

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTELLECTUAL PROPERTY ENTERPRISE COURT



BETWEEN:

IP-2017-000106

(1) A.P.T. TRAINING & CONSULTANCY LIMITED

(2) MR WILLIAM DAVIES

Claimants

- and -

BIRMINGHAM & SOLIHULL MENTAL
HEALTH NHS FOUNDATION TRUST

Defendant

PARTICULARS OF CLAIM

The Claimants

1. The First Claimant (company number 05830391) was incorporated under the laws of England and Wales on 26 May 2006 and at all material times has carried on business as a provider of training to "the helping professions", such as psychologists, psychiatrists, mental health nurses, social workers, occupational therapists etc.
2. The Second Claimant is a director and 50% shareholder of the First Claimant.
3. The Second Claimant is the owner and registered proprietor of the following trade marks (the "Registered Trade Marks"), of which the First Claimant is the exclusive licensee:
 - (a) UK Trade Mark No. 1515793 for the word mark "RAID" registered as of 15 October 1992 in respect of "Educational services; provision of training; conferences; seminars; teaching; tuition; correspondence courses; all relating to psychology, behavioural problems, business and commerce" in Class 41.



- (b) EU Trade Mark No. 8509242 for the word mark "RAID" registered as of 25 October 2009 in respect of, inter alia, "Printed matter and publications; books; manuals; leaflets; instructional and teaching materials; pamphlets; brochures; stationery" in Class 16 and "Educational and training services including educational and training services relating to psychology, mental health, behavioural problems, learning disabilities, substance misuse" in Class 41.

(The sign the subject of the Registered Trade Marks shall be referred to herein as the "RAID Mark".)

4. Annex 1 hereto comprises prints from the UK Intellectual Property Office website relating to the Registered Trade Marks.
5. At all material times since approximately 1990, the First Claimant and its predecessors in title have provided mental health training courses under and by reference to the RAID Mark (the "RAID Courses").

PARTICULARS

- (1) From around 1990 to 2006, RAID Courses were provided by the Second Claimant and his wife, Mrs Phillippa Davies, operating in partnership (the "Partnership"). In or around May 2006, the business of the Partnership, including all goodwill built up in the RAID Mark, was transferred to the First Claimant.
- (2) The RAID Courses consist of training in a positive behaviour support approach for tackling challenging behaviour at source. The RAID Courses are provided on-site at the premises of the customer organisation or individuals can attend a course at the First Claimant's offices.
- (3) Over 15,000 professionals, both from within the UK National Health and Social Services and from independent health providers, have attended the RAID Courses. The NHS is the First Claimant's biggest customer and the First Claimant regularly runs in-house RAID Courses within the NHS.



- (4) The RAID Courses are the First Claimant's top selling courses, and have been for the last 30 years. The total turnover of the First Claimant from its RAID Courses in the United Kingdom is approximately £300,000 per annum. Since the Claimant commenced its RAID Courses in 1990, it is estimated that the total turnover accrued in relation to the RAID Courses is approximately £4 million.
- (5) The advertising and promotional expenditure of the First Claimant under and by reference to the Trade Marks in the United Kingdom is approximately £14,000 per annum.
- (6) Since approximately 1996, the RAID Courses were promoted under and by reference to the RAID Mark through the website accessible at <http://www.raid.co.uk>. Since approximately 2000, the Raid Courses were promoted under and by reference to the RAID Mark through the website accessible at <http://www.theraidinstitute.com>. Since at least 2001, the RAID Courses have been promoted under and by reference to the RAID Mark from the website accessible at <http://www.apt.ac/>. Both of the two earlier websites now re-direct to this current website. Annex 2 hereto consists of prints of selected pages from the First Claimant's current website, taken at 13 April 2017, and the earlier websites taken as at December 2004 and January 2002 respectively.
- (7) There has been substantial further advertising and promotion of the RAID Courses under and by reference to the RAID Mark through direct mailings, via social media (including Twitter at <https://twitter.com/aptraining> and Facebook at <https://www.facebook.com/aptraining/>) and through targeted social media campaigns. The RAID Courses are also advertised on other online course forums, including: www.hotcourses.com, www.emagister.co.uk and www.coursesplus.co.uk. Annex 3 hereto consists of copies of documents which illustrate the advertising and promotion of the First Claimant's business.



- (8) The Raid Courses are very well regarded and the First Claimant has received many positive reviews. A selection of these reviews can be seen at page 46 of Annex 2.
- (9) The First Claimant also gives out "RAID Awards" annually for excellence in working with challenging behaviour and further accredits mental health providers as "RAID Centres of Excellence". These awards are seen as an accolade for those who receive them.
6. As a result of such use:
- (a) the RAID Mark has acquired a reputation in the UK and EU within the meaning of s.10(3) of the Trade Marks Act (the "Act") and/or Art. 9(2)(c) of the EU Trade Mark Regulation ("EUTMR"); and
 - (b) the First Claimant owns a substantial and valuable goodwill and reputation in the RAID Mark, such that when it is used in relation to educational and training services related to mental health, it has come to indicate the services of the First Claimant and none other.
7. Moreover such goodwill and reputation existed before the Defendant started the activities complained of below, and has continued to exist at all times thereafter.

The Defendant

8. The Defendant is an NHS foundation trust that provides mental health care to people living in Birmingham and Solihull. NHS foundation trusts are public benefit corporations that form part of the NHS but have greater autonomy as they are directed by their members, governors and board of directors rather than by the government.
9. Since a date not known to the Claimants but in any event following the First Claimant's (and its predecessors in title's) commencement of trade under and by reference to the RAID Mark, the Defendant has provided a specialist multidisciplinary mental health service for people aged over 16 within acute hospitals in Birmingham and Solihull (the "Defendant's RAID Service") under and by reference to the sign RAID (the "Defendant's Sign").



10. The Defendant's RAID Service comprises a specialist mental health liaison team based within acute hospitals which provides mental health care to people being treated for physical health conditions in general hospitals who exhibit signs of mental distress. The team works alongside general hospital staff and follows a patient's journey through hospital attendance, rapid assessment, interface and discharge. The team also educates and trains general hospital staff in dealing with mental health problems.
11. Annex 4 hereto comprises prints of selected pages from the Defendant's website accessible at <http://www.bsmhft.nhs.uk/> relating to the Defendant's RAID Service, taken at 13 April 2017.
12. In or around December 2014, the Defendant launched the "National RAID Network", accessible at <http://www.raidnetwork.org/>, as a platform for staff working in the Defendant's RAID Service and other liaison mental health services to share resources and to strengthen links between such service providers.
13. Annex 5 hereto comprises prints of selected pages from the National RAID Network's website, taken at 13 April 2017.

Infringement of the Registered Trade Marks

14. The Defendant has infringed the Registered Trade Marks as follows:

Infringement under s.10(1) of the Act and/or Art. 9(2)(a) EUTMR

15. The Defendant has used in the course of trade without the consent of the Claimants a sign (namely the Defendant's Sign) which is identical to the RAID Mark in relation to goods and services (namely educational and training services relating to mental health and related printed matter) which are identical with the goods and services in respect of which the Registered Trade Marks are registered in a way which is liable to adversely affect the origin function of the Registered Trade Marks.

PARTICULARS

- (1) At trial the Claimants will seek a remedy for all acts of infringement of the Registered Trade Marks by the Defendant.



- (2) Pending disclosure and further investigations, the Claimants rely upon the uses of the Defendant's Sign as described in paragraphs 9 to 13 above and as illustrated in the Annexes referred to therein in support of and as examples of the Defendant's acts of infringement.

Infringement under s.10(2) of the Act and/or Art. 9(2)(b) EUTMR

16. The Defendant has used in the course of trade without the consent of the Claimants a sign (namely the Defendant's Sign) which is identical to the RAID Mark in relation to goods and services (namely mental health services) which are similar to the goods and services in respect of which the Registered Trade Marks are registered. Because of such identity or similarity there exists a likelihood of confusion on the part of the public, including the likelihood of association.

PARTICULARS

- (1) The particulars to paragraph 15 above are repeated.
17. In support of their case as to likelihood of confusion, the Claimants rely on the following facts and matters:
- (a) the identity of the respective signs;
 - (b) the identity and high level of similarity of the respective services; and
 - (c) the highly distinctive character of the RAID Mark, both per se and because of the use that has been made of it by the First Claimant and its predecessors in title as detailed at paragraph 5 above.

Infringement under s.10(3) of the Act and/or Art. 9(2)(c) EUTMR

18. The Defendant has used in the course of trade without the consent of the Claimants a sign (namely the Defendant's Sign) which is identical to the RAID Mark in relation to goods and services which are identical with and similar to the goods and services in respect of which the Registered Trade Marks are registered. Such use has been in circumstances where the RAID Mark has a reputation in the UK and/or EU and the use by the Defendant is without due cause and is detrimental to the distinctive character and/or repute of the RAID Mark.



PARTICULARS

- (1) The particulars to paragraph 15 above are repeated.
19. In support of their case as to detriment to distinctive character and repute the Claimants will refer to the following facts and matters:
- (a) There is a likelihood of confusion by reason of the Defendant's activities complained of. Such is inherently detrimental to the distinctive character and repute of the RAID Mark.
 - (b) Even persons who are not confused are likely to have a link created in their minds between the RAID Mark and the Defendant's RAID Service by reason of the Defendant's use of the Defendant's Sign. This dilutes the distinctive character of the RAID Mark and reduces its ability to distinguish the goods and services of the Claimants from those which have a different origin.
 - (c) The First Claimant's reputation is built on high quality, effective training services. As such, if the First Claimant is associated with mental health services and/or training services related to mental health that are not of a high quality, such will tarnish the reputation of the RAID Mark.

Passing Off

20. The Defendant's use of the Defendant's Sign in relation to the Defendant's RAID Service is likely to have given rise to the mistaken belief amongst members of the relevant public that the Defendant's RAID Service is a service of the First Claimant, or is a service authorised or approved of by the First Claimant or in some other way connected in the course of business with the First Claimant.
21. Such misrepresentations have caused and are likely to continue to cause the First Claimant damage.
22. In the premises, the Defendant has passed off its services as or for services of the First Claimant, or as services authorised or approved of by the First



Claimant or in some other way connected in the course of business with the First Claimant contrary to the fact.

PARTICULARS

- (1) The particulars to paragraph 15 and the facts and matters set out in paragraph 19 above are repeated.

Remedies

23. A letter dated 6 December 2016 was sent to the Defendant complaining of trade mark infringement and offering to settle the claim upon the provision of undertakings. However, the Defendant has refused to provide the requested undertakings or any undertaking.
24. Accordingly, unless restrained by the court, the Defendant threatens and intends to continue to infringe the Registered Trade Marks and to pass off in the manner complained of above, whereby the Claimants have suffered and will continue to suffer damage.
25. The Claimants are entitled to interest upon all sums found due to them pursuant to s.35A of the Senior Courts Act 1981.
26. The Claimants have complied with the provisions identified in CPR 63.20(2) (and the equivalent provisions in the Practice Direction on Pre-Action Conduct as amended by the 79th Update to the CPR on 6 April 2015).

AND THE CLAIMANTS CLAIM

- (1) An injunction restraining the Defendant (whether acting by its directors, officers, servants or agents or any of them or otherwise howsoever) from:
- (a) infringing UK Trade Mark No. 1515793 and/or EU Trade Mark No. 8509242 (the "Registered Trade Marks"); and
 - (b) passing off any goods or services as or for goods or services of the First Claimant or as goods or services authorised or approved of by the First Claimant or as being in some other way connected in the course of business with the First Claimant by the use in relation thereto of



the Defendant's Sign or any sign colourably similar thereto, or in any other way.

- (2) An order for the delivery up to the Claimants, at the expense of Defendant, to an address in the United Kingdom to be nominated by the Claimants, of all articles which infringe the injunction in paragraph (1) which are in the possession, custody or control of the Defendant.
- (3) An order that all articles delivered up to the Claimants pursuant to paragraph (2) above be forfeited to the Claimants or at the Claimants' option be the subject of destruction at the expense of the Defendant.
- (4) An inquiry as to damages for infringement of the Registered Trade Marks and for passing off (including damages pursuant to regulation 3 of the Intellectual Property (Enforcement, etc.) Regulations 2006 and Directive 2004/48/EEC) or at the Claimants' option an account of profits.
- (5) An order for payment to the Claimants of all sums found due upon taking such inquiry or account together with interest thereon pursuant to s.35A of the Senior Courts Act 1981.
- (6) An order that, at the Claimants' option and at the expense of the Defendant, appropriate measures are taken for the dissemination and publication of any judgment or order made in this case.
- (7) Costs.
- (8) Further or other relief.

CHARLOTTE SCOTT

Statement of truth

The Claimants believe that the facts stated in these Particulars of Claim are true. I am duly authorised to sign this statement on behalf of the Claimants.

Signed: [Signature] Full name: WILLIAM DAVIES

Position or office held: DIRECTOR Date: 9/6/17



Dated: 08 June 2017

Served by: Howes Percival LLP, 3 The Osiers Business Centre, Leicester, LE19
1DX (Ref: 222485.0001/HES)



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Howes Percival LLP
3 The Osiers Business Centre
Leicester
LE19 1DX

Tel: 0116 2473500
Fax: 0116 2473539
DX: 710913 Leicester Meridian

Ref: 222485.0001/HES

Solicitors for the Claimants