

O-404-15

ORDER under the Companies Act 2006

In the matter of application

No.661 by International Business Machines Corporation

For a change of company name of registration

No. 08508837

BACKGROUND, CLAIMS AND DEFENCES

1) The company name IIBM LTD has been registered since 29 April 2013 under number 8508837.

2) By an application filed on 19 November 2013, International Business Machines Corporation (“the applicant”) applied for a change of name of this company registration under the provisions of section 69(1) of the Companies Act 2006 (the Act).

3) It provided information regarding its claimed extensive goodwill and reputation in the UK in respect of computer hardware, computer software, outsourcing services and business services. The trade mark used in the course of this business is described as “IBM and the eight bar striped logo”. It claims that the company name IIBM LTD is identical or sufficiently similar to its name that it is likely to mislead the public by suggesting a connection between IIBM Limited and the applicant.

4) IIBM LTD (“the respondent”) filed its notice of defence. This was provided by Mr Jonathan Georgiades, the director of the respondent. He concedes that the applicant has built up considerable reputation in the UK and that IBM is a registered trade mark in the UK. He also states that:

- The respondent’s name is not an “offending name” because “iIBM” stands for “Innovation in Business Management” whereas “IBM” stands for Industrial Business Machines” and these are “distinctively different in words”;
- The choice of the “ii” element shows that he did not have the applicant in mind when he devised the name and that it was not chosen with malicious intent but rather, it was adopted in good faith;
- The respondent’s name was purchased before he was made aware of the applicant’s activities;
- Operation of the respondent company has commenced and that it has “engaged services” and invested a huge amount of time and money building the business, but also states that the respondent company is “not fully operational in respect of trading until July 2014” (see the notice of defence dated 6 December 2013).

5) Both sides filed evidence. Neither party requested a hearing nor filed written submissions. We make our decision after careful consideration of the papers.

EVIDENCE

6) In light of the respondent's acceptance of the applicant's reputation, it was not required to provide evidence on this point and, consequently, the respondent was provided with an opportunity to provide evidence first.

Evidence for the respondent

7) This takes the form of an affidavit, dated 9 May 2014, by Jonathan Joseph Ramon Georgiades, Managing Director of the respondent. He states that he has been preparing for the respondent to commence trading in August 2014 and that the current status of the company is "dormant".

8) Mr Georgiades states that, despite the respondent being "dormant" he has engaged contractors and spent a large amount of time and effort preparing the respondent for commencement of trading in August 2014.

9) Mr Georgiades provides testimonies as to his good character from family members and friends. Some also state that the respondent's name was Mr Georgiades' own idea and was not conceived with any malicious intent. In addition, he also provides, at Exhibit 3, page 10 of his evidence, a letter entitled "To whom it may concern" jointly from his course tutor and "head of centre" who state:

"Previous to joining the course, Jonathan already had his business idea which led to him joining the BTEC course to enable him to gain knowledge, skills and experience in the field.

...

His name and logo represent the company he created in 2013 which was registered with Companies House at that time and has a Dormant status.

The business is called Innovation in Business Management. ...

...

Jonathan has used the initials from his business name to create the logo for his business. ..."

10) He also provides information regarding how he intends to develop the respondent's business and his plan to use the respondent as "the hub of the wheel" where it is the centre of a business wheel that extends out to other businesses and disciplines where all the business names will utilise the letters "ii" at the beginning of their names e.g. "iiFM – Innovation in Financial Management".

11) Mr Georgiades and his step-father, Mr Constantine Georgiades, both describe how he was inspired to come up with the respondent's name by an old consultancy

business that his step-father was involved in in the 1980s called “BMI Business Management Innovation Ltd”.

12) Mr Giorgiades registered the domain name www.iibm.co.uk on 27 April 2013 with a view to it hosting the respondent’s website. He states that the intention was for him to complete his academic studies before commencing his business in July 2014.

13) Mr Giorgiades has undertaken a field survey involving more than 100 individuals and the results are at Exhibit 14. Participants were shown the IBM trade mark and a mark incorporating a stylised version of the iIBM name where the dots of the “i”s are in the form of eyes and the words “Keeping two eyes in business management” appear in small letters underneath, the whole being against a dark circular background. In addition, the recipients were asked “Jonathan Giorgiades has registered his company IIBM Limited and IBM Limited have objected for the following reasons ‘the name is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company (IIBM) and the applicant’ (IBM Limited) Do you find the name IIBM or its logo misleading to such an extent that you believe this assertion?” All responses were negative.

14) Mr Giorgiades states that “at present www.iIBM.co.uk (iibm.co.uk) does not show up at all in any of the search engines and as being the sole mind of iIBM Limited, I have already given my personal assurance that it is not my intention for this to happen as iIBM and IBM Limited operate their businesses in a different way to iIBM Limited”. At Exhibit 10, he also provides exhibits in the form of results from Internet searches in respect of “IBM” He states that none of these brought back any reference to “IIBM”.

15) Mr Giorgiades provides evidence of other company names incorporating “IBM” as evidence that the public are not confused by use of these letters by others.

Evidence for the applicant

16) This takes the form of a witness statement by Ms Tracey Robertson, European Patent Attorney and Trade Mark Attorney at the Intellectual Property Department of IBM United Kingdom Limited.

17) Ms Robertson questions the admissibility of much of Mr Giorgiades’ evidence because it appears to be in the form of unsigned and unsworn exhibits to an affidavit. Nevertheless, she goes on to provide both submissions and evidence in response to the substance of Mr Giorgiades’ evidence. We will not summarise the submissions but refer to them as necessary in the decision.

18) At Exhibit TR4, Ms Robertson provides a copy of a web page, printed on 1 July 2014, that appears at www.iibm.co.uk. This provides a number of adverts of third parties plus the following statement that appears alongside a prominent logo featuring the letters “LCN”:

“The domain name iibm.co.uk has been registered on behalf of a client of ours. Visit LCN.com for hassle free website hosting and great value domain names”

19) Ms Robertson concludes that the respondent’s website is not operational. Ms Robertson provides a technical reason, that we do not need to detail here, to conclude that because the web site is not operational it will not appear on the results of Internet searches and this explains why it will not appear on a search for “IBM” as conducted by Mr Georgiades (see paragraph 13 above).

20) Further developing her response, Ms Robertson points out that modern search engines predict simple spelling mistakes and will display search results of what it considers to be the correct search query. At Exhibit TR8 is an Internet extract showing the results of a Google search for “IIBM” and this brings back hits for “IBM”.

21) In response to the claim that the parties are in distinct fields and their business activities do not overlap, Ms Robertson provides extracts, at Exhibit TR10, from the applicant’s website www.ibm.com/uk/en to illustrate that it provides a range of business services such as “application innovation”, “business analytics” and “business strategy”. The extract is undated but Mr Robertson states that the applicant has offered such services for many years. Ms Robertson concludes that the applicant provides services that directly overlap with the proposed activities of the respondent.

22) Exhibit TR13 consists of extracts from the Companies House website illustrating three companies that previously had a name incorporating “IBM”, but in May or June 2014 they have all changed their names to ones that no longer incorporate the “IBM” element. Ms Robertson explains that this is in response to the respondent’s evidence of the existence of other company names that incorporate the letters “IBM” and is filed to illustrate that the applicant has made successful challenges to some of these company names resulting in a change of name.

Further evidence for the respondent

23) This takes the form of a detailed, twenty one paged witness statement by Mr Georgiades. Many of the statements made in Mr Georgiades’ affidavit are repeated and we summarise the statement only so far as we consider it necessary.

24) In order to overcome the criticisms of the way the exhibits were presented in his affidavit, Mr Georgiades adopts the exhibits under cover of his witness statement.

25) At paragraph 10, Mr Georgiades states:

“The only reason why [he has] ever admitted to the fact that IBM Limited had a reputation was as a result of reading CNA1, where [he stated] *‘I accept the information in the following sections of Form CNA 1:’*”.

and:

“... I had believed that they sold typewriters and printing machines prior to receiving [the] Skeleton Arguments of the Applicant (25th April 2014)...”

26) At the time the respondent was incorporated, Mr Geordiades was an 18 year old full-time student and was not aware of the full extent of the products and services offered by the applicant.

Further evidence for the applicant

27) This takes the form of a further witness statement by Ms Robertson where she rebuts the statements of Mr Geordiades in his evidence. As far as these are relevant, we record the following:

- In response to Mr Geordiades' claim that he had no or limited knowledge of the activities of the applicant, Ms Robertson states that IBM is a household name and in *Interbrand's* Best Global Brands Study of 2013 (a copy of which is provided at Exhibit TR29), it listed IBM as fourth best performing brand behind only *Apple*, *Google* and *Coca-Cola*;
- In excess of £28 million has been spent marketing the IBM brand in the UK over the last three years, with promotion being via television advertising, print advertising, attendance at trade exhibitions and conferences and high profile sponsorship being technology partners to the Wimbledon tennis tournament (and has been sponsoring it “for the last 25 years”) and to the sport of rugby union. Examples of television and online advertising campaigns are provided in recorded form on a DVD at Exhibit TR31 and Exhibit TR 32 consists of screen shots of the same;
- Exhibit TR33 consists of listings from March 2011 and September/October 2012 showing when the applicant's television commercials were aired. These illustrate that its advertisements appeared regularly on both terrestrial and satellite channels in the UK including ITV1, More 4, Film 4, Dave, ITV3 and ITV4, generally between the hours of 7pm and 11pm. Ms Robertson states that these schedules are typical of the scheduling of the applicant's advertisements in spring and autumn “in recent years”;
- A print advertisement provided at Exhibit TR35 appeared in *The Economist* in 2012. Ms Robertson also states that in 2011 and 2012, the applicant placed advertisements in publications such as *The Times*, *Daily Telegraph*, *Guardian*, *Independent* and the *Financial Times* as well as various periodicals;
- The above are examples of why the applicant is very well known in the UK. Other information augmenting this is also provided, such as examples of when the applicant featured on the BBC news, its activities in the field of community programs and its contributions to education in terms of cash, equipment and personnel.

DECISION

28) Section 69 of the Act states:

“(1) A person (“the applicant”) may object to a company’s registered name on the ground—

(a) that it is the same as a name associated with the applicant in which he has goodwill, or

(b) that it is sufficiently similar to such a name that its use in the United Kingdom would be likely to mislead by suggesting a connection between the company and the applicant.

(2) The objection must be made by application to a company names adjudicator (see section 70).

(3) The company concerned shall be the primary respondent to the application.

Any of its members or directors may be joined as respondents.

(4) If the ground specified in subsection (1)(a) or (b) is established, it is for the respondents to show—

(a) that the name was registered before the commencement of the activities on which the applicant relies to show goodwill; or

(b) that the company—

(i) is operating under the name, or

(ii) is proposing to do so and has incurred substantial start-up costs in preparation, or

(iii) was formerly operating under the name and is now dormant;
or

(c) that the name was registered in the ordinary course of a company formation business and the company is available for sale to the applicant on the standard terms of that business; or

(d) that the name was adopted in good faith; or

(e) that the interests of the applicant are not adversely affected to any significant extent.

If none of those is shown, the objection shall be upheld.

(5) If the facts mentioned in subsection (4)(a), (b) or (c) are established, the objection shall nevertheless be upheld if the applicant shows that the main purpose of the respondents (or any of them) in registering the name was to obtain money (or other consideration) from the applicant or prevent him from registering the name.

(6) If the objection is not upheld under subsection (4) or (5), it shall be dismissed.

(7) In this section “goodwill” includes reputation of any description.”

Does the applicant have the requisite goodwill?

29) Under section 69(1) the applicant must establish that it had a goodwill or reputation under the names upon which he relies at the date of the application, in this case 19 November 2013. Such a reputation has been accepted by the respondent in its notice of defence.

Are the names “sufficiently similar”?

30) The respective company names must also be “sufficiently similar” that use of the respondent’s name would be likely to mislead by suggesting a connection between the parties. Mr Georgiades submits that the use of a double “i” by the respondent is sufficient to avoid being misled, that a survey of the public supports this, and that the respective words that are represented by “iiBM” and “IBM” respectively, are totally different. In respect of the last point, the full names that the letters in each name are intended to represent are not in issue in these proceedings. Consequently, this point cannot support the respondent’s case.

31) In respect of the respondent’s survey, this has attracted a number of criticisms from the applicant. Firstly, it doubts its value because it is in respect of an issue in which the Tribunal is capable of making its own assessment, namely, whether the names “iiBM” and “IBM” are sufficiently similar. Secondly, the respondent appeared to obtain views on the similarity of two logo trade marks reproduced side-by-side rather than the two company names. Thirdly, the survey did not comply with the criteria set out in *Imperial Group plc & Another v. Philip Morris Limited & Another* [1984] RPC 293. In particular, there is no information regarding how the interviewees were selected leading to doubt that they are representative of the relevant cross-section of the public; that the question asked was a leading question; it appears that interviewees were able to see the answers of those interviewed earlier and may have been influenced by them, and; there are no copies of the instructions to the interviewers and it is not known how interviewees may have been influenced by what the interviewer might have said. We are in agreement with these criticisms and we conclude that the results of the survey carry very little, if any, weight when considering the issue of “sufficient similarity”.

32) Mr Georgiades submits that the existence of other company names using the letters “IBM” proves that the public are not confused by such use by third parties. We dismiss this argument. As Ms Robertson pointed out, there are no particulars about these names before the Tribunal, and we do not know if they are trading. Some are

dissolved, others are IBM companies and others have since changed their name following challenges by the applicant. Consequently, we cannot reach the same conclusion as Mr Georgiades.

33) The consideration is in respect of the respondent's name, namely "IBM LTD" and the name associated with the applicant, namely "IBM". Ms Robertson makes reference to the guidance of the Court of Justice of the European Union ("the CJEU") in *Lloyd Schuhfabrik Meyer & Co GmbH*, Case C-342/97 i.e. that the average consumer is deemed to be reasonably well informed, observant and circumspect, but perceives trade marks in their totality and does not proceed to analyse their various details and rarely has the benefit of comparing the trade marks or names side by side but instead must rely upon the imperfect picture he has kept in his mind. Further, Ms Robertson refers to the CJEU guidance in *Sabel Puma BV v Puma AG*, Case C-251/95 i.e. that the greater the distinctive character an earlier trade mark the greater the likelihood of confusion.

34) Whilst these cases relate to the interpretation of trade mark law and the issue of "likelihood of confusion", we agree with Mr Robertson's submission that similar principles apply to considering whether company names are sufficiently similar as to be likely to mislead by suggesting a connection between the respondent and the applicant.

35) As the applicant has pointed out, the "Limited" element merely identifies the nature of the company and consequently the "IBM" element of the respondent's name is the operative part for the purposes of comparison with the applicant's name. We observe that, in this respect, the two names both contain the letters "IBM" appearing in the same order. The respondent's name differs by having an additional "I" at the beginning. Mr Georgiades often makes reference to the respondent's name beginning with two lowercase "i"s and with the letters "BM" being in upper case. This is not reflected on the company register where the respondent's name is recorded as "IIBM LTD". Consequently, it is this form of the name we must consider.

36) Ms Robertson also submits that the letter "i" is used generically to denote "Internet" e.g. i-music and i-magazine. It is argued that this is another factor that mitigates against the difference between the names being significant. Whilst we agree that the letter "i" is often used in this way, it is not clear from the presentation of the respondent's name (and the absence of a hyphen) and combined with letters that have no obvious descriptive meaning that this is the meaning that would be attributed to the first "I" in the respondent's name.

37) As Ms Robertson points out, the respective names incorporate the letters "IBM" and "IIBM" respectively and not the words that they stand for. Consequently, the difference in these respective words does not assist to differentiate the names, as contended by the respondent.

38) Both sides have much to say upon the relevance of Internet searches and the significance of the respondent appearing in search results for "IBM" and vice-versa. The automated searching of a search engine has no bearing on the issue of similarity of the names. We must assess whether there is sufficient similarity to mislead and this must be assessed from the perspective of the customers and

potential customers of the applicant when encountering the respondent's name and not on whether an automated search engine detects one when instructed to search for the other.

39) Taking account of all the points discussed above, we are of the view that an additional letter "l" at the front of the name is insufficient to avoid a finding of "sufficient similarity". We find that the names are so similar that the respondent's name "would be likely to mislead by suggesting a connection between the company and the applicant".

40) We point out that the perceived different business areas identified by the respondent are not material to the issue of similarity between the names. This is because a company's business model may change over time and although the business areas of the parties are currently distinct of each other, this does not necessarily reflect the position in the future. Consequently, the names may be used in the future in the same business area.

41) Taking all of this into account, we dismiss the respondent's arguments and find that the respective names are sufficiently similar within the meaning specified in section 69(1)(b).

DEFENCES

42) In light of the applicant's accepted reputation in the UK and our conclusion that there is sufficient similarity between the respective names, the applicant will succeed unless the respondent has a defence under one of the sub-sections of section 69(4) of the Act.

Was the name registered before the commencement of the activities on which the applicant relies to show goodwill?

43) The respondent will have a prima facie defence if it can establish that the name was registered prior to the commencement of the activities upon which the applicant relies, as per section 69(4)(a) of the Act. This is not the case here. The applicant has been in business for many decades and has been trading in the UK since at least 1951 (see paragraph 12 of Ms Robertson's first witness statement).

Is the respondent operating?

44) It is a potential defence to the application, under section 69(4)(b)(i), if the respondent establishes that, at the time of its application on 19 November 2013, it was operating under the company name. In his affidavit, Mr Georgiades states that the respondent company was dormant at that time. Therefore, this defence is not open to the respondent. There is some evidence that, at a later date, the respondent has commenced trading. This evidence has attracted a number of criticisms from the applicant, and importantly, this evidence, in the form of a letter purporting to relate to a company engaging Mr Georgiades' services is dated 1 May 2014. This is sometime after the application date and does not assist the respondent.

Is the respondent proposing to commence operations?

45) Under section 69(4)(b)(ii), the respondent may rely upon the defence that it is proposing to commence trading and has incurred substantial start-up costs in preparation. In this regard, Mr Georgiades makes clear statements in his affidavit that the name was registered with a view to commencing trading in July 2014 upon completion of his academic studies. The evidence provided to support this, whilst open to some criticism as noted by the applicant, consistently confirms this. However, it is a requirement of section 69(4)(b)(i) that the respondent has incurred substantial start-up costs in preparation.

46) It is the submission of the applicant that at the time it contacted the respondent to put it on notice of its objections i.e. about seven weeks after the respondent's name was registered on 29 April 2013, it had not incurred large start-up costs, nor had Mr Georgiades spent a large amount of time or effort in building the business. It further contends that the respondent's evidence fails to demonstrate that substantial costs were incurred by the later date of 19 November 2013, when the applicant commenced these proceedings.

47) Mr Georgiades does provide evidence (at pages 72 to 76 attached to his affidavit) in the form of receipts, invoices and order confirmations, namely:

- A receipt for a product identified as "APPLE MC461B/A BK CHRG" for £65 and dated 13 March 2014;
- A receipt for items of stationery for £5.05 dated 7 October 2013;
- An invoice in respect of the purchase of an *Apple iPhone* on 3 October 2013 that carries an "Apple Gift Message" that states "Happy birthday Jonathan, we hope you have a lovely day. With all our love. Mum and Dad xxx";
- an invoice dated 28 May 2012 in respect of a "magnetic smart case cover" costing £5.99;
- an order confirmation, dated 29 April 2013, from a company called "The Company Warehouse" for a "Corporate Compliance Pack" costing £36.36;
- an order confirmation, dated 27 April 2013, from "The Company Warehouse" for "Online Company Formation" costing £20.19.

48) Such evidence is not persuasive for the following reasons:

- (i) the amounts involved cannot, under any ordinary definition, be considered to be "substantial" as required under section 69(4)(b)(ii) and;
- (ii) it is not clear that they specifically relate to start up costs of the respondent, for example the purchase of the iPhone appears to be a birthday present to Mr Georgiades and not a "start-up cost" of the respondent.

49) Mr Geogiades submits that because he has a very low income, it amounts to a proportionately large sum of money. We note this, not without some sympathy for the argument, but we are of the view that the costs looked at as a proportion of income is not the test intended by the wording of section 69(4)(b)(ii). In light of all of this, we find that the evidence fails to illustrate that “substantial costs” have been incurred in setting up the respondent company.

Was the respondent formerly operating under the name and is now dormant?

50) Section 69(4)(b)(iii) provides a defence where the respondent was formerly operating under the name and is now dormant. This is not a defence relied upon in these proceedings.

Was the respondent’s name registered in the course of a company formation business?

51) There is no pleaded defence that the respondent’s name was registered in the ordinary course of a company formation business as envisaged by the defence set out in section 69(4)(c) of the Act.

Was the respondent’s name adopted in good faith?

52) Section 69(4)(d) provides a defence where the name was adopted in good faith. This is a defence strongly relied upon by Mr Georgiades.

53) In (1) *Adnan Shaaban Abou-Rahmah* (2) *Khalid Al-Fulaij & Sons General Trading & Contracting Co v (1) Al-Haji Abdul Kadir Abacha* (2) *Qumar Bello* (3) *Aboubakar Mohammed Maiga* (4) *City Express Bank of Lagos* (5) *Profile Chemical Limited* [2006] EWCA Civ 1492, Rix LJ commented upon the concept of good faith:

‘48 The content of this requirement of good faith, or what Lord Goff in *Lipkin Gorman* had expressed by reference to it being “inequitable” for the defendant to be made to repay, was considered further in *Niru Battery*. There the defendant bank relied on change of position where its manager had authorised payment out in questionable circumstances, where he had good reason to believe that the inwards payment had been made under a mistake. The trial judge had (a) acquitted the manager of dishonesty in the *Twinsectra* or *Barlow Clowes* sense on a claim of knowing assistance in breach of trust, but (b) concluded that the defence of change of position had failed. On appeal the defendant bank said that, in the absence of dishonesty, its change of position defence should have succeeded. After a consideration of numerous authorities, this court disagreed and adopted the trial judge’s broader test, cited above. Clarke LJ quoted with approval (at paras 164/5) the following passages in Moore-Bick J’s judgment:

“I do not think that it is desirable to attempt to define the limits of good faith; it is a broad concept, the definition of which, in so far as it is capable of definition at all, will have to be worked out through the cases. In my view it is capable of embracing a failure to act in a commercially acceptable way and

sharp practice of a kind that falls short of outright dishonesty as well as dishonesty itself.”

54) In (1) *Barlow Clowes International Ltd. (in liquidation)* (2) *Nigel James Hamilton and (3) Michael Anthony Jordan v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* the Privy Council considered the ambiguity in the *Twinsectra Ltd v Yardley* [2002] 2 AC 164 judgment. The former case clarified that there was a combined test for considering the behaviour of a party: what the party knew at the time of a transaction and how that party’s action would be viewed by applying normally acceptable standards of honest conduct.

55) In *Harrisons Trade Mark Application (“Chinawhite”)* [2004] FSR 13 Pumfrey J commented:

‘14 Mr Engelman’s argument was a direct challenge to the hearing officer’s approach to the question of good faith, but he also objected that it was not open to the hearing officer to infer bad faith from the facts, which he maintained was contrary to the decision of the Court of Appeal in *Davy v Garrett* (1878) 7 Ch D 473 at 489. This I think is a misapprehension as to the scope of the decision in *Davy v Garrett*. That case was dealing with fraud in a different context. In this field context is everything. The words “bona fide” or “good faith” are what are sometimes called chameleon words and take their content and their colour from their surroundings. Once the hearing officer had decided that the correct approach was that which I think he may well have been bound to accept, it was open to him to find that objectively the behaviour of the application did not satisfy the second half of the formulation. The word “inference” itself has a wide meaning, as Robert Walker L.J. demonstrates in *REEF Trade Mark* [2003] R.P.C. 5. This was not a question of drawing an inference at all. It was a question of coming to a secondary finding of fact on all the material. I do not consider that the hearing officer’s decision is open to challenge on this ground and the appeal must accordingly be dismissed.’

56) Ms Robertson identifies the fact that, in the respondent’s notice of defence, Mr Georgiades has admitted the goodwill and reputation that the applicant has built up in the name “IBM”. She claims that, despite this, the respondent has chosen a name incorporating “IBM” and that he must have been aware of its fame and attractive force. Mr Robertson further points to the fact that Mr Georgiades is involved in a business solutions consultancy company as a reason why he would have been aware of the applicant’s reputation.

57) We acknowledge that Mr Georgiades recognised the reputation enjoyed by the applicant in the respondent’s notice of defence, but he also stated that he purchased the name before he was made aware of the extent of the applicant’s activities. In his witness statement he states that “The only reason why [he has] ever admitted to the fact that IBM Limited had a reputation was as a result of reading CNA1, where [he stated] ‘I accept the information in the following sections of Form CNA 1:’”. Further, the core activities of the applicant are different to the intended activities of the respondent and, as Mr Georgiades also states in the notice of defence:

“...[IBM] ...has pointed out that they operate some of the business services that iiBM Ltd. intends to offer ...The choice of company name had absolutely nothing to do with the IBM name ... nor was I persuaded in any way to use the name iiBM in order to affect, encourage, accelerate or promote the operation of iiBM ...and any comparison or checking on their web site has only been done since receiving the letter from [IBM]...My business is new and fresh and my company name .. is based on the words that explain exactly what services my business operates in; namely ‘Innovation in Business Management’.”

58) Mr Georgiades is a young man, apparently excelling in his academic studies in Business, but he appears to have very little by way of practical business experience. These factors lend support to his statements reproduced above. The evidence shows efforts by Mr Georgiades to set up a company providing business consultancy. Whilst the evidence also shows that the applicant is actively providing the same or similar services, the evidence does not support a finding that these are a core area of its business. The significance of this is that we are satisfied that, as a young man inexperienced in the practical business world, Mr Georgiades was unlikely to be aware that the applicant provided such services and as he has stated (at page 3 of his witness statement) he believed that the applicant only sold typewriters and printing machines.

59) Ms Robertson has submitted that there is no real evidence relating to Mr Georgiades’ decision to register the respondent company and that, in fact, he refers to it as “Innovation in Business Management”. Further, Ms Robertson casts doubt upon Mr Georgiades’ character and subsequent impact upon the veracity of his evidence, in particular identifying the following:

- he has allegedly falsely presented as business expenses, the purchase of an *iPhone* (with the gift message) and an item bought twelve months before the incorporation of the business (see paragraph 48 above);
- he has allegedly falsely presented a reason why that the respondent’s website does not appear in search results because of some gentlemanly conduct on his behalf;
- the manner of producing and presenting the survey evidence is unfair;
- he claims he created the name IIBM LTD without contemplation of the household name “IBM”.

60) The last of these points goes to whether Mr Georgiades acted in good faith or not, and is the issue we must decide having regard to all the facts before us. We need not say more on that point at this stage. In respect of the first bullet point, we agree that there is doubt over whether these relate to genuine business expenses. In respect of the second bullet point, Mr Georgiades provides further information in his witness statement and explains that his statements were only intended to reflect an undertaking on his part that “it is not [his] intention for” searches for “IBM” to bring back results for “iiBM”. At face value, we see no issue with this statement. The mere fact that there may be technical reasons why searches for “IBM” will not currently

bring back hits for “iIBM” does not detract from Mr Georgiades’ intention or wish to prevent such searches bringing back such hits.

61) Regarding the third bullet point, as a young man with little business experience and even less experience in the field of conducting surveys, we do not think that the flawed survey exhibited by Mr Georgiades illustrates any bad faith or attempt to unfairly influence the tribunal. We dismiss the argument to the contrary.

62) Taking all of the above into account, together with the plausible explanation he has provided as to why the respondent’s name was adopted, it is our view that, whilst the evidence is far from overwhelming, the overall impression created is of a young man with ambition but little practical experience of business, attempting to demonstrate that the operation of the respondent company is developed further than it actually is. To that end we accept that Mr Georgiades’ evidence of business expenses has been exaggerated, but we do not conclude that, as a result, we should dismiss his statements regarding how he came up with the respondent’s name. On the contrary, the consistent message from his evidence is that he was inspired to come up with the respondent’s name because it was the initials of the name “Innovation in Business Management” rather than because it was similar to the applicant’s name.

63) Unsworn testimonials carry little weight, as pointed out by Ms Robertson, because they are no more than hearsay evidence. Nevertheless, hearsay evidence is not necessarily without any persuasive value. In this case, at least one of these letters (jointly from Mr Georgiades’ tutor and “head of centre”) retains some credibility despite not containing a statement of truth and being in the form of a “to whom it may concern” letter. The authors of the letter are writing in their professional rather than personal capacity and they are not personally involved with Mr Georgiades. The letter states that Mr Georgiades already had his business idea when he joined the course and that the business name was “Innovation in Business Management”. The other letters provided in support appear to be from a friend and from family members. In the absence of a statement of truth, we agree with the applicant that we must treat such documents with a degree of caution.

64) Mr Georgiades explains that the use of the two letter “i”s is important in order to make the link between the respondent’s name of “Innovation in Business Management” with the strap line “Keeping two eyes in Business Management” that the respondent uses in a number of stylised signs shown in its evidence. The applicant submits that there are alternative ways to make the link other than adopting the name “IIBM LTD”. Ms Robertson also points out that there is only one “i” in Business Management and this fact undermines Mr Georgiades’ claim. We do not accept this second point. The “strap line” works when linked with the full name used by Mr Georgiades, namely “Innovation in Business Management” because the first two words both begin with the letter “i”. We feel that Ms Robertson’s submission requires too much of a literal interpretation. Further, whilst we accept that there are other ways of illustrating such a link, it is our view that this, in itself, is not a reason to doubt the reasons offered by Mr Georiades for selecting the name and this does detract from the credibility of the respondent’s case.

65) In summary, having regard to all the information before us, we conclude that the respondent's name was adopted in good faith.

Are the applicant's interests adversely affected?

66) Section 69(4)(e) provides a defence where the interests of the applicant are not adversely affected to any significant extent. The respondent's submissions are that the differences in the name are sufficient so that the applicant's name is not likely to mislead by suggesting a connection with the applicant. We have already found that this is not the case. This, together with evidence that both parties are involved in overlapping fields leads us to the conclusion that the respondent's reliance upon this defence must fail.

Summary

67) An application to the Company Names Tribunal is not an alternative to an action for infringement or passing off. Taking account of the circumstances identified in paragraphs 58 to 66, above, we are of the view that the respondent has shown evidence of good faith and the registration of its name does not, in context, prove bad faith or actions that amount to "sharp practice". Its registration of the company name was not intended to benefit from a suggestion that there is a connection between the parties, but rather, it was motivated by a wish to protect the business idea of Mr Georgiades.

68) The applicant cannot succeed if the respondent has a defence under section 69(4) of the Act. We have found that it has a defence under section 69(4)(d), namely, that it adopted the name in good faith. Owing to this finding, the applicant's case must fail.

COSTS

69) The respondent having been successful is entitled to a contribution towards its costs. We take into account that the respondent was not legally represented and, as such, did not incur legal costs. Costs are awarded on the following basis:

Official fees (1 x Form CNA2; 2 x Form CNA3s): £450

Preparing a statement and considering the applicant's statement: £150

Preparing evidence and considering and commenting on the evidence of the applicant: £400

Total: £1000

70) International Business Machines Corporation is ordered to pay IIBM LTD the sum of £1000. This sum is to be paid within seven days of the expiry of the appeal

period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful. Any notice of appeal against this decision must be given within one month of the date of this order. Appeal is to the High Court in England, Wales and Northern Ireland and to the Court of Session in Scotland. The tribunal must be advised if an appeal is lodged.

Dated this day 25th of August 2015



Mark Bryant
Company Names
Adjudicator



Judi Pike
Company Names
Adjudicator



Chris Bowen
Company Names
Adjudicator