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INSIGHTS OF THE EUROPEAN COMMUNITIES TRADE MARK ASSOCIATION

DAVID TATHAM (1936-2019)

INTERVIEW WITH
KIRSI EKSTRÖM

INTERVIEW BY
ARI-PEKKA LAUNNE

'Prominent', 'fine-grained white sand', 'crystal water'

'mild waves' 'well sheltered from the winds' -

*The expressions that you will find about Cyprus coastline beaches
around Ayia Napa and Protaras are not exaggerating.*

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Enjoy !

Bad Faith:

*A Pattern of
Unscrupulous
Behaviour*

*Held to be
Relevant in
Unrelated
Proceedings*



BACKGROUND

Trump International Ltd vs. DTTM Operations LLC (Case No: CH-2018-000205) initially involved an opposition against an application to register the mark 'TRUMP TV' in the UK, at a time when Donald Trump was standing for election as President of the United States. The opposition was based on a number of grounds, but the main ground, and the one on which the opposition was successful, was bad faith. The other grounds of opposition were not considered.

The applicant filed an appeal against the decision on the ground that the Hearing Officer had erred in his judgment that the application had been filed in bad faith,

claiming errors in law or principle. The appeal was refused on the basis that the evidence of behaviour was relevant.

THE OPPOSITION

On 30 October 2016, Trump International Limited filed a UK trade mark application for the mark 'TRUMP TV' for various telecommunication / broadcasting services in class 38 and entertainment and educational services in class 41. On 20 April 2017, the mark was opposed by DTTM Operations LLC, a company responsible for holding and administering trade marks previously owned by Donald Trump.

In connection with the bad faith claim, the opponent alleged that the applicant was

one of hundreds of companies owned and controlled by an individual named Michael Gleissner. It was claimed that it was unlikely that the applicant had any intention to use the mark and it was impossible for the applicant to have been unaware of the international reputation of the mark 'TRUMP'. The opponent claimed that the reason for filing the application was to cause damage to the reputation of its mark 'TRUMP' and to disrupt its legitimate business interests. As such, the application was an instrument of fraud.

Evidence submitted by the opponent included reports that the sole director of the applicant, Mr. Gleissner, was the director of over 1,000 UK companies, most of which

were non-trading, as well as a significant number of companies in other territories. Mr. Gleissner had also been involved in numerous trade mark proceedings in the UK and overseas. One of the decisions referred to in the opponent's evidence was 'the Apple case' (Sherlock Systems CV vs. Apple Inc O/015/17). This case involved 68 applications made by companies under the control of Mr. Gleissner, to revoke various trade marks owned by Apple, including IPHONE, ITUNES and APPLE, on the ground of non-use. The Hearing Officer concluded that the proceedings had been bought for an ulterior and improper purpose and should be struck out as an abuse of process.

The opponent also submitted evidence that Mr. Gleissner's companies had previously attempted to register a variety of well-known marks, such as TESLA, LEHMAN BROTHERS, PAN AM and THE HOME DEPOT. Further evidence showed that Mr. Gleissner was the sole director of EUIPO International Ltd which had filed Canadian and Portuguese trade mark applications for the mark 'EUIPO'. The Canadian application covered goods/services in all 45 classes and included 'trademark agent services; trade-mark monitoring services; licensing of intellectual property; monitoring of intellectual property; intellectual property consultancy'. Furthermore, evidence showed that one of his companies set up a misleading 'TMView' search database (tmview.org), which looked like the genuine database (tmdn.org) administered by the EUIPO.

The opponent also submitted evidence which showed that Mr. Gleissner's companies had been accused of reverse domain name hijacking, as those companies had been involved in the practice of filing applications for well-known third party marks, while

at the same time attempting to cancel earlier registrations for those marks. Once registration was secured, they were used as a basis for filing domain name complaints in order to secure the transfer of the domain names to Mr. Gleissner's companies, so that they could ultimately be sold for a profit.

The Hearing Officer held that the evidence submitted by the opponent pointed to a pattern of behaviour which suggested that the applicant did not have a *bona fide* intention to use the mark applied for, although that pattern of behaviour was not sufficient in itself to sustain a finding of bad faith. However, when this was combined with the fact that the mark applied for included the name of someone as well known as Donald Trump and allegations of a motivation on the part of the applicant to interfere with the legitimate interests of the opponent in the 'TRUMP' mark, the Hearing Office found that the combination of facts '*easily overcomes the presumption of good faith and founds a prima facie basis for bad faith*'.

The Hearing Officer concluded that the applicant '*had acted below the standards of acceptable commercial behaviour judged by ordinary standards of honest people*', and the Application was refused on the ground of bad faith.

APPEAL

Trump International Ltd appealed the decision to the High Court, on the basis that the Hearing Officer had made errors of law or principle, in reaching his conclusion on the evidence before him that the Application had been filed in bad faith. It was argued that the Hearing Officer had shown actual or apparent bias and as such the hearing procedure and decision was unfair and contrary to the European Convention on Human Rights, on the basis that the Hearing Officer had accepted and relied upon evidence and allegations regarding the history of behaviour in unrelated proceedings.

The appeal was refused on the basis that the evidence of behaviour was relevant and that the Hearing Officer had not acted in a biased manner. It is also interesting that the Comptroller General of Patents, Designs and Trade Marks actually sought permission to intervene in the appeal, raising concerns regarding the behaviour of Mr. Gleissner and his practice of '*filing unmeritorious applications time and time again through a myriad of non-trading and impecunious corporate entities*' which was considered to constitute an abuse of the process of registration. «



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