in respect of Class 16 (printed matter) and Class 41 (educational and cultural events). I

consider that this merely demonstrates the club's history and the fact that it was the first (and only) winner of this trophy.

- Dr Loveluck explains that THE YOUDAN CUP is currently on loan to Sheffield United as part of its museum at its ground, Bramall Lane which the public pay to access. Dr Loveluck claims that this means that is evidence of Class 41 services being provided by Sheffield United on licence from the opponent. There is nothing in evidence regarding any licensing arrangements between the two clubs. Even if there was, it is clear that THE YOUDAN CUP is included as part of a historical exhibition (and because the final was played at Bramall Lane) within which Hallam FC are acknowledged as the first (and only) winner of the tournament rather than as part of a trade under the name YOUDAN CUP that can acquire goodwill.
- In support of his assertion that the Youdan Cup is known globally, Dr Loveluck includes in evidence details of a trip undertaken by the North Korean football team of 1966 to Sheffield in 2010. This includes a photograph of members of this team holding the Youdan cup. At best, it may demonstrate goodwill attaching to Hallam FC. Wikipedia entries in other languages are also included in evidence, no translations are included, but it is clear that the information is the same as that in English: that Hallam FC won this trophy in 1867.
- There is also a Hallam FC brochure in evidence. This is dated 2010 and around 10,000 copies were produced. It is noted that Hallam FC is the "name" used throughout the publication. The same applies to hoardings in evidence. It is noted that a photo of the Youdan Cup (the actual trophy presented) is included and that Hallam won it, but the only "name" mentioned is Hallam FC, not Youdan. This is also undated.

Witness statement of Chris Taylor

12. Mr Taylor is the Vice-Chairman of Hallam FC, His witness statement is dated 20th October 2015. He makes mention of archives containing what he says are vast amounts of information regarding goodwill in respect of THE

YOU DAN CUP. He also makes several references to gaining directions from the Tribunal regarding particular items of evidence. It should be noted that during the proceedings, several Case Management Conferences occurred with a number of directions issued. It was made clear to the opponent on more than one occasion that although specific directions on evidence can be issued by the Tribunal, it was not for the Tribunal to prosecute a case on behalf of a party. This issue was therefore resolved prior to this witness statement being drafted, agreed and signed. It has been a feature of the opponent's conduct throughout these proceedings to be unable to accept the resolution of particular procedural issues. Rather, it has regularly sought to pursue the same arguments and points, to the detriment of the real issues. To sum up Mr Taylor's witness statement: there is, according to him, lots of evidence of goodwill in the archives which has not been forthcoming and which has not been filed. I am therefore unable to consider it.

Witness statement of Stephen Basford

13. There is a witness statement from Mr Basford, dated 20th October 2015. Mr Basford is the Chairman of Hallam FC. Mr Basford repeats the history of the Club and exhibits the season ticket and Guinness Book of Records entry already described. Again, the witness statement contains requests for directions from the Tribunal as regards evidence despite the Tribunal having advised the opponent described above. Confidential evidence is mentioned in the witness statement, but no request for confidentiality was received during the proceedings and so the Tribunal was unable to issue directions on this point.

Applicant's evidence

14. This is comprised of a witness statement from Mr Jock Waugh, a Director of the applicant. This statement will not be summarised in full as it contains repetition as to the history of Hallam FC or otherwise contains submissions and/or information which is not relevant. It is noted that in response to an allegation that Mr Glyn Youdan was duped into giving an interview regarding

the Youdan family, Mr Waugh exhibits an email exchange between himself and Mr Youdan, which according to Mr Waugh, demonstrates that there was no attempt to manipulate Mr Youdan. I will return to this point further below.

Opponent's evidence in reply

15. It is noted that the evidence filed was additional evidence (as opposed to reply evidence) intended to support the opponent's initial case and presumably was an attempt to close the gap left by the first set of evidence filed. At a further Case Management Conference on 5th April 2016, and in the interests of fairness, proportionality and in an attempt to avoid a multiplicity of proceedings, I allowed the evidence to be admitted into proceedings, whilst also allowing the applicant a further (and final) period in which to reply.

16. The further evidence from the opponent contained four witness statements:

Witness statement of Phil Farnsworth

17. Mr Farnsworth is the former Treasurer of Hallam FC and also provides lectures regarding the club. Much of his witness statement, dated 28th February 2016, is repetitive as regards the history of the club and THE YOU DAN CUP. In respect of lectures Mr Farnsworth has provided and his involvement in television broadcasts, these appear to be in respect of the history of the club and THE YOU DAN CUP. Exhibit PF-01 contains a review of one of his talks from a local newsletter, dated June 2014. This publication describes the talks provided and that they include a history of the rules of the game (and how they have changed) and also the Youdan Cup. Mr Farnsworth explains that any visitor to the Club's "1860" suite cannot fail to notice a large photograph of the YOU DAN CUP and the same applies to those attending to watch a football match. It is noted that this does not however, allow this Tribunal to gauge its impact. Details of bookings of the 1860 suite are provided, though again, the impact of this is unclear. Mr Farnsworth

concludes by stating that the opponent has made use of the YOU DAN CUP for at least as long as he remembers.

Witness statement of Dave Atkins

18. Dave Atkins is a designer who designed the Hallam FC badge, recreating the original so that it could be reproduced to a higher standard. He describes the trade mark applied for appearing on his Facebook page and thinking to himself that the applicant was not who he was purporting to be. It is noted that this Facebook entry is not attached to Mr Atkins witness statement so I am unable to assess it. I will return to this point later in the decision. Mr Atkins ends his statement by saying that a) the YOU DAN CUP is widely known in relation to Hallam FC and b) that the tournament director of the new YOU DAN TROPHY participated in the creation of the Hallam FC badge (Mr James Hope-Gill). As such, he is fully aware of the history of the original Youdan tournament.

Witness statement of Jane Basford

19. Ms Basford explains that she is the bookings manager of the 1860 suite at Hallam FC's football ground. Numbers of bookings and guests are provided. She corroborates Mr Farnsworth's description of a large photograph of the Youdan Cup on the wall of the suite, which many visitors have photographs taken in front of. The certificates from the Guinness Book of Records are also displayed. Exhibit JB-02 is an advertisement from the opponent's website for a talk provided by Phil Farnsworth regarding the history of the club and the Youdan Cup. It is noted that the entry describes how Hallam FC will be opening its gates to talk about its history, including Thomas Youdan etc.

Second witness statement of Scott Loveluck

20. Though the entire content of this witness statement has been perused and considered, much of it is not summarised as it is not directly relevant to the

issues in hand in these proceedings. This has been a feature of the evidence filed by the opponent in these proceedings. For example, Dr Loveluck alleges that the applicant does not intend to make use of the trade mark applied for. This is based on another trade mark which is in use which “differs” from that applied for. However, this does not of itself mean that the applicant will not also make use of the trade mark applied for.

21. Dr Loveluck asserts that the applicant and all those associated with it knew of the opponent’s “reputation” in the Youdan “marks”. Further, he exhibits a number of printouts from the applicant’s Twitter page which in his view demonstrate the applicant’s attempts at leading the public to believe that its offerings are connected to the opponent. He also describes a previous situation where the applicant was the licensee of a third party in respect of another trade mark (a figurative YOU ARE THE REF). Here, the applicant’s parent company applied for the trade mark in its own name, rather than in the name of the third party proprietor. This was subsequently assigned to the third party following intervention from Dr Loveluck himself. I will return to this later in the decision. Dr Loveluck confirms that the YOUDAN CUP is on loan to Sheffield United in its museum and has been for the last 14 years. In his view this demonstrates goodwill in Classes 14 and 41. Dr Loveluck makes much of an alleged copyright infringement by the applicant in respect of Hallam FC’s badge and use of an image of Thomas Youdan. These are included as evidence of bad faith on the part of the applicant. Dr Loveluck also refers to the interview given by Mr Glyn Youdan (see below) which, according to Dr Loveluck has been edited to show Mr Youdan’s support for the tournament.

Witness statement of Glyn Youdan

22. Mr Youdan explains that he is a descendant of Thomas Youdan, the organiser of the original Youdan tournament. He describes an interview he gave with the applicant’s parent company, after having first been contacted by them in March 2015. It is noted that this initial contact is a full year after the relevant date in these proceedings, which is 4th April 2014.

Applicant's evidence

23. This is a further witness statement from Jock Waugh. Mr Waugh argues that much of the evidence filed by the opponent is not relevant, is vague or simply that he cannot understand it. As such, he has no comment to make. In respect of Dr Loveluck's evidence, Mr Waugh refutes any allegation of dishonesty. In respect of Mr Youdan's evidence, Mr Waugh has little to add, except to say that in relying on (already mentioned) email exchanges between himself and Mr Youdan, he does not feel that he has acted in bad faith.

DECISION

General principles of passing off

24. Before assessing the evidence of the opponent, it is helpful to set out both the general principles of passing off and, crucially, what is meant by "goodwill". As such, I bear in mind the following guidance:

25. Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165 provides the following analysis of the law of passing off. The analysis is based on guidance given in the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731. It is (with footnotes omitted) as follows:

“The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

- (1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and
- (3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute an exhaustive, literal definition of passing off, and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House.”

26. Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

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

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

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

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

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

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances."

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

27. Specifically in respect of goodwill, the following is taken into account:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.” (Inland Revenue Commissioners v Muller & Co’s Margarine Ltd [1901] AC 217 (HOL):

Analysis of opponent’s evidence

28. The opponent’s evidence has contained a number of red herrings and its scatter gun approach is to its detriment in prosecuting its claim under passing off law. Following a thorough review of the evidence and the numerous exhibits, I can conclude as follows:

29. It is accepted that the opponent, Hallam FC has a place in English football history. Notably, it is accepted that an important part of its history is in respect of its victory in the final of the Youdan Cup in 1867. To this extent, it is clear that the name of Hallam FC will always be associated with the Youdan Cup. It is also accepted that Hallam FC celebrate this heritage in the way of informative talks, enabling the public to learn about its history, which the victory in the final of the Youdan Cup is part of.

30. As regards goodwill, it is noted that it is a force associated in connection with a business. Hallam FC clearly has a goodwill in terms of the operation of a football club. However, the attractive force that brings in custom is the name Hallam FC. The Youdan Cup is not used as part of the attractive force to bring in custom but merely reflects a historical fact that the club was the first and only winner of the cup. I am not persuaded that consumers on seeing a

football tournament run under the name YODAN TROPHY would believe that the operation had anything to do with Hallam FC, even if they were aware of the historical fact. . The activities undertaken by Hallam FC are not therefore a definable trade offered under the name of the Youdan Cup. Rather, they are those which form a secondary part of its core business (i.e. playing competitive football) and the Youdan cup forms part of the historical content of these offerings, based on the historical event. There is no evidence that this historical event has acquired a distinct identity of its own in a manner in which goodwill can attach. Further, any “goodwill” associated with any of these activities would clearly attach to the name Hallam FC itself. The basis of the opposition in so far as it is based upon Section 5(4)(a) therefore fails.

Section 3(6) – Bad Faith

Legislation

31. Section 3(6) of the Act states:

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

32. 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 Plasticulture 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)."

33. The opponent has presented numerous pieces of evidence and arguments to support its claim. These will be commented upon in turn:

34. Mr Atkins' evidence alleges that the applicant breached its copyright in using the Hallam FC badge. It is noted that the use of the badge is for the purpose of acknowledging Hallam FC as the winner of the original Youdan trophy. Whether or not this is copyright infringement is outside of the scope of these proceedings and so I make no further comment on it. It certainly has no bearing on these proceedings.

35. Dr Loveluck has introduced many pieces of evidence showing that the applicant and particular figures associated with it were aware of Hallam FC winning the original Youdan tournament. This is the core of its claim under Section 3(6). This is not in dispute and I accept that the applicant, when it applied for the trade mark in question, was aware of this accepted fact. This does not influence any finding under bad faith as the fact that Hallam FC won the original trophy does not mean that it had protectable intellectual property rights in the name.

36. Dr Loveluck has made the Tribunal aware of an assignment situation between the applicant's parent company and a third party as already described above. There is no witness statement from the third party involved and so I am unclear as to the exact circumstances surrounding these events.

37. Dr Loveluck seeks to make much of actions by the applicant following the filing of the opposition in these proceedings. These include a number of promotional activities, such as interviews, hoardings and trivia on the applicant's Twitter feed. The opponent's view of these activities is that they all seek to capitalise on the opponent's "goodwill" and reputation surrounding the Youdan Cup by linking its activities with them. On perusal of the evidence in this regard, I can find only that the applicant consistently (and appropriately) acknowledge Hallam FC's place in the history of English football and in no way sought to misrepresent that, to align itself with it or to capitalise upon it. It was clearly informative in nature. They also consistently refer to a resurrection of the original trophy in order to celebrate the rich heritage of the City of Sheffield in respect of English football. Finally, all of the activities mentioned are those one would expect any company to undertake in order to promote its business. I do not therefore agree with the opponent's position on this.

38. Dr Loveluck also alleges that the applicant manipulated Mr Glyn Youdan in taking part in various activities, including an aforementioned interview. I cannot accept this contention. The applicant spoke to Mr Youdan regarding his heritage and at all times appear to fully acknowledge both the Youdan name and Hallam FC in respect of their historical victory. I cannot see how this helps the opponent in these proceedings.

CONCLUSION ON BAD FAITH

39. Bearing in mind all of the aforesaid, I cannot agree with the opponent that there is bad faith on the part of the applicant. This ground of opposition therefore also fails.

Final remarks

40. It is noted that many of the allegations made by the opponent went unanswered by the applicant. It is often the case that the Tribunal would reasonably expect answers to allegations made. However, in these proceedings, the opponent's approach to the prosecution of its case was such that it was extremely difficult for every allegation to be responded to. Further, the applicant indicated that certain aspects of the opponent's evidence was unclear and that it was therefore unsure how to respond. Finally the evidence relied upon by the opponent did not raise a prima facie case to answer in respect of bad faith. So, nothing turns on the absence of responses to particular questions on the part of the applicant.

COSTS

41. In these proceedings, the applicant has asked for an award of costs off the normal scale. This is as a result of, what it alleges, is the unreasonable behaviour of the opponent in terms of causing delays and generally behaving in its view, unprofessionally. In response, the opponent filed lengthy submissions disputing this and arguing that some of the delays were outside of its control and asserting that it did, at all times, strive to conclude these proceedings as quickly as possible.

42. I am of the view that the opponent has, at times, been awkward, though at least some of this is likely to be attributable to a lack of knowledge of the Tribunal process. Further, the applicant, at times, was also drawn into conflict over irrelevant issues, when it could have chosen to stay silent at no detriment to it. I therefore decline to award costs off the scale. Rather, I have considered all matters in the round and will utilise the scale of costs.

43. The applicant has been successful and is entitled to a contribution towards its costs. In the circumstances I award the applicant the sum of £3000 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering notice of opposition and accompanying statement - £200

Statement of case in reply - £300

Preparing and filing evidence - £750

Considering further evidence - £750

Preparing for and attending a hearing - £1000

TOTAL - £3000

44. I therefore order Hallam Football Club to pay Youdan Trophy Limited the sum of £3000. The above sum should 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 19th day of October 2016

Louise White

For the Registrar