

O/872/21

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK 00003454406

IN THE NAME

OF

ANNE MARIE MURGATROYD

FOR THE FOLLOWING SERIES OF TWO TRADE MARKS

Skeletal Family

SKELETAL FAMILY

IN CLASS 41

AND IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF

INVALIDITY THERETO UNDER NO. 503329

BY

ROGER NOWELL

Background and Pleadings

1. Anne Marie Murgatroyd, formerly Hurst (“the Proprietor”) is the registered proprietor of UK trade mark no.3454406 (series of two) for the trade mark Skeletal Family/SKELETAL FAMILY (“the contested mark”). The contested mark was filed on 28 December 2019 and achieved registration on 14 August 2020. It stands registered for the following services in class 41:

Class 41: Musical group entertainment services; Musical performance services; Musical performances; Music-hall services; Motion picture film production; Motion picture production; Motion picture song production; Music composition services; Music concert services; Music concerts; Music entertainment services; Music festival services; Music group services; Music performance services; Music performances; Music production; Music publishing; Music publishing and music recording services; Music recording; Musical entertainment; Musical entertainment services; Musical events (Arranging of -); Performance of dance, music and drama; Performance of films; Performance of music; Performance of music and singing; Performance of musical programmes; Performance of radio programmes; Performances (Presentation of live -); Performing of music and singing; Pop music concerts (Organisation of -); Popular entertainment services; Presentation of concerts; Presentation of live entertainment events; Presentation of live entertainment performances; Presentation of live performances; Presentation of live performances by a musical group; Presentation of live performances by musical bands; Presentation of live performances by rock groups; Presentation of live show performances; Presentation of music concerts; Presentation of musical concerts; Presentation of musical performance; Presentation of musical performances; Presentation of radio programmes; Production of audio entertainment; Production of audio master recordings; Production of audio recordings; Production of audio tapes for entertainment purposes; Production of audio/visual presentations; Production of audiovisual recordings; Production of audio-visual recordings; Production of entertainment in the form of sound recordings; Production of entertainment in the form of

video tapes; Production of entertainment shows featuring singers; Production of live entertainment; Production of live entertainment events; Production of live performances; Production of live shows; Production of music; Production of music concerts; Production of music shows; Production of musical recordings; Production of musical videos; Production of musical works in a recording studio; Production of sound and image recordings on sound and image carriers; Production of sound and music recordings; Production of sound and video recordings; Production of sound recordings; Production of stage performances; Production of stage shows; Production of video recordings; Production of video tapes and video discs; Providing a computer game that may be accessed network-wide by network users; Providing digital music from mp3 internet web sites; Providing digital music from the internet; Providing digital music [not downloadable] for mp3 internet web sites; Providing digital music [not downloadable] for the internet; Providing digital music [not downloadable] from MP3 internet web sites; Providing digital music [not downloadable] from MP3 internet websites; Providing digital music [not downloadable] from the internet; Providing digital sound recordings, not downloadable, from the internet; Providing information in the field of entertainment; Providing information in the field of entertainment by means of a global computer network; Providing information in the field of music; Providing information on entertainment through computer networks; Providing video entertainment via a website; Provision of entertainment; Provision of facilities for live band performances; Provision of live entertainment; Provision of live music; Provision of live musical performances; Provision of live shows; Publishing of music; Publishing of musical works; Publication of lyrics of songs in book form; Publication of lyrics of songs in sheet form; Publication of material which can be accessed from databases or from the internet; Publication of music; Publication of musical texts; Band performances (Live -); Booking of entertainment; Booking of performing artists for events (services of a promoter); Arranging and conducting of concerts; Arranging and conducting of entertainment activities; Arranging and conducting of entertainment events; Arranging and

conducting of entertainment events for charitable fundraising purposes; Arranging and conducting of entertainment events for charitable purposes; Arranging and conducting of live entertainment events; Arranging and conducting of live entertainment events for charitable purposes; Arranging and conducting of music concerts; Arranging of concerts; Arranging of entertainment shows; Arranging of festivals for entertainment purposes; Arranging of music performances; Arranging of music shows; Arranging of musical entertainment; Arranging of musical events; Arranging of visual and musical entertainment; Arranging of visual entertainment; Artistic management of musical shows; Artistic management of performing artists; Artistic management of theatre shows; Artistic management of theatres; Audio and video editing services; Audio and video production, and photography; Audio and video recording services; Audio entertainment services; Audio, film, video and television recording services; Audio production; Audio production services; Audio recording and production; Audio recording and production services; Club entertainment services; Club services [entertainment]; Club services [entertainment or education]; Composition of music for others; Concert booking; Concert booking services; Concert services; Corporate entertainment services; Corporate hospitality (entertainment); Cruise ship entertainment services; Conducting of concerts (Arranging and -); Conducting of entertainment activities; Conducting of entertainment events; Conducting of live entertainment events; Conducting of performing arts entertainment; Conducting of performing arts festivals; Dance hall services; Disc jockey services; Disc jockey services for parties and special events; Disc jockeys for parties and special events; Editing or recording of sounds and images; Festivals (Organisation of -) for entertainment purposes; Holiday camp services [entertainment]; Holiday centre entertainment services; Live band performance services; Live band performances; Live entertainment; Live entertainment production services; Live entertainment services; Live music concerts; Live music performances; Live music services; Live music shows; Live musical concerts; Live musical performances; Live performance services; Live performances

by a musical band; Live performances by a musical bands; Live performances by rock groups; Live performances (Presentation of -); Live show production services; Live stage shows; Night club services [entertainment]; Nightclub services [entertainment]; On-line entertainment; Online entertainment services; Organisation of concerts; Organisation of entertainment and cultural events; Organisation of entertainment events; Organisation of entertainment services; Organisation of festivals; Organisation of live musical performances; Organisation of live performances; Organisation of live shows; Organisation of music concerts; Organisation of musical concerts; Organisation of musical entertainment; Organisation of musical events; Organisation of musical performances; Organisation of stage shows; Organising events for entertainment purposes; Organising of entertainment; Organising of festivals; Organising of shows for entertainment purposes; Organising of stage shows; Organization of shows; Radio and television entertainment; Radio and television entertainment services; Radio entertainment; Radio entertainment services; Record mastering; Record masters (Production of -); Recording, film, video and television studio services; Recording of music; Recording services; Recording studio services; Rendering of musical entertainment by instrumental groups; Rendering of musical entertainment by vocal groups; Rental of phonographic and music recordings; Rental of pre-recorded films in the form of video tapes; Rental of recorded entertainment; Rental of sound and video recordings; Rental of sound recordings; Services of a disk jockey; Services providing entertainment in the form of live musical performances; Show production services; Shows and films production; Shows (Production of -); Singing concert services; Song publishing; Song writing services; Songwriting; Songwriting services for non-advertising purposes; Sound engineering services for events; Sound recording and video entertainment services; Sound recording services; Television and radio entertainment; Television and radio entertainment services; Television entertainment; Television entertainment services; Television, radio and film production; Theater performances; Theater production; Theater production services;

Theater productions; Theatre entertainment; Theatre performances; Theatre production; Theatre production services; Theatre productions; Theatre services; Theatrical performances; Theatrical performances, music performances; Theatrical production services; Theatrical shows provided at performance venues; Tv entertainment services; Video and DVD film production; Video entertainment services; Video film production; Video production; Video production services; Video recording services; Video recordings [not downloadable] provided from the internet; Videotape film production; Videotape production; Videotaping.

2. On 15 September 2020, Roger Nowell (“the Applicant”) applied to invalidate the contested mark under section 47 and section 3(6) of the Trade Marks Act 1994 (“the Act”). In his pleadings the Applicant claims that registering the contested mark was in bad faith and “is a seemingly vindictive action [which has been taken] to deprive us of obtaining future bookings and also our main source of income from merchandise and recording media under our well known current established recording/performing band name Skeletal Family.” By bringing a bad faith action, the Applicant is claiming that the Proprietor had no legitimate right to register the mark as she was no longer a member of the band having left to form a new band. The Applicant, in particular, claims:

a) The Proprietor and the Applicant were both members of a band called Skeletal Family (“the band/the band name”). The founder members were Mr Steven (Stan) Greenwood and Mr Nowell.

b) There have been various reincarnations of the band over the last 40 years. The Proprietor left the band on two occasions, in 1985 and 2018, to form new bands. The last occasion was in 2018 when the Proprietor left to form the band Killing Eve. In or about 2019 the Applicant and Mr Greenwood hired a new lead vocalist to replace the Proprietor.

c) On each occasion after the Proprietor’s departures the remaining band members continued to perform under the band name. The band name has been used for over 40 years and continues to do so.

d) The actions taken by the Proprietor were done to keep the name for herself and to deprive the remaining founder members from obtaining future bookings and income. The registration is an attempt by the Proprietor to prevent the band from using the established band name and halting their operations.

3. The Proprietor filed a defence and counterstatement denying the claims. It is contended that the trade mark was registered in good faith to protect it from being used by someone else, following the discovery that it had not been registered by the band previously in the 80s. In addition, it is contended that the Applicant's actions in applying to invalidate the contested mark is an attempt to stop her from promoting her upcoming shows.

4. Neither party is professionally represented in these proceedings. Only the Applicant filed evidence in the form of a witness statement by Mr Roger Nowell. The Proprietor filed a counterstatement to which I will refer to further below. Neither party requested to be heard on the matter nor filed submissions either during the evidence rounds nor in lieu of hearing. This decision is taken following a careful perusal of the papers.

Preliminary Issues

The Proprietor's evidence

5. The Proprietor did not file evidence in the form of a formal witness statement during the evidence rounds, but nevertheless filed a counterstatement in which she outlined various matters she wished me to take into account in response to the Applicant's allegations contained within his original pleadings/statement of grounds. Rule 64(1) of the Trade Marks Rules 2008 sets out the provisions as to what constitutes evidence in proceedings and the form they must take, which would normally be by way of a witness statement, affidavit or statutory declaration and must include a statement of truth to be signed and dated by the maker of that statement.

6. Although Rule 64 sets out the format which the evidence should take, in the case of *Soundunit Limited v Korval Inc.*, BL/0468/12, Mr Daniel Alexander Q.C., sitting as the Appointed Person, acknowledged that "before the High Court a pleading verified by a statement of truth may be admitted as evidence (see CPR Rule 32)."

7. Taking this decision into account, whilst the Proprietor has not formally filed a witness statement in the correct format, I am able to consider the contents of her counterstatement as evidence in reply to the pleadings, as it has been signed by her personally and it includes a declaration of truth. On this basis I shall summarise the contents of the counterstatement to the extent that it is relevant.

Notification of proceedings

8. The Proprietor raises issues regarding the pre notification process and states that she was not informed of Mr Nowell's application for invalidity before it was issued. Whilst she accepts that she received notification of his intention to challenge the company name registration (on form CAN-1) in January 2020 she states that no further correspondence was received from Mr Nowell thereafter, which it is stated is contrary to the Registry's guidance notes. The Proprietor produces a paragraph, which appears to have been taken from the document "Guidance following the filing of a TM8" which refers specifically to the obligation placed on a party to copy documents "during this process" to the other party, otherwise, it will be regarded as not having been filed and will not be admitted into the proceedings. This guidance, however, relates to the service of evidence and correspondence during the evidence rounds and does not refer to the form TM26(I) which is served by the Registry. In this regard I am unclear as to the relevance of the Proprietor's comments. In any event, the issue of pre notification, is ordinarily an issue that arises when considering whether to make an award of costs to a party, in circumstances where an application is withdrawn before a defence is filed.¹ Given that these proceedings have been defended by the Proprietor, the issue of pre notification does not apply and has no bearing on the decision in suit.

9. Mr Nowell believes that he properly challenged the trade mark application and refutes the claim that the Proprietor was not notified in advance. He confirms that "form TM7A" was sent to the Proprietor by recorded delivery in January 2020 and was signed for by the Proprietor or her agent. He contends that this opposition was not actioned by the Registry, which resulted in him having to file an invalidity action after the contested mark attained registration. It appears that Mr Nowell is under the misapprehension that the filing of Form TM7A commenced the opposition process.

¹ TPN 4/2017

This form, however, is no more than a “Notice of threatened opposition” and does not commence proceedings. Its purpose is not only to warn an applicant of a potential challenge, but also, extends the time period, given to an Opponent to file an opposition, from 2 months to 3 months. Mr Nowell would have needed to file a separate TM7 form in order to commence opposition proceedings whilst the contested mark was unregistered, and I find no record that this was done. The contested mark proceeded to registration unchallenged and therefore the only avenue open to Mr Nowell, thereafter, was to bring an invalidity action. It cannot be inferred, as has been suggested by the Proprietor, that Mr Nowell had no interest in the contested mark because he did not oppose the application before it was registered.

Allegations of Harassment

10. The Proprietor has made allegations against Mr Nowell and Mr Greenwood (which are denied) that they have at various times threatened and harassed her, her promoter and new band members. These are not matters upon which I intend to comment as they have no bearing in the sole issue before me, namely the claim that the trade mark was filed in bad faith and, therefore, these allegations will not factor into my decision.

Company name

11. At the same time as applying for the trade mark, the Proprietor applied to register the name Skeletal Family as her limited company name. This was challenged in the correct format by the Applicant. I understand that the application was not defended and an order was made in the Applicant’s favour. The company name decision will have no bearing on the outcome of the invalidity action and I shall not consider the matter further therefore.

Hearsay evidence

12. Both parties throughout their evidence, refer to comments made to them by third parties in an attempt to prove the truth of the matters stated without obtaining a first-hand account from the individual making the statement. This is what is known as hearsay evidence and is often considered inadmissible in legal proceedings. However, in civil proceedings and proceedings before the Registry, hearsay evidence may be admissible. Whether the comments are relevant to my determination, however, and what weight I place on such evidence, will be matters for me to consider in due course.

Evidence

The Applicant's evidence

13. The evidence is in the form of a witness statement from Mr Roger Nowell, dated 4 May 2021, accompanied by 28 exhibits, marked RN01-RN028. He states that he has the authority to complete the statement on behalf of the band. The Proprietor goes by the stage name of Anne-Marie Hurst and reference is made throughout the evidence to this name. I shall adopt the name Hurst when referring to the Proprietor for ease of reference, in order to avoid confusion. I shall summarise the main points below:

- Mr Nowell (also referred to as Trotwood) is the bass guitarist and manager for the band. Mr Steven Greenwood is the band's guitarist. Both are founder members of the band, previously performing under the name The Elements changing its name to Skeletal Family in 1982.
- An account is given as to the inspiration of the skeletal creature logo and design which accompanies the words SKELETAL FAMILY. This logo was first used on the cover of the single "Trees c/w Just a Friend" in 1983 and has been used on all records, cds, cassette covers and merchandise since. The design was varied in 1985 (following Chrysalis Records' involvement) and was used until 1989. Examples of the logo and name in use on record sleeves is produced.²
- Whilst the Proprietor was a member, the band signed a deal with Red Rhino Records in early 1983, releasing the single "The Night" under the label.
- In 1985 Ms Hurst left the band and she was replaced by Ms Katrina Phillips. The members as at 1985 signed a record deal with Chrysalis Records. Ms Hurst was not a member of the band at this time. A contract is produced between Chrysalis Records and Katrina Phillips, Mr Nowell, Mr Greenwood, Mr John Clarke and Mr Kevin Hunter known as SKELETAL FAMILY.³ The band was paid approx. £35,000 in advances by Chrysalis Records (now EMI) and Dejamus Music publishers (now Universal).
- From 1983 to the present day, the band has released 9 albums and 7 singles in different formats, under 5 different labels and 1 publishing company. Thousands of albums have been sold by the band. The band achieved a degree

² Exhibits RN03-RN06

³ RN012

of chart success which included a number one independent album as well as high placing singles in the independent charts. In 1988/1989 Red Rhino Records went bankrupt and therefore the back catalogue is currently owned by Cherry Red Records and EMI whilst the publishing is currently held by Universal and Complete Music. Following the collapse of Red Rhino, Cherry Red Records took over the obligation to pay the band royalties from that period. Being one of the members at that time Ms Hurst receives historical royalties for works released or re-released or licensed to other labels by Cherry Red Records. Over the years Cherry Records have licensed albums and tracks on compilation albums to various companies. Royalties are also paid via You Tube and Spotify, but little money is made via these forums. Despite the band's success the original members were not in a financial position to qualify as professional musicians and still claimed benefits or supplemented their income with other jobs.

- Income generated by the band has varied over the years being sufficient in the 1980s to pay a wage to only breaking even in the latter years. Over a 39-year period it is estimated that revenue generated by the band would amount to approximately £15,000. This money was used to run the band, pay for support tours, rehearsal rooms and running of the websites. The main expense over the last 20 years has been the website costs as well as payments to promoters and agents. Mr Nowell lists a number of social media accounts/ websites owned by either the band or himself over the last 25 years, to include www.skeletalfamily.com, www.skeletalfamily.co.uk, Facebook-SkeletalFamily, YouTube-Skeletal Family channel. Mr Greenwood registered the band's official website in 1999. In addition various other websites and apps have been registered in the last 20 years either in Mr Nowell or Mr Greenwood's name.

14. The remainder of Mr Nowell's statement is in the form of evidence in reply to the Proprietor's counterstatement which is as follows:

- Although the original artwork was designed by Mr Greenwood he sought approval from the band prior to any proofs being sent for printing.
- Mr Nowell accepts that promotional photos of the band which include images of Ms Hurst whilst she was a member, have been used on the band's official website. It is also accepted that outdated photographs of the band's line up

have been used by ticket agencies and promoters in advertising material which do not reflect the current line-up, which is beyond his control and is common practice in the industry. The images on the website are archived photographs in keeping with preserving the history of the band from its formation and includes photographs of all previous members.

- Post 2018 the band has continued to perform. The line-up of the current members of the band were displayed on promotional posters prior to their live performances. The posters made it clear to fans that Ms Hurst was not performing with the band. The band were booked to appear live in Keighley, Manchester, Dublin and Leeds. Posters of those gigs are produced and are dated in October 2019, January and February 2020.⁴ Ms Hurst's poster advertising her Leeds show in February 2020 gave the impression that she was appearing live with the band Skeletal Family as both her name and the band's name were on the same bill.⁵
- It is denied that the band worked together in writing new material whilst Ms Hurst was a member. Mr Greenwood and Mr Nowell wrote 100% of the songs and 95% of the lyrics. In the formative years the songwriting was credited equally amongst the current band members which resulted in equal publishing credits irrespective of whether they had contributed or not. Mr Nowell produces a spread sheet taken from the UK Performing Rights Society database and highlights 7 tracks where Ms Hurst is accurately credited as having written the lyrics. 10 tracks are highlighted as being incorrectly credited to Ms Hurst.
- The band has had several line-ups with a number of different vocalists to include Anne Marie Hurst (1982-1985 and 2009-2018), Katrina Phillips (1985-1989 and 2003), Clare Bannister (2003-2009) and Hanna Small (2019/2020). From time to time when Mr Greenwood or Mr Nowell were unavailable session musicians were employed. Letters are produced from Mr Jonathan Lorrimer and Mr Steven Wilson who confirm that they were employed in this capacity.⁶ Mr Nowell confirms that from 2009 to 2018 during the band's UK, European

⁴ RN08, RN020

⁵ RN09

⁶ RN026-27

and USA tours he played in 99 out of 112 live performances, refuting Ms Hurst's claims that he was only present 50% of the time.⁷

- Mr Nowell confirms that Ms Hurst left the band in 2018 to form a new band Killing Eve with Andy Cousins. The formation of Killing Eve was formally announced in January 2019 via Facebook.⁸ He produces an extract taken from Killing Eve's Facebook account and website which confirms that she was the manager of Killing Eve and had left Skeletal Family in 2018.⁹ It is claimed that this new venture failed in or about September 2019 which is why Ms Hurst wished to resurrect her connections to the band.
- The band has continued to perform under the name Skeletal Family even when Ms Hurst was not a member. When Ms Hurst left in 2018 a replacement singer was sought and 4 lead singers were auditioned. Whilst searching for a new lead singer, the band was asked to play at the Keighley Arts & Film Festival in October 2019. Given that the original singer of the Elements was available it was decided to perform as The Elements as a one-off performance. The intention had always been that if a singer was found in time, then the gig would proceed as a double bill which was subsequently done – the band performed as the 'Skelements'. The band (with Hanna Small as lead singer) has continued rehearsing, writing songs and performed live in 2019 and 2020 under the name Skeletal Family. It is accepted that the covid pandemic has restricted live gigs but the band has recorded 9 new songs and been actively promoting itself during 2019/2020.
- The band is in the process of signing an American record deal and negotiating a UK, European and USA tour to promote the band's imminent releases. The action taken by Ms Hurst is affecting the band's current and future plans.
- It is contended that Ms Hurst was fully aware that the band was continuing to perform with a new singer after 2018 given that she contacted Mark Musolf (a local Bradford promoter) requesting that her image be removed from an advertising poster used to promote the band's show scheduled for 3 January 2020 in Manchester. The parties were both present at a gig in the "The Library" music venue in Leeds in November 2019 where it is claimed she would have

⁷ RN025

⁸ RN019

⁹ RN017a

seen a promotional poster for the band's forthcoming show, scheduled for 1 February 2020, which was displayed prominently in the foyer. It is said that Ms Hurst only applied to register the trade mark after seeing these promotional posters showing the new line up of the band. The band's shows in January and February 2020 were also well documented on social media.

- It is denied that Mr Nowell threatened Ms Hurst, her promoters or band members. It is accepted that he notified Ms Hurst's promoter that the parties were in a legal dispute and given that she was no longer with the band he asked to promoter to bill the gigs accordingly.¹⁰
- Furthermore, registering the band name on the Worldwide Band Registry does not provide Ms Hurst with any exclusive rights over the name as this register is not recognised by the UK Musicians Union.
- It is denied that Ms Hurst was unaware that the trade mark/band name was not registered until 2019 since the parties had previously discussed the registration in early 2018 whilst she was still a member.

The Proprietor's Counterstatement

15. As referred to above, the Proprietor filed a counterstatement dated 13 November 2020, in which she responds to the Applicant's pleadings. The main points from her counterstatement are as follows:

- The founding members of the band were herself, Steven Greenwood and Roger Nowell.
- The band was formed after the demise of the band "The Elements" in which she was the backing singer in 1981. She was a fully committed member of the band. The band was at its most successful whilst she was a member from 1982 to 1985.
- In 1985 she left to form a new band "Ghost Dance".
- The band Skeletal Family was dissolved in 1985 when she left.
- The logo used on the band's albums and t shirts claimed to be designed by Mr Greenwood is in fact a copyrighted image owned by the Catholic Church. The

¹⁰ RN023

provenance of the design came to light following a Facebook post by a fan some-time later.

- From 1981 until the present day Ms Hurst's image has been used on the band's website. She had cause to contact the band's promoter in 2020 to request that her image be removed from a poster used to advertise the band's shows, as she was no longer singing with the band.
- She refutes that Mr Nowell and Mr Greenwood wrote 100% of the songs and 95% of the lyrics. She states that they always worked together as a band when writing new material which is supported by the fact that all royalties paid by Red Cherry records from the recordings made between 1981 and 1985 are paid equally to the three founding members.
- From 1985 after she left, she accepts that the band had various incarnations however Mr Nowell was not always a member.
- She rejoined the band in 2009 following the break-up of the band whilst Claire Bannister was the singer. Mr Nowell had not been a member of the band for some time prior to this. It is disputed that Claire Bannister left in 2013.
- In November 2011 the band at that time wrote and released an album called "Days of all days" and toured until 2018.
- Ms Hurst denies that she left the band in 2018. She states that she agreed to work with another song writer in Autumn 2018 "as a side project" because Mr Nowell was not available to work with the band because he was away for some months with his primary job. This arrangement caused conflict between herself and Mr Greenwood as he did not like her working with someone else whilst being a member of the band even though he had done so for several years. She states that Mr Greenwood's behaviour caused her to contact the police and she states she was advised to have no further contact with Mr Greenwood.
- Mr Nowell and Ms Hurst agreed to meet up after Christmas (2018) to discuss things moving forward. This meeting did not take place and Mr Nowell did not return her calls. She had no direct contact from Mr Nowell since November 2018.
- In August 2019 Mr Nowell announced that he was reforming "The Elements" with Mr Greenwood and would be performing shows under this name.

- In or about mid-August 2019, following requests from fans and promoters she announced on social media that she would be doing a few shows playing Skeletal Family songs and songs from other bands she had worked with.
- Upon discovering that the name Skeletal Family had never been registered and because she needed to start a company to manage her new project, she registered Skeletal Family as her limited company name in October 2019. This was done because the name was not being used and to protect it from being used by someone else. At the same time, she registered the name of the band on the 'worldwide band register'. A certificate dated 28 October 2019 is produced.
- In January 2020 she applied to register the name as a trade mark.¹¹ She did so as the name was not being used and because she had been told by Mr Nowell that he was going to use and perform under the name "The Elements". She felt no obligation to inform him or anyone else of her applications.
- She had no contact from Mr Nowell until she announced her Leeds concert in February 2020 when he threatened the promoter and members of her new band. She states that he wanted the name Skeletal Family removed from her advertising poster. A copy of the advertising poster is produced.
- Mr Nowell only decided to resurrect "another Skeletal Family" lineup after she had announced her upcoming shows (which I take to be February 2020 from the documents produced). She states that Mr Nowell has actively tried to stop her playing in both the UK and Europe, despite the fact that she was awarded the rights to use the Skeletal Family name. She states that he has again threatened the promoter of her upcoming show in Paris (scheduled for November 2020).
- It is denied that she has never had an interest in the band. She was a founder member and the lead singer on the band's most successful recordings.
- It is disputed that the band has been working for 40 years. It is argued that between 1985 and 2009 it was a "hobby" for Mr Nowell.
- Both Mr Greenwood and Mr Nowell have not been fully committed to the band and have worked at various times for other bands and in other employment.

¹¹ The actual filing date of the application was 28 December 2019.

There have been long periods when Mr Nowell has not performed live with the band due to his other commitments.

- She paid to produce a cd when she was a member and still receives royalties from the band. She is owed monies from her time with Mr Nowell and Skeletal Family for live performances, merchandise and cd sales.

Decision

Legislation

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

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

17. Section 3(6) has application in invalidation proceedings by virtue of section 47 of the Act which states:

“47. (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

[...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed.”

18. The relevant case law in relation to allegations of bad faith has been set out in a number of decisions the most recent being *Sky Limited & Ors v Skykick, UK Ltd & Ors*, [2021] EWCA Civ 1121 where the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 EU:C:2009:361, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, EU:C:2013:435, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, EU:C:2019:724, *Hasbro, Inc. v EUIPO, Kreativni*

Dogaaji d.o.o. intervening, Case T-663/19, EU:2021:211, *pelicantravel.com s.r.o. v OHIM, Pelikan Vertriebsgesellschaft mbH & Co KG (intervening)*, Case T-136/11, EU:T:2012:689, and *Psytech International Ltd v OHIM, Institute for Personality & Ability Testing, Inc (intervening)*, Case T-507/08, EU:T:2011:46. It summarised the law as follows:

“68. The following points of relevance to this case can be gleaned from these CJEU authorities:

1. The allegation that a trade mark has been applied for in bad faith is one of the absolute grounds for invalidity of an EU trade mark which can be relied on before the EUIPO or by means of a counterclaim in infringement proceedings: *Lindt* at [34].

2. Bad faith is an autonomous concept of EU trade mark law which must be given a uniform interpretation in the EU: *Malaysia Dairy Industries* at [29].

3. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].

4. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].

5. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].

6. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].

7. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].

8. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

9. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

10. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

11. Bad faith can be established even in cases where no third party is specifically targeted, if the applicant's intention was to obtain the mark for purposes other than those falling within the functions of a trade mark: *Koton Mağazacılık* at [46].

12. It is relevant to consider the extent of the reputation enjoyed by the sign at the time when the application was filed: the extent of that reputation may justify the applicant's interest in seeking wider legal protection for its sign: *Lindt* at [51] to [52].

13. Bad faith cannot be established solely on the basis of the size of the list of goods and services in the application for registration: *Psytech* at [88], *Pelikan* at [54]”.

19. The correct approach to assessing bad faith was set out in *Alexander Trade Mark*, BL O/036/18, which outlined the key questions for determination a claim of bad faith namely:

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

20. In addition it is necessary to ascertain what the Proprietor knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

21. In this case the relevant date is the date of application for the trade mark namely 18 December 2019.

22. I consider it appropriate at this stage to outline the facts that are agreed between the parties

- In or about 1982 the parties were members of the band.
- Whilst Ms Hurst was a member, the band signed with Red Rhino Records in 1983. They released a number of singles and an album to include the songs/album *Trees*, *The Night* and *Burning Oil*.
- Ms Hurst left the band for the first time in 1985 forming the band *Ghost Dance*.

- The band continued to perform under the name and signed a record deal with a new singer Katrina Phillips. The band released a number of records and performed live performances with this line up.
- Ms Clare Bannister joined the band as lead vocalist.
- Ms Hurst re-joined the band in 2009. The band toured extensively throughout the UK, USA and Europe between 2009 and 2018.
- Mr Greenwood and Mr Nowell worked with other bands whilst being members of the band.
- In Autumn 2018 Ms Hurst together with Andy Cousins formed the band Killing Eve

23. Both parties have provided lengthy commentaries as to the history of the band each from their own perspective; who were the founder members; who was present at various times during the live performances; who designed/created the logo used by the band and what photographs were used in the promotional posters. Whilst this gives a narrative to the band's history, not all of the information is relevant to the issue that I must determine, namely whether the application for the trade mark was filed in bad faith. It matters not who created or designed the logo since not only was the contested mark applied for as a word only mark but more importantly, absent any agreement to the contrary, the name is an asset of the band and is held by its members collectively and not owned by the person who created it. I shall go on to consider this matter further later in my decision.

24. Focussing on the main issues in dispute, therefore, the first matter for me to determine is whether Ms Hurst had formally left the band in 2018 and as at the relevant date what was the legal position in relation to the band's name. Secondly I must consider what Ms Hurst knew as at the relevant date. Thirdly, if I find that Ms Hurst did in fact leave as at 2018 whether she was entitled to register the name in her sole name.

Band membership

25. It appears to be common ground that Ms Hurst was a member of the band between 1982 and 1985 together with Mr Nowell and Mr Greenwood. I note that, in addition, Karl Heinz and Steve Crane were also the original members of the band, when it recorded and subsequently released its first single Trees in 1982/1983, as they are all

listed on the record sleeve.¹² Ms Hurst left in 1985 to form a new band Ghost Dance with which she recorded songs and performed live. In November 1985, after Ms Hurst left, the current members of the band at that time, signed a record deal with Chrysalis Records with a new lead vocalist Ms Katrina Phillips. The band members who were signatories to the contract were Ms Phillips, Mr Greenwood, Mr Nowell, Mr Clarke and Mr Hunter. I am not told how long this line up lasted but at some point the band must have split up given that the interview published in the magazine Kaleidoscope refers to the band reforming in 2002/2003.¹³ The interview was undertaken with the proposed band members at that time, namely Katrina Philips, Stan Greenwood, Trotwood (Roger Nowell) Martin Henderson and Karl Heinz. Again, I am not entirely clear how long this arrangement lasted but I note from Mr Nowell's evidence that Clare Bannister replaced Katrina Phillips as the lead vocalist in 2003 and continued to perform with the band until 2009. Mr Nowell describes the Clare Bannister period as one of the most lucrative periods "touring more and earning better fees than in earlier incarnations." Ms Hurst reunited with the band in 2009 and this arrangement continued until July 2018. I am not told by either party what the arrangement was when Ms Hurst re-joined whether she was purely employed and paid on a salary basis, or ,whether the income generated by the band was split equally between the members of the band at that time. Mr Greenwood and Mr Nowell continued to be members of the band and although I am not given details of who the other members were, I note that two session musicians, Mr Lorrimer and Mr Wilson, were hired to perform with the band from time to time when Mr Nowell was not available. I do not accept Ms Hurst's assertions that Mr Nowell rarely played with the band during this period as I have been provided with a detailed spreadsheet that shows Mr Nowell played in 99 out of 112 performances between 2009 and 2018.

26. Whilst Ms Hurst denies leaving the band in 2018 stating that she merely set up a side project, I do not find, on the evidence, that this to be the case. I place great weight on the screenshot (reproduced below) taken from Killing Eve's website which confirms that Ms Hurst left Skeletal Family in 2018 in order to work on a new project.¹⁴

¹² RN01

¹³ RN016

¹⁴ RN017a

Andy Cousins show on www.dearadio.co.uk whilst working on some new projects including KILLING EVE.

Anne Marie Hurst
 Anne-Marie Hurst was the lead vocalist for the groups the Elements, Skeletal Family and Ghost Dance. She was the lead vocalist of the Elements until she helped form Skeletal Family.

After departing from Skeletal Family she co-founded Ghost Dance with Gary Marx (formally of the Sisters Of Mercy). Here Anne Marie became a well loved and respected vocalist and features in the top ten most influential women in Goth.

Anne Marie started her solo career and released an album before Skeletal Family rejoined. Since leaving the band in 2018, Anne Marie has been working on the new project KILLING EVE.

Adrian "Ozzy" Osadzenko
 Newly recruited Drummer for Killing Eve. Formally of The Skeletal Family from 2013-2018. Taught himself drums at the late age of 18 and has played the Yorkshire music scene ever since. Also played for 50 Foot Woman who supported Ricky Warwick on tour.

27. In addition the posts taken from “The Andy Cousins Show” and “Killing Eve’s” Facebook accounts announced in January 2019 demonstrate that Ms Hurst was a member of this “new venture”. A post, dated in March 2019, displays a promotional poster for Killing Eve’s forthcoming tour in May 2019. Ms Hurst and Mr Cousins are named as the band members for Killing Eve and their past accolades/associations are referenced underneath.

28. I find that Ms Hurst had left the band in 2018 and was no longer a member of the band as at the relevant date.

Continued use of the name

29. The evidence produced by Mr Nowell has been hard to follow at times and is not the clearest. I have had to rely on the exhibits which are not in chronological order to try and piece together evidence that the band continued to perform under the name and had not been abandoned as alleged by Ms Hurst. The issue of whether the band name (and thus the goodwill) has been abandoned is one ordinarily brought up in passing off claims brought under section 5(4) of the Act (which has not been pleaded by the Applicant). The issue of goodwill, however, is not without relevance to this

decision. This is because goodwill identified by the contested trade mark, is an asset of the band. I shall consider this point in greater detail below.

30. It is clear that the band has not continuously performed under the name Skeletal Family since 1982 as there were periods where the band disbanded/split and reformed. Various reincarnations have included different line-ups over the years, most notably 1982-1985, 1985 onwards, 2003-2009 and 2009-2018. I am aware that during Ms Hurst and Ms Phillips' stints with the band during the 1980s, record deals were signed with Red Rhino and Chrysalis Records resulting in royalty payments. It appears that during these times the band also toured and released a number of records enjoying chart success. Similarly when Ms Bannister joined the band Mr Nowell describes this period as its most lucrative and describes how the band toured more and earned better fees. I am not told of the circumstances which led to Ms Hurst re-joining the band in 2009 but again it is accepted that the band toured extensively up until 2018. I do not believe that these facts are in dispute between the parties. The issue between the parties is whether when Ms Hurst applied for the contested mark the name was still being used by Mr Nowell and the remaining band members.

31. Ms Hurst states that she had been told by Mr Nowell that the name was not being used and that 'they' (Mr Greenwood and Mr Nowell) were reforming "The Elements" effectively meaning that the name was free for her to register in December 2019. Mr Nowell disputes this. He states that as per the previous pattern, when Ms Hurst left in 2018, the band's intention had always been to continue performing which is supported by the fact that they (by which I understand him to mean himself and Mr Greenwood) actively looked for a new lead singer to replace Ms Hurst. It appears that Ms Hanna Small was hired in or about 2019/2020. Whilst I note that there is a poster in October 2019 billing the band as the Skelements I accept Mr Nowell's unchallenged evidence as to the reasons for this and that they had performed as a double bill (a combination of their previous band The Elements and Skeletal Family). In support of the band's intention to continue performing under the name are promotional posters of their forthcoming shows in early 2020 (reproduced below).

MINISTRY OF AGRO CULTURE PROMOTIONS
PRESENTS



GO TH / ROCK
LEGENDS.....



SKELETAL
FAMILY

LIVE AT
THOMAS HOUSE,
DUBLIN,
IRELAND

SATURDAY 4TH JANUARY 2020

Doors : 8pm

Admission: €10
(includes entrance to aftershow club)



[DeCrypt]
DUBLIN IRELAND

A SONGS OF PREYS MUSIC PRODUCTION

SKELETAL FAMILY



NIGHT PEOPLE & the TWISTED WHEEL
MANCHESTER
Friday 3rd JANUARY 2020
plus support from


DR. DIABLO AND THE RODENT SHOW **GOTHZILLA**
WEIMAR



Advance Tickets: £10.00

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CARPE NOCTUM
proudly presents



SKELETAL
FAMILY

with special guests
LESBIAN BED DEATH
plus
FTG and the Pangalactic Space Carnival
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Saturday 1st February 2020

THE LENDING ROOM
Upstairs @ The Library, Woodhouse Ln, LEEDS LS2 3AP
Doors 7pm, bands from 7:30, club
night till 2am. £7/£5 after 10pm. **skiddle** **BUY TICKETS NOW**

32. The poster advertising the Leeds show, I am told, was displayed in the foyer of the venue at least by 9 November 2019. It is reasonable for me to assume, that the arrangements for this performance, such as availability and tickets sales, would have been formalised prior to the poster being displayed and therefore I accept that the band intended to continue performing under the name after Ms Hurst left and prior to

the application of the contested mark. After this date, I note that the covid pandemic would have curtailed live performances but Mr Nowell states that the band continued to rehearse and write new songs during this time. Currently the band is in the process of signing an American record deal and negotiating UK, European and USA tours to promote their imminent releases. It is clear that despite its various hiatuses and changes in line ups, the band has performed live, released records and toured extensively throughout UK, USA and Europe and has continued to do so even when Ms Hurst was not in the band.¹⁵

Who owned the name?

33. In a dispute of this kind, involving members and ex members of bands, an application may have been filed in bad faith where the party filing the application acted in breach of a general duty of trust as regards the interests of another party, including his or her own (ex) partners. This scenario was considered in *Saxon Trade Mark* [2003] EWHC 295 (Ch), where Mr Justice Laddie considered the ownership of goodwill and the subsequent name generated by bands with changing memberships. He held that:

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

¹⁵ See RN025 – 31 October 2009 to 29 July 2018

relationship between the first and second bands, the latter will acquire separate rights in the goodwill it generates which can be used against third parties (see *Dent v Turpin and Parker & Son (Reading) Ltd v Parker* [1965] R.P.C. 323). If the first band is a partnership, the goodwill and rights in the name are owned by the partnership, not the individual members, and if the second band were to be sued, such proceedings would have to be brought by or on behalf of the partnership.

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

34. This is the position before me. It is clear that the band has had a number of reincarnations over its 40-year existence with a number of different musicians being members of the band, from time to time. A number of members have left and re-joined. I am not given any specific evidence from either party as to the entire membership in any given period, since both appear to focus their attentions on the changes made to the lead vocalist and their individual positions within the band over the years. What is clear and which is supported by the evidence is that both Mr Nowell and Mr Greenwood have been longstanding and founder members of the band and continue to be.

35. I am unclear, however, as to the other members and their relationship within the band; whether they are employees or are regarded as full members taking on equal ownership rights. I have not been provided with any details as to the contractual obligations or whether a formal agreement existed between the members, specifically from 2009 onwards. I acknowledge that there were contracts between the band, Red

Rhino and Chrysalis records in the 1980s and that the royalties were divided equally between the members at that time. I have no information, however, as to the positions thereafter, nor specifically what the arrangements were for new members; whether they were contracted by Mr Nowell, whether they were paid a salary or paid a fee per performance or whether they were paid royalties and a share in the profits. I have not been told either as to how the assets were to be divided or who retained the name and the goodwill that had been generated in the event that a member left. Since no ground under section 5(4) has been pleaded it is not necessary for me to consider this issue further in any great depth.

36. In absence of any express agreement, Justice Laddy confirmed in *Saxon* that in such situations as have arisen in this case, members of a band who perform for consideration are likely to do so as a partnership at will. Taking into account the caselaw, on each reincarnation of the band, each time a member leaves or joins, a new partnership at will is established and the name, being an asset of that partnership, is retained by the remaining members/partners, each being entitled to an undivided share. When Ms Hurst left in 2018, the band continued with the membership as a partnership at will and when Ms Small joined in 2019/2020 a fresh partnership at will was generated. The name therefore belonged to that partnership. Consequently, an individual is not entitled to assume ownership of the partnership asset over and above the other members without an express agreement to the contrary.

Knowledge

37. It is now necessary for me to decide what the Proprietor knew at the relevant date. I find that Ms Hurst at the time she registered the contested mark was fully aware that she was no longer a member of the band and that the band was continuing with a new line up, despite her claim to the contrary. By her own admission, she contacted a promoter to ask him to remove her image from a promotional poster. This must have occurred before the performances scheduled for early January 2020 and was likely to have been before 9 November 2019 as the poster had been rectified with the correct line-up by then. I also accept that Mr Nowell and Ms Hurst had discussed the issue of the registration whilst she was still a member of the band in early 2018 and knew that the name of the band had not been registered as a trade mark. There was no logical

explanation for her to enquire as to whether the mark was registered in 2019 if she assumed it had already been in the 1980s. On the one hand Ms Hurst states that she had not had contact with Mr Nowell since 2018 and yet she claims he had told her that The Elements were reforming and that the name Skeletal Family was no longer being used. Mr Nowell states that no such conversation took place. Of note is Ms Hurst's comment that she felt no obligation to inform Mr Nowell or anyone else of her intention to apply for the contested mark.

38. Ms Hurst maintains that she registered the trade mark to protect it from being used by someone else. There is no suggestion, however, that the name of the band was being challenged or about to be used by anyone else other than the remaining members of the band. The band had successfully performed under the name for over 40 years without feeling the need to protect it. I fail to see, therefore, why as at 2019 Ms Hurst considered the position had changed. The only conclusion I can come to is that Ms Hurst felt aggrieved by her treatment at the hands of Mr Greenwood and Mr Nowell and registered the contested mark to prevent Mr Greenwood and Mr Nowell and any subsequent members of the band from using the name. Ms Hurst knew or it would have been obvious to her having left the band, that she was not entitled to register the name and even if she was uncertain, she did not make sufficient enquiries to ascertain the true position. Had she felt obliged to contact Mr Nowell the true position would have been clarified.

39. At the relevant date, namely 28 December 2019, Ms Hurst was not a member of the band and therefore the goodwill that had been generated by the band and therefore the rights to the name were partnership assets retained by the remaining members and any subsequent members divided equally between them. Ms Hurst was not entitled to register the name in her individual name as she was not entitled to hold it on trust on behalf of the remaining members as she was no longer a member of the band at this time. In effect when Ms Hurst applied for the trade mark she was claiming that she was the sole beneficiary and the sole owner of the name when in accordance with the caselaw this was not the case.

40. Since I have found that Ms Hurst was not a current member of the band on the filing date of the application, she was in my view in breach of her general duty of trust as regards the interests of the remaining members and ex members. Acknowledging

that Mr Nowell's evidence has not been the clearest, overall, I prefer his unchallenged evidence. Ms Hurst has not sought to rebut the inconsistencies identified with her account nor has provided a plausible explanation for her conduct.

41. Taking all matters into account, I do not find that the Proprietor was entitled to register the contested mark in her own name as she had left the band a year prior to applying for the mark in 2019. The application was filed by her own admission to prevent others from using the name which would include Mr Nowell, Mr Greenwood and the remaining members of the band. It is my view that her conduct departs from the accepted standards of ethical behaviour or honest commercial and business practices.

42. I am satisfied that the contested mark was applied for in bad faith.

Conclusion

43. The application for invalidity based upon section 3(6) of the Act succeeds. Under section 47(6) the registration is deemed never to have been made.

Costs

44. The Applicant has been successful and is entitled to a contribution towards his costs. As an unrepresented party, any claim for costs is awarded in accordance with The Litigants in Person (Costs and Expenses) Act 1975 which sets payment at a rate of £19.00 per hour. Mr Nowell was invited by the tribunal to complete and file a pro forma, setting out the hours spent on a range of given activities and the costs incurred relating to the prosecution of the proceedings. In total Mr Nowell claims 23 hours of time for preparing his case. I accept that as a lay person the time taken to prepare his case would take longer than a professional and that a claim of bad faith is a complex area of law. I note however that Mr Nowell's claim includes 3 hours for postage and printing. I am unclear as to what is meant by this figure, but I consider that it would be included within the time spent for preparing and writing up evidence claimed at 10 hours. On this basis I am disallowing these 3 hours. In light of the evidence filed and the preparation incurred I do not consider that a claim of 20 hours is excessive, and I allow this figure. In relation to the official fee the Applicant is only entitled to reclaim those fees incurred in bringing the invalidation action (and not any other actions which

were not pursued). Only the official fee of £200 is therefore allowed. I award costs on the following basis at the rate of £19 per hour:

Preparing a Notice of Invalidation (2.5 hours) :	£47.50
Considering TM8 form filed by Proprietor (2.5 hours):	£47.50
Preparing evidence including research and writing the witness statement (10 hours):	£190
Official fee	£200
Total	£485

45. I order Ms Murgatroyd to pay Mr Nowell the sum of £485. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of November 2021

Leisa Davies

For the Registrar