

O/778/19

TRADE MARKS ACT 1994

**IN THE MATTER OF THE APPLICATION UNDER NO. 3304621
BY GUANGDONG PUSS INVESTMENT CO., LTD. TO REGISTER:**

The logo consists of the words 'NO' and 'ME' stacked vertically. The 'NO' is in a bold, sans-serif font with a small semi-circle above the 'O'. The 'ME' is also in a bold, sans-serif font, with the 'E' having a horizontal bar that extends to the right.

AS A TRADE MARK FOR SERVICES IN CLASS 35

AND

**IN THE MATTER OF THE OPPOSITION THERETO UNDER NO. 413219
BY GUANGZHOU RENREN MANAGEMENT CONSULTING CO., LTD**

BACKGROUND AND PLEADINGS

1. On 18 April 2018, Guangdong Puss Investment Co., Ltd. (“**the Applicant**”) applied to register as a trade mark in the UK the figurative mark shown on the front page of this decision, in respect of the Class 35 services set out in the table below (“**the UK TM Application**”). The UK TM Application claims priority from Chinese trade mark application No. 27251868, which was filed on 2 November 2017 (“**the Relevant Date**” for determination of the claims in these proceedings).

Class	Applicant’s services
35	Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Advertising; Presentation of goods on communication media, for retail purposes; Business management and organization consultancy; Rental of vending machines; Sponsorship search; Rental of sales stands; Import-export agency services; Employment agency services; Updating and maintenance of data in computer databases; Marketing; Accounting; Commercial administration of the licensing of the goods and services of others; Providing business information via a web site; Provision of an on-line marketplace for buyers and sellers of goods and services; Relocation services for businesses.

2. The UK TM Application was published for opposition purposes on 25 May 2018. On 25 July 2018, a Form TM7 was filed on behalf of Guangzhou Renren Management Consulting Co., Ltd (“**the Opponent**”), opposing registration of all of the services under the Application, based on grounds under section 3(6) of the Trade Marks Act 1994 (“**the Act**”). The Opponent’s alleged in its statement of grounds that the UK TM Application was filed in bad faith, claiming as follows (my underlining added for ease of reference):
 - i. The Applicant had, at the time of filing, full knowledge of the Opponent’s use of the

confusingly similar sign  (“**the Sign**”) in relation to identical and/or similar goods and services.

- ii. The Opponent has used the Sign in China since at least as early as 21 November 2016 in relation to its chain of “Scandinavian” styled retail stores. The Opponent operates 14

stores in China bearing the Sign in major cities including Shanghai, Guangzhou and Shenzhen. The stores sell a range of goods bearing the Sign, including products for home decoration, homeware, clothing, shoes, accessories, beauty and skincare products, household items, bags, food and accessories of electronic products.

- iii. The Applicant is located in the Guangdong province in China, where the Opponent operates a number of stores under the Sign and the Opponent submits that the Applicant was, or at least should have been, aware of the Opponent's business as of the date of filing the Application.
 - iv. The Opponent submits that the filing of the UK TM Application in relation to the contested services amounts to an attempt to dishonestly acquire property or rights of another” and “is an unauthorised attempt to interfere with the legitimate business of the Opponent”, which “falls short of the standards of acceptable commercial behaviour observed by reasonable and experienced businesses.”
3. On 7 August 2018, the registry wrote to the Opponent's legal representatives in the following terms:
- Section 3(6):** The Registrar considers an allegation that an application was made in bad faith to be a particularly serious one. If a party wishes to raise this ground then the Registry would expect the allegation to be fully particularized and will not accept a general allegation that the application was made in bad faith. In *Royal Enfield* BL O/363/0 Simon Thorley QC, sitting as appointed person, held:
- ‘An allegation that a trade mark has been applied for in bad faith is a serious allegation. It is an allegation of commercial fraud. A plea of fraud should not be lightly made (see Lord Denning MR in *Associated Leisure v. Associated Newspapers* (1970) 2 QB 450 at 456) and if made should be distinctly alleged and distinctly proved. It is not permissible to leave fraud to be inferred from the facts (see *Davey v. Garrett* (1878) 7 Ch. D. 473 at 489). In my judgement precisely the same considerations apply to an allegation of bad faith made under Section 3(6). It should not be made unless it can be properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference. Further I do not believe that it is right that an attack based upon Section 3(6) should be relied on as an adjunct to a case raised under another section of the Act. If bad faith is being alleged, it should be alleged up front as a primary argument or not at all.’
4. The registry's letter invited the Opponent to file an amended Form TM7 and statement of grounds by 28 August 2018, advising that absent amendment “the registry may decide to strike out any grounds which are not adequately explained.”
 5. On 28 August 2018, the Opponent's representatives wrote in reply as follows:

“On seeking further information to support the claim under section 3(6) of the Act as requested by the Registrar, new information has come to light that the Opponent is the licensee of a Chinese copyright registration in the sign NOME (stylised) with a date of first publication of 8 December 2015. ...”


6. The Opponent amended its statement of grounds, invoking section 5(4)(b) of the Act:

6. **As the evidence will demonstrate, the Opponent is the licensed user of a registered**

Chinese Copyright for  **which was first published on 8 December 2015.**

Under the provisions of the Copyright Designs and Patent Act 1988 and the Berne Convention for the Protection of Literary and Artistic Works, the Opponent is entitled to prevent the use of the mark of the Application. As a consequence, it is submitted that the Application should be refused under the provisions of Section 5(4)(b) of the Act.

7. The Opponent maintained its allegation of bad faith, supplementing its statement of claim under section 3(6) to the extent of adding that: “Further, as the evidence will demonstrate and as stated above, the Opponent is the owner of a Copyright Registration in China for the

sign  which was first published on 8 December 2015. Furthermore, the Applicant has opposed a US trade mark application in the name of the Opponent for the word mark NOME.” (my emphasis)

The Applicant’s defence


8. The Applicant submitted a notice of defence and **counterstatement** from which I note the following points made by the Applicant:

In relation to the Opponent’s claim under section 5(4)(b) of the Act:

i. There was a discrepancy in the Opponent’s statement of grounds between its claim to be a “licensed user of a registered Chinese copyright” in the Sign (para 6) and its claim to be “the owner of a Copyright Registration in China” for the Sign (para 10); the Applicant claimed that this gave rise to a lack of clarity as to what rights the Opponent sought to rely on in support of under section 5(4)(b) of the Act. The Opponent had filed no documentary evidence with its Statement of Grounds to support its claims (i) that the copyright in the

Sign is registered in China (ii) that it is the owner of such copyright, or (iii) that it is a licensee of the Sign. The Applicant put the Opponent to strict proof that it is a licensee of the Sign.

ii. It was not clear that any such rights corresponded to the relevant legislation or case law in the United Kingdom. The Applicant put the Opponent to strict proof that:

- (a) the Sign  qualified as an artistic work in which copyright subsists in the United Kingdom, which is denied by the Applicant; and
- (b) that the Opponent is the owner of copyright in the United Kingdom in the Sign entitled to prevent the use of the trade mark under the Application in the United Kingdom per section 5(4) of the Act.

In relation to the Opponent's claim under section 3(6) of the Act:

- iii. The Applicant denied that the UK TM Application was filed in bad faith and the Applicant put the Opponent to strict proof that the Applicant had full knowledge of the Opponent's use of the Sign;
- iv. The Applicant stated that the Opponent must prove that at the time of filing, the Applicant acted dishonestly, with no legitimate objective. The Applicant stated that case law¹ principles require that in determining whether a trade mark has been applied for in bad faith, it is necessary to take into account all factors relevant to the case as at the date of filing, including, inter alia,
- (a) that the Applicant must know that the Opponent is using a similar sign for identical or similar goods capable of being confused;
- (b) the Applicant's intention must be to prevent the Opponent from continuing to use the sign; and
- (c) the degree of legal protection enjoyed by the Opponent in the mark.
- v. The Opponent had provided no documentation or evidence to show any of the following:
- (a) the Applicant's knowledge of the Opponent;
- (b) the Applicant's intention;
- (c) the extent of legal protection, if any, enjoyed in the Sign; or
- (d) that the Applicant had no legitimate objective.

¹ Chocoladefabriken Lindt & Sprungli (IP) [2009] EUECJ C-529/07 (11 June 2009)

- vi. The Applicant specifically noted that in support of its section 3(6) claims the Opponent states: that it has used the Sign in major cities in China; that the Sign was first published/created as a copyright work on 8 December 2015; that the Opponent is the owner of a Chinese copyright registration for the Sign; and that the Opponent is a licensee of the Sign. The Applicant's counterstatement responded:
- (a) that use of the Sign in China is "irrelevant and misleading. It does not constitute evidence of any use or reputation in the United Kingdom, nor of the Applicant's knowledge of the Opponent, who is not commercially or otherwise associated with the Applicant."
 - (b) that "in any event, ownership of a registered Chinese copyright is not evidence that the Applicant was aware of the Opponent's business at the date of the filing of the Application."
 - (c) "On the other hand, the Applicant intends to submit proof that the Application was designed independently by the Applicant."
 - (d) The Applicant put the Opponent to strict proof of the allegation that the UK TM Application was filed in bad faith. The Applicant stated that it was insufficient to infer bad faith and the Applicant reserved the right to submit evidence that the Application was filed in good faith, with a legitimate business objective.

Representation and papers filed

9. Appleyard Lees IP LLP acts for the Applicant in these proceedings; Urquhart-Dykes & Lord LLP (UDL) acts for the Opponent. The Opponent requested a main hearing of the matter, which took place by video conference on Monday, 4th November 2019. Alan Fiddes (of UDL) attended on behalf of the Opponent; Chris Hoole attended as attorney for the Applicant. The parties each filed hundreds of pages of evidence. To the extent I consider warranted, I summarise below and comment on what the parties filed during the proceedings, and refer to particular points where appropriate elsewhere in this decision. Both parties filed skeleton arguments ahead of the main hearing.

THE EVIDENCE

10. During the evidence rounds, the parties filed the following:

i. *The Opponent's evidence in chief:*

- **Witness Statement of Zheng Ming Yong**, dated 12 February 2019 with **Exhibits 1 – 11**. This witness statement included matters of submission.
- **Witness Statement of Gareth Ian Price**, dated 15 February 2019, with **Exhibits GIP1 – GIP3**.


ii. *The Applicants evidence:*


- **Witness Statement** dated 13 April 2019 signed in the name of **Chen Hao** with **Exhibits 1 – Exhibit 8**. This witness statement included matters of submission.

iii. *The Opponent's reply:* **Written Submissions dated 2 August 2019**

11. **Late evidence:** When the Applicant filed its skeleton argument it also filed two items of evidence that it requested leave to admit into the proceedings, notwithstanding that the evidence rounds were long completed. I dealt with the request to admit this evidence as a preliminary matter at the hearing. I will outline the content and outcome of that preliminary matter once I have summarised below the initial evidence filed by the parties. Suffice to note here that subsequent to the hearing, the Opponent filed evidence in reply to one of the Applicant's late filed items of evidence.


The Opponent's evidence in chief

12. **Zheng Ming Yong** is the President of the Opponent. He states that the logo  was created and published by Ms Hu Yao on 8 December 2015 and copyright for this logo was registered on 10 April 2018 (several months after the Relevant Date). **Exhibit 1** shows a certificate in Chinese, with translation in English that shows this logo (which is identical to


the Applicant's mark) along with the Sign  (which is equivalent to the Applicant's mark, but without the shallow bowl-like device atop it). The numbered certificate gives the name of the work as "NOME", the type of work as "work of art", the author of the work as Hu Yao, the owner of the copyright as Hu Yao, and states that the work was both finished and published on 8 December 2015. It refers to approval of those points of content under seal

and on the audit of the China Copyright Protection Center (CCPC)² and in accordance with the regulations of the Voluntary Regulation of Works Trial Measures.




13. On 12 April 2018, copyright in the  Logo (and Sign) was assigned to Mr Ye Guofu. **Exhibit 2** shows another certificate from CCPC confirming that. On the same date (12 April 2018), Mr Ye Guofu licensed the Opponent in relation to all rights under the copyright of the Logo. **Exhibit 3** appears to be a translation of such an agreement signed by the parties. Provision 2 of that licence states: "Scope of licensing rights: All rights under this copyright, including the right to claim infringement of the third party." Provision 3 states: "Scope of licensing regions: Globally." The witness states that because Mr Ye Guofu (owner of the copyright in the Logo) has not authorised the Applicant to file the UK TM Application, the Applicant "is not eligible" to own the trade mark in the UK.
14. Mr Ye Guofu states that he has authorised a company called Nome Design (Guangzhou) Limited ("**Nome Design Ltd**") to use the Sign in retail outlets. **Exhibit 5** is a copyright licence agreement between Mr Ye Guofu and Nome Design Ltd. Other than the name of the licensee, it is identical to Exhibit 3, giving Nome Design Ltd a global licence from 12 April 2018. The witness states that that Nome Design Ltd was founded in 2016 and its products include household items, clothing, shoes, "colour cosmetics", snack foods and "digital parts".
15. The witness states that Nome Design Ltd is based in Guangdong province, that that



company has made "prominent and extensive use of the  logo throughout China and



that the "authorised use of the  sign can be seen on the website "<http://nome.com.cn/>". **Exhibit 6** is said to be "the homepage of nome's website". The exhibit comprises five pages. The first page shows the Sign and the words in English "Swedish Independent Designer Brand" and pictures of four products labelled "RHA Serum"




bearing the  Sign. The page is undated and has no URL or contextualising

² This is more usually translated as the Copyright Protection Centre of China (CPC).

information. Page 2 is undated, does not show the Sign, and mainly shows a signed photograph of a man named Jon Eliason, alongside 3 (alike) unidentified items. Page 3 shows a pair of shoes, a citrus soap and cap and trousers. It does not show the Sign or any other information. Page 4 shows a chair on a busy road, with the slogan “Explore A New Life”. It is undated and does not show the Sign, but shows only the words “Contact Us” “hr@nome.com.cn” and “Sweden headquarters North of Grand Square, Old City, Stockholm, Sweden”. Page 5 of the exhibit is simply a piece of paper of unclear source or date, that gives an address in Guangzhou for the China Head Office of Nome Design Ltd. It also includes: “© 2018 NOME”.



16. The witness states that the Opponent and Nome Design Ltd are “affiliated companies” and describes a nexus of companies which includes Mr Ye Guofu being “the shareholder of Miniso Guangzhou Limited”, which is said to be “the corporate shareholder” of Nome Design Ltd. **Exhibit 7** shows “extracts of information of [the companies in the nexus] from National Enterprise Credit Information Publicity System in China and a chart showing the relationships of the above companies.” The final page of the exhibit indeed is a family-tree-style diagram showing the claimed connection of Mr Ye Guofu to the companies named in the witness statement. And one of the five companies in the chart is Nome Design Ltd which is labelled as being “shareholder and parent company” of Miniso Guangzhou Limited. The rest of the exhibit comprises about a dozen pages and shows various translations of those stated official documents dated 26 July 2018. The official documents (from the Enterprise Credit source) include reference to the Opponent, to Mr Zheng Ming Yong and to Mr Ye Guofu, but notably no official information is given about the Nome Design Ltd, nor is it even mentioned in that documentation. The only reference to Nome Design Ltd in the exhibit is in the simply generated, seemingly hand-labelled, unsourced and undated chart.

17. **Exhibit 8** is said to be a brochure “showing use of [the Sign] by authorised retail outlets and showing some of the product range on which the [the Sign] is used.” The exhibit shows around 40 pages, largely in Chinese, although with occasional phrases in English, such as “Swedish Independent Designer Brand”, “Explore a New Life”, “Nordic Designer Brand”, occasional inclusions of the  Sign, a contents page, various photographs of individuals with Swedish-sounding names (e.g. Henrik Lundblad), a picture of five or so cosmetic products (cleanser, toner etc) bearing the Sign, and a few other products such as clothing

and household goods, but not seen to bear the Sign; a few photographs of store fronts (locations unclear) bearing the sign NOME. The exhibit ends with a page simply saying “THANKS!”, which tends to suggest the foregoing content was more in the line of a presentation package. There is no information on the context of this ‘brochure’ – its date of creation, its distribution etc - nor on the extent to which it reflects actuality or ambition.

18. The witness states (para 11) that “the Applicant company is also based in Guangdong Province and has opened outlets selling similar products and has set up a website under nome.com, which is virtually identical to the website provided by [Nome Design Ltd].”
19. **Exhibit 9** shows trade mark applications, mainly throughout 2018, for the word NOME (sometimes in figurative form) by the Opponent and affiliated companies in numerous other countries such as Saudi Arabia, UAE, Mexico, Brazil. The earliest date of those trade mark applications (for the word “NOME”) appears to be the USA application, which is dated 26 December 2017.
20. The witness also states that the company Nome Design Ltd has opened 121 retail stores in China. **Exhibit 10** shows photographs of various packaged products bearing the Sign – including toothbrushes, toothpicks, hangers and socks. The exhibit is also said to show media coverage – it includes several pages of Chinese text and some other pages in English, which I take to be translations. The precise source of the claimed media coverage is unclear, but the translations refer to the “Grand Opening of NOME Flagship Store” in Shanghai, seemingly on June 8th 2018 and to providing “a Nordic-style version of MUJI”.
21. The witness (para 15) states that since 2018, Nome Design Ltd has achieved turnover of approaching the equivalent of £21 million and anticipates a turnover approaching £290,000 overseas in 2019. No stores overseas are identified.
22. **Exhibit 11** is said to show sales contracts between Nome Design Ltd and Chinese entrepreneurs, where the former authorises the latter traders to open franchise stores bearing the Sign. The earliest of such agreements is dated 20 July 2018.

23. Zheng Ming Yong then gives his opinion that:

- the UK TM Application has been filed without legal authority and will lead the public in the UK to think that the Applicant is the owner of the trade mark in the UK, which is not true. (para 17);
- this “false representation of ownership will reduce the value of the  logo to Mr Ye Guofu, the true owner and to the companies whom Mr Ye has authorised to use” it.
- the Applicant filed for the UK trade mark with the intention of benefitting from the reputation in the authorised use of the  logo through its own separate unauthorised use; and
- the “use and registration of the Logo trade mark by the Applicant is therefore unfair competition.”


24. **Witness Statement of Gareth Ian Price:** Mr Price is a Partner at UDL and gives evidence relating to the Berne Convention to the effect that works first published in a Contracting State (China) must be given the same protection in another Contracting State (UK) as the latter (UK) grants to the work of its own nationals. **Exhibit GIP3** shows an English translation from the WIPO website (29 January 2019) of copyright law in China. Mr Price states that copyright protection arises automatically in China on “completion of the work” and that registration is not mandatory, but registration of a copyright work “is *prima facie* proof of ownership”. He states that copyright registration is administered by the Copyright Protection Centre of China (“CPCC”). Mr Price refers too to the principle of national treatment arising under provisions of the Copyright, Designs and Patents Act 1988 (“**CDPA**”)³ Mr Price states that “the holder of a copyright in a work protected in China is therefore entitled to enforce his rights in the UK under the CDPA”. He also refers to section 17 of the CDPA which describes the restriction on copying an artistic work by reproducing it in any material form.


The Applicant’s evidence

25. **Chen Hao** is the CEO of the Applicant and I note the following from his **Witness Statement** of 13 April 2019 and **Exhibits 1 –8**. He states that the Applicant was founded as a limited

³ I note in particular sections 154 and 159 of the CDPA.

company on 21 June 2016 in the Republic of China, but does not trade as "Guangdong Puss

Investment" and since its formation has traded under the mark .

26. *Creation of the mark:* The witness states that he himself independently developed the NoMe Mark between March - April 2017. Explaining the mark, the witness states: "The Applicant concerns its business with a lifestyle that appreciates the values of each individual. The "No" of NoMe, refers to the rejection of mainstream standards, and "Me", refers to self importance. In this sense, the Applicant's brand under the NoMe Mark aims to introduce a new lifestyle to its consumers."
27. *The Applicant's protection of the mark:* **Exhibit 1** shows an official Chinese copyright certificate in the name of the Applicant in respect of the sign  (and another presented a "NOME", in the same font and with the same bowl device) issued on 21 December 2017. The author is shown to the Applicant, with a creation (completion) date of 10 April 2017 and a date of first publication of 20 August 2017. The witness states that following its application for registration of copyright in the mark, the Applicant, on 2 November 2017 also filed a trade mark application in China (No. 27251868).
28. *The Applicant's business in China:* Chen Hao states that the business ethos, epitomised by the aim of the described message of the mark is "highlighted by the employment of more than 150 independent designers from Nordic countries, who create simple but unique and practical products." He states that "information about the design process of the Applicant's products can be found at the following link" and he gives a link to <http://nome.com/designer>. However, I have not accessed the information at that link because such hyperlinks, being subject to change, are not acceptable as evidence in tribunal proceedings.
29. Chen Hao states that the Applicant's employment of such designers is a testament to the amount of capital investment and effort that has gone into the business under the NoMe Mark, which has grown rapidly since August 2017. The witness lists around 38 major cities in China where the Applicant has expanded its business, including Beijing, Hainan, Shenzhen and Shanghai. He states that as of April 2019, "the Applicant hosts 164 offline

retail outlets in China alone.”⁴ **Exhibit 2** shows photographs said to include the Applicant's warehouse, and the shop fronts of numerous retail stores in specifically named cities showing the mark on those shop fronts. A few products showing the mark are also shown (e.g. make-up remover). **Exhibit 3** is said to show information from the Applicant's website <http://nome.com/>. The exhibit includes similar images and identical slogans to those in evidence filed by the Opponent; the exhibit is undated and of very little probative weight. The witness states the Applicant's annual revenue is expected to exceed the equivalent of over £1 billion in 2019.

30. *Media coverage*: The witness refers to the Applicant having attracted attention and praise, including, for example, an award in 2018 of the title of "Most Influential Brand in China's New Retail Industry". **Exhibit 4** shows various press coverage and awards, although I note that that particular award is attributed to a company called Guangzhou Nome Brand Co., Ltd, which is not the Applicant. Another award shown is identified as "2018 Annual Retail Innovative Elite: Mr Chen Hao, president of Puss Investment Group and founder of NöME". The media coverage includes an online article dated 13 September 2018 from www.thebeijinger.com, heralding the recent openings of several outlets in Beijing. It confirms the designer input and refers to (amongst others) Henrik Lundblad (whose name likewise appears in the Opponent's evidence). Another media article dated 25 June 2018 shows a photo of Chen Hao on stage next to a large 3D model of the Applicant's mark, identifies him as the "president of NOME" and refers to the remarkable financial success in a period of 9 months. **Exhibit 6** is said to show further examples of large-scale conference/award-type events focused on the Applicant and the mark.

31. *Allegation against the Opponent*: In his witness statement, Chen Hao states as follows: "Whilst the Applicant has experienced much positive press, it should be noted that the feud between the Applicant and the Opponent has been the interest of many internet users. Examples of such articles in English are shown at **Exhibit 5**. The articles confirm the Applicant's position in being the victim to false commentary provided by Ye Guofu, who claimed to have acquired the NoMe brand. Given the Applicant's earlier rights and use of the NoMe Mark, I can only assume that the Opponent has filed the Opposition in bad faith with the sole intention of disrupting our bona fide business interests."

⁴ The witness provides a link <http://nome.com/store/> - said to be to a further list of the Applicant's retail store locations, but I have not accessed it.

Exhibit 5 includes an undated LinkedIn.com article on the phenomenon of copycat business activities and refers to Miniso (a company affiliated to the Opponent). Another article on hitouch.com refers in derogatory terms to Ye Guofu alleging that “in order to stop his competitor NOME expanding business in China, he spread the fake news that MINISO has acquired NOME. On 19 March 2018, he let 27,000 MINISO employees repost this rumour on their WeChat Moments, a copy website was born as well.”

32. *The Applicant's international expansion plans:* The witness states that although its main activities *the NoMe Mark* currently take place in China, the Applicant is a growing business with plans to operate on an international scale, and in preparation has filed various trade mark applications, and obtained registrations for the NoME mark in various jurisdictions. **Exhibit 7** confirms this.

33. *Direct challenges to the Opponent's claims:* The witness statement of Chen Hao addressed directly several of the claims made by the Opponent, including the following:

- (i) He pointed to the fact that the Applicant's copyright registration predated the registration relied on by the Opponent;
- (ii) He questioned why there was a period of years between the registration date (10 April 2018) of the copyright registration relied on by the Opponent and the date (8 December 2015) on which it is claimed that the sign was created and published by Ms Hu Yao;
- (iii) He submitted that the Opponent had failed to provide evidence to support the claim as to the creation date and he put the Opponent to strict proof that the creation date was indeed 8 December 2015;
- (iv) He submitted that it remained unclear who Ms Hu Yao is, and the reason for the assignment of copyright to Ye Guofu just two days after registration of the Sign relied on by the Opponent;
- (v) He submitted that the relationship was unclear as between the Opponent and the copyright owner and that it was questionable as to how and why the Opponent was authorised to use the copyright of the Opponent's Sign.

34. The witness concludes with the submission that: “In summary, the Applicant is the clear owner of earlier rights in China in the NoMe Mark, and has a genuine bona fide interest in protecting its rights in the NoMe Mark in the UK. Our earlier rights in the NoMe Mark are clear from both the date of protection and date of trading, as well as consumer and public

comment. The evidence filed by the Opponent on the other hand illustrates that it does not own, nor that it has established any earlier rights in the NoMe Mark or similar mark, nor any rights at all to oppose the Application. Rather, the Opponent relies solely on an unsupported alleged creation date in December 2015. The Opposition, we assume, was filed with the intent to cause our business harm and to disrupt our genuine and rightful interests in protecting the brand.”

The Opponent’s submissions in reply

35. The Opponent noted that the Applicant’s witness had stated that the Applicant began trading in August 2017, which is after the date that the Opponent’s affiliate, Nome Design Ltd, was founded.
36. In response to the question of the identity of Ms Hu Yao and the request for proof that the work was created on 8 December 2015, the Opponent replied that Ms Hu Yao was the author of the work and that the CPCC was satisfied as to her being the author and as to the date of creation. The Opponent stated that the purpose of copyright registration is to provide prima facie proof of ownership. It was argued that it was “not appropriate for the Applicant to question the validity of a copyright registration granted by the CPCC in these proceedings. The Applicant has had ample opportunity to challenge the validity of the copyright registration in the Opponent’s Sign with the CPCC and has not done so.”
37. The submissions noted that the witness statement of Chen Hao, and Exhibit 5 make “unsubstantiated allegations” against the Opponent and its licensor. The submissions contained no denial of those allegations, but noted that the Applicant had provided no evidence of legal measures taken by the Applicant against the Opponent or its licensor.

The late filed evidence

38. I return now to the issue I mentioned at paragraph 11 above, of the two items of evidence filed with the Applicant’s skeleton argument. The Applicant sought leave to admit those items and I dealt with the request at the hearing as a preliminary matter. One item was a resubmission of Exhibit 1 of Chen Hao’s witness statement, to correct an error in the original English translation. Mr Fiddes took no objection and the version containing the initialed correction was admitted.

39. The other item was identified as a Statutory Declaration of Chen Hao, dated 15 October 2019. Chen Hao had not signed his statutory declaration, but it enclosed an **Exhibit CH-20**, which was an annexed declaration by Yu Jia Yan, signed by Yu Jia Yan and dated 13 October 2019. (Moreover, the annexed declaration of Yu Jia Yan was accompanied by a stamped, numbered certificate from the China Council for the Promotion of International Trade (CCPIT), dated 15 October 2019, and signed by Lu Xiaohui of CCPIT, which certified that the signature of Yu Jia Yan on the annexed declaration was genuine.) The declaration by Yu Jia Yan ran to around four pages and opened with an oath as to the veracity of its content. Yu Jia Yan is a trade mark attorney for the Applicant and for Guangzhou Nome Brand Management Co., Ltd., who provided information about the copyright registration process in China, based on two years' professional experience in handling such matters.
40. Mr Hoole of the Applicant's representatives stated that the evidence had been sought because the Opponent had not made clear in its own evidence how the Chinese copyright examination process works. He apologised for the delay in requesting leave to admit this late evidence, which he stated was received only on 31 October 2019. He explained that instructions on the current proceedings came via instructing attorneys in China, which complicated the collation of evidence as there are three parties that need to communicate, rather than two. Mr Hoole stated that the evidence was filed to enable the UKIPO and the parties' UK representatives to understand this unfamiliar area of foreign legal procedure. He argued that it was potentially an important piece of evidence because, whilst the Applicant denied that there is any copyright for the Opponent to own, if the tribunal were to find copyright to subsist, an explanation of Chinese copyright registration would be key, especially with regard to establishing the creation date of a work, being the date from which copyright protection starts. The annexed declaration included extracts from the relevant publicly accessible Chinese website and gave a corresponding account of those in English.
41. Mr Fiddes argued against admitting the evidence from Yu Jia Yan. Mr Fiddes argued that the evidence was not relevant and because it was filed only when the parties filed their skeleton arguments, it was too late. He also pointed out that Chen Hao's statutory declaration was unsigned and that the evidence in the annexed declaration was prepared by the Applicant's own trade mark attorney, reportedly for the purposes of other proceedings (in Singapore).

42. I considered the points from both sides and took account of all relevant factors⁵, including the nature and materiality of the evidence and questions of fairness and prejudice of denying the Applicant the ability to rely on such evidence. At the hearing I gave my view that the evidence filed, although very late, contained what may be useful contextual information for the tribunal in these proceedings. I therefore admitted the late filed evidence into proceedings, but allowed Mr Fiddes an opportunity to respond to that evidence. Mr Fiddes stated that he would need to take instructions from his clients as to whether they wished to contradict or correct any aspect of the annexed declaration and that since he was not expert in Chinese copyright law he may need to seek advice from a competent Chinese attorney. A period of 4 weeks was considered reasonable for the task and I set a deadline of 2 December 2019 for a response. I allowed the same deadline for the Applicant to obtain the missing signature of Chen Hao. Both parties duly filed further material by that deadline. In particular a further witness statement was filed on the side of the Opponent. The witness statement was in the name of Xinyan Zhou, who is a qualified Chinese attorney with 14 years' practice in intellectual property.
43. The central point of contention in the late filed evidence from **Exhibit CH-20** was that Yu Jia Yan referred to the CPCC website guidance to state that for "personal works"⁶ filed for copyright registration "evidence of ownership" of an art work is not required. Yu Jia Yan also stated that there is no substantial examination to verify the authentic date of creation. Yu Jia Yan stated that the information in relation to the date of completion and date of publication on a copyright registration certificate is "merely the date which an applicant indicates on the application form."
44. The witness statement of Xinyan Zhou took issue with that position and argued that if there is no evidence to prove the contrary the Copyright Registration Certificate should be accepted as evidence of ownership of copyright. Xinyan Zhou states:
"According to Articles 8 & 9 of Voluntary Registration of Works Trial Measures Authors or other copyright holders applying for copyright registration shall show their identity card and provide evidence that rights over the work belongs to them (such as: a photocopy of the cover and copyright page, a copy of part of the manuscript, pictures, samples, etc.)"

⁵ In line with section 4.8.5 of the UK Trade Marks Manual and with (Property Renaissance Ltd v Stanley Dock Hotel & Ors (2016) EWHC 3103 (CH)

⁶ (i.e. works that not joint works, commissioned works, corporate works or works made during employment)

45. Xinyan Zhou also refers to a requirement “to submit a few documents when applying for copyright registration, such as the sample of the work, the description of the work (including the purpose, designing process and originality of the work).” However, she next states that “Although for personal works, evidence of ownership is not required, above mentioned documents actually act as a preliminary evidence to establish the ownership.” Xinyan Zhou also referred to the available course of challenging a copyright registration with the CPCC.

DECISION

The bad faith claim

46. Section 3(6) of the Act provides that a trade mark shall not be registered if or to the extent that the application is made in bad faith. The case law principles on bad faith were summarised by Arnold J in the *Sun Mark* case⁷ as follows (with citations omitted):
- (i) the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date;⁸
 - (ii) later evidence is relevant if it casts light backwards on the position as at the application date;
 - (iii) a person is presumed to have acted in good faith unless the contrary is proven and so it is not enough to prove facts which are also consistent with good faith;
 - (iv) bad faith includes not only dishonesty, but also ‘some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined’;
 - (v) the provisions against bad faith are intended to prevent abuse of the trade mark system. There are two main classes of abuse - abuse vis-à-vis the relevant office and abuse vis-à-vis third parties;
 - (vi) the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case;
 - (vii) the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant’s conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant’s own

⁷ *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929(Ch)

⁸ The Opponent accepted in its skeleton argument that the relevant date for the determination of this Opposition is 2 November 2017, which is date of the filing of the Chinese National Application from which the Application claimed priority.

standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry;

(viii) consideration must be given to the applicant's intention at the time of filing, including whether an applicant is intending to prevent a third party from entering the market.

47. The case law of the Court of Justice of the European Union (“the CJEU”) has made clear that the intention of an applicant for a trade mark is a subjective factor which must, however, be determined objectively by a tribunal making an overall assessment, taking into account all the factual circumstances relevant to the particular case.⁹ This emphasises the importance of the facts in cases concerning allegations of bad faith, hence my lengthy presentation of and commentary on the evidence filed, particularly by the Opponent.
48. Evidence in proceedings as to what is the true factual situation is of course often imperfect and a tribunal must consider the cogency of the materials before it, to assess, in the context of the whole, the credibility and probative value the evidence, and to determine what the materials show and what they fail to establish. Lord Mansfield’s observation in *Blatch v Archer* [1774] remains applicable: ‘It is certainly a maxim that all evidence is to be weighed according to proof which it was in the power of one side to have produced, and in the power of the other to have contradicted.’
49. In the present case, I find there are gaps in the narratives on both sides which raise some unanswered questions. (Examples of such evidential gaps include: a lack of corroboration that would have given more solidity around the establishment of the referenced relationship with the Scandinavian designers; greater clarity in promotional materials; and any evidence of legal action taken in China to prevent the apparent trade trespasses suggested by both parties.)
50. Although there may be shortcomings on both sides, I of course bear in mind that the onus of proof lies initially with the Opponent. Thus, as to the section 3(6) ground, it is for the Opponent to establish a prima facie case of facts that show bad faith and that are not consistent with good faith. It is worth briefly recapping the thrust of the alleged bases on which the Opponent brings its bad faith claim:

⁹ See, to that effect, judgment of 11 June 2009, *ChocoladefabrikenLindt & Sprüngli*, C-529/07, EU:C:2009:361, paragraphs 37 and 42; see too C-104/18P *Koton*



- at the time of filing the UK TM, the Applicant had full knowledge of, or should have been aware of, the Opponent's use of a similar sign for similar goods and services;
- the Applicant had opposed an application by the Opponent for a US trade mark;
- the Opponent has used the Sign in China since at least as early as 21 November 2016 and operates 14 stores in China;
- filing the UK TM Application was an attempt to dishonestly acquire property or rights of another" and "to interfere with the legitimate business of the Opponent";
- and, according to the submissions of Zheng Ming Yong, the UK TM Application will mislead the public in the UK and make false representations, benefiting from the

reputation in the authorised use of the  logo to the detriment of the "true owner", Mr Ye Guofu;

- all of which "falls short of the standards of acceptable commercial behaviour observed by reasonable and experienced businesses";

51. At the hearing, Mr Fiddes chose not to speak to the bad faith claims and instead referred me to the written materials; he instead focussed primarily on the claimed earlier copyright. I nonetheless asked him to indicate where in the evidence it is shown, for example, that the Opponent had used the Sign in China since at least as early as 21 November 2016, or even on what date the Applicant is said to have opposed the Opponent's US trade mark application. Mr Fiddes indicated that he agreed that such points were not in evidence.

52. The picture that apparently emerges from the evidence is that both the Opponent and the Applicant claim to be operating successful retail businesses in China invoking Scandinavian

design and under marks/signs that differ only as between:  and . The Opponent claims to have done so since 2016, yet it shows no clear evidence of that. The Applicant's evidence and submissions include challenges to the integrity of the Opponent's business activities, to which the Opponent gives no express denial. This inevitably factors in my weighing of the evidence, but even if the Opponent's evidenced case were taken at face value, I find the Opponent has fallen a very long way short of establishing its claims.

53. My primary consideration is that *even if* it is in reality the case that the Opponent operates a legitimate business in China (which is not the implication of the evidence from the Applicant

and on which the Opponent's evidence is far from compelling), and even if that business were operative before the Relevant Date (which the Opponent's evidence singularly fails to show – indeed the evidence suggests that the Opponent's business started after the Applicant's activities), and even if the Applicant had been aware of the Opponent operating in China (which the Opponent's evidence also fails to show) such would still not be sufficient to establish bad faith on the part of the Applicant in filing the UK TM Application. Trade mark systems are jurisdictional so mere knowledge of a mark in another jurisdiction is not normally enough. An assessment must be made of the motives behind the application. The Opponent has shown neither that it had plans to expand into the UK at the Relevant Date, nor that the Applicant would have known of any such plans. By contrast, the Applicant has filed persuasive evidence of its own business activities, its protection of its mark in China and of its overseas applications, consistent with the UK TM Application having been filed in good faith. (Moreover, the Opponent has filed no evidence that would suggest that the UK public would in any way be aware of its business in China, so the allegations in the witness statement of Zheng Ming Yong, to extent that they may be pertinent to the grounds, are not supported.)

54. To the extent that the bad faith claim rides additionally on the basis that the Opponent claims to have had copyright in the Sign (and in the Logo) which, owing to their claimed creation/publication dates, predates any claim to copyright on the part of the Applicant, the section 3(6) ground must also fail. The evidence clearly shows that the Applicant had applied for and secured copyright registration in China before Ms Hu Yao applied for copyright in relation to precisely the same Sign/Logo. It seems clear that the Applicant could not have been aware of a copyright claim arising from Ms Hu Yao's *subsequent* application for copyright registration, which was then anyway assigned to a third party and then licensed to the Opponent. Irrespective of the merits of the Opponent's claim under section 5(4)(b), which I shall come on to, that the Opponent may be shown to be a subsequent licensee of that later copyright registration can in no way support a claim of bad faith. **The claim under section 3(6) fails.**

The copyright claim

55. Section 5(4)(b) of the Act provides that a trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented by virtue of an earlier right including by virtue of the law of copyright. The section also states that “A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”
56. A work created by a Chinese national may be protected in the UK according to the copyright laws in the UK, notably the provisions of the Copyright, Designs and Patents Act 1988.¹⁰ A helpful summary of the main principles of copyright law and artistic works was given by District Judge Clark in *Suzy Taylor v Alison Maguire* [2013] EWHC 3804 (IPEC):

“6.[...] Section 1 of the CDPA provides for copyright to subsist in original artistic works.

An "original artistic work" is a work in which the author/artist has made an original contribution in creating it – for example by applying intellectual effort in its creation.

7. Artistic works are listed in s.4(1) CDPA and include "a graphic work... irrespective of its artistic quality". Graphic work is defined in 4(2) as including "(a) any painting, drawing, diagram map, chart or plan and (b) any engraving, etching, lithograph, woodcut or similar work...".

8. For an artistic work to be original it must have been produced as the result of independent skill and labour by the artist. The greater the level of originality in the work the higher the effective level of protection is, because it is the originality which is the subject of copyright protection. If the work includes elements which are not original to the artist then copying only those elements will not breach that artist's copyright in the work. It is only where there is copying of the originality of the artist that there can be infringement. “

[...]

11. If something is an exact copy of the whole or a substantial part of an artistic work protected by copyright, it will be an infringement if there is no defence provided by

¹⁰ By virtue of s.159 of the CDPA and section 22 of the Intellectual Property Act 2014

one of the exceptions contained in the CDPA. If something is an inexact copy, for example if it merely resembles an artistic work protected by copyright, it may or may not be infringing.”

57. The Applicant denied the Opponent’s claim based on section 5(4)(b) and put forward several premises to its defence. The Applicant firstly denied the subsistence of copyright in the **NO ME** sign in the UK, i.e. it denied it would be capable of protection as an artistic work in the UK. On that point I note that the matter is to be determined on the basis of UK copyright law, so the fact that the sign may have been accepted in China as an artistic work is not evidence of subsistence in the UK. (Comparably, it is possible that a Chinese character or combination of characters may potentially achieve protection in the UK as an artistic work, but the same may be denied copyright in China.) I note that the sign is simply one extremely common English word placed above another. I also note that the Opponent has provided no evidence in relation to the creation of mark (except an assertion as to the date of creation and to the author’s name), so it is not clear even that the font is novel / original, nor even whether the word selection and format is original. I also recognise that that the UK affords only very limited protection to typefaces, although I received no submissions or guidance on that point. Notwithstanding the very low threshold of qualification as an “artistic work”, which is “irrespective of its artistic quality”, I am not satisfied that the Opponent has shown that the sign would be considered to have involved the necessary independent skill and labour of the artist or that copyright subsists in the sign under UK law.¹¹ However, since I may be wrong in that finding, I deal with the further premises of the Applicant’s defence.
58. The next point of defence is that the Applicant itself has a Chinese copyright registration that predates the Chinese copyright registration relied on by the Opponent. However, it is the Opponent’s claim that although its registration was some months after that of the Applicant, the important point for establishing an earlier copyright is that the sign was created by Ms Hu Yao at an earlier date than that claimed by the Applicant. Of course, the earlier creation of a copyright work is key to being able to rely on copyright, but the onus is on the Opponent to provide proof sufficient to satisfy a tribunal as to which work was created first. The

¹¹ The Applicant referred in its skeleton argument to the finding in the Exxon case that an invented five letter word was insufficient to qualify for copyright as a work for lack of intellectual creation (*Exxon Corp v. Exxon Insurance [1982] RPC 69*). However, that case concerned a literary work, not an artistic work, and the relevant analysis raises different considerations.

Applicant put the Opponent to strict proof of the creation date and sought information as to the identity of the claimed author (Hu Yao), why she seemingly waited a number of years before filing for copyright registration and as to the circumstances in which she almost immediately assigned the mark to Mr Ye Guofu. The Applicant also provided evidence from Yu Jia Yan to the effect that in filing for a copyright registration, Ms Hu Yao would not have been required to file evidence of ownership of a ‘personal work’ and that there would have been no substantial examination by the CPCC to verify the authenticity of the claimed date of creation.

59. In response to the clear challenge during the evidence rounds (and arguably even as from the filed defence) to explain, clarify and prove the truth of the claimed creation, the Opponent has chosen to do little more than to rely on what is said in the Chinese copyright certificate. I did not find the evidence in reply from Xinyan Zhou entirely clear, nor that it overcame, or even contradicted, the evidence from Yu Jia Yan. Both Chinese attorneys agreed that for personal works, evidence of ownership is not required by the CPCC. Xinyan Zhou refers vaguely to filing a “few documents such as” a “sample of the work, the description of the work (including the purpose, designing process and originality of the work)”. I have no doubt that a “sample of the work” would necessarily have been provided in order to establish the subject matter of the copyright registration sought. However, it is not clear that Ms Hu Yao would have given an account of the purpose and originality of the work, or of the design process or early drafts. At any rate, the Opponent should have provided evidence of precisely that sort, had it existed.
60. Although I accept that a copyright registration certificate may serve as *prima facie* evidence, in the event that there is a challenge to it, especially in circumstances such as those of the present proceedings, I find it is inadequate for the Opponent to maintain simply that the CPCC is satisfied and to suggest that any challenge to the creation date is matter to be determined exclusively by that body. By ‘the circumstances such as those of the present proceedings’, I mean to include:
- the fact that the Applicant has its own earlier copyright registration (and Chinese trade mark application);
 - that Chen Hao has given a brief account under a witness statement of how and when he himself conceived of the mark, which ties in with the account of when the Applicant started using the mark in trade in China;

- that the Applicant has used the mark in trade, as evidenced by third party media coverage showing Chen Hao receiving recognition for the degree of success (£1 billion in turnover in one year);
- that the Opponent is not the author, but a business rival whom the Applicant has accused the Opponent of outright fake news and copycat websites;
- has expressly sought evidence from the Opponent to verify the claimed, very precise, creation date (8 December 2015).

61. In my view, the Opponent has failed to provide sufficiently compelling evidence that the sign under its section 5(4)(b) was in fact created at an earlier date than that claimed by the Applicant and for which the latter also has a registration (equally to the satisfaction of the CPCC). On this point the claim again fails.

62. A further premise of the Applicant's defence is to the effect that the Opponent lacks the *locus standi* to bring the claim. The Applicant's skeleton argument argued that since the assignment to Ye Guofu and the licence to the Opponent (12 April 2018) post-date the priority date of 2 November 2017, the Opponent had no actionable right at the Relevant Date. Mr Fiddes argued that since the licensing agreement is silent as to whether or not it gives retrospective rights, it should be understood to do so

63. Proceeding on the basis that the underlying claim to earlier copyright were valid, I accept that, on the evidence of **Exhibit 3**, the Opponent is a licensee from Ye Guofu (the assignee/proprietor of the relevant Chinese copyright registration). I also note the provision in the licensing agreement as to the scope of the licensing rights, which purports to cover all rights under the copyright "including the right to claim infringement of the third party." I also note the Opponent's evidence as to the requirement under Article 24 of the Chinese copyright law (**Exhibit GIP3**) that a licensing contract "shall include" among its basic clauses "the exclusive or non-exclusive nature of the right to exploit the work covered by the licence". No such clause is in evidence. Section 101A(6) of the CDPA states that a "non-exclusive licensee" means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner, but I conclude that in the present case, the licence under **Exhibit 3** is non-exclusive on the basis that **Exhibit 5** shows the grant, in precisely the same terms, of a licence to another further party.

64. I accept, of course, that copyright is personal property and that its ownership may be passed to another who may then be able to rely on those owned rights to take action against a party who infringes those rights. However, I do not accept that where a copyright owner gives a third party a licence to use a copyright work that the licensee is then necessarily put in a position to enforce infringement of the copyright equivalent to that of the owner; the CDPA distinguishes between the rights and remedies available to an exclusive licensee (section 101 CDPA) and those available to a non-exclusive licensee, where section 101A provides:

101A Certain infringements actionable by a non-exclusive licensee

(1) A non-exclusive licensee may bring an action for infringement of copyright if—

(a) the infringing act was directly connected to a prior licensed act of the licensee; and

(b) the licence—

(i) is in writing and is signed by or on behalf of the copyright owner; and

(ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.

(3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.

(4) In an action brought by a non-exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

(5) Subsections (1) to (4) of section 102 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a “ non-exclusive licensee ” means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner.

65. Neither party made submission on or even referred to this legislation, but my reading of it – and especially the reference at sub-section 101A(1)(a) to “prior licensed act of the licensee” – leads me to conclude that the Opponent is not entitled to enforce any rights it may have as a licensee in so far as they operate retrospectively. The Opponent was not a licensee at the Relevant Date. Therefore, despite the wording of Exhibit 3, I do not accept that the Opponent is the “proprietor of an earlier right” entitled to prevent the use of the applied-for

trade mark as required under section 5(4)(b) of the Act at the Relevant Date of these proceedings. On this point the claim again fails.

66. Section 17 of the CDPA states that copying of a work is an act restricted by copyright and copying in relation to an artistic work means reproducing the work in any material form. The final premise of defence raised by Mr Hoole at the hearing was that the Opponent has failed to establish that there *could* have been copying, because the Applicant could not have known about the copyright application/registration or the assignment and licence which all post-date the Applicant's own copyright registration. While I accept that latter aspect of the Applicant's argument, and while I note Chen Hao's account of the independent genesis of the logo, I consider it the weakest of the premises of the defence. This is because if the Opponent's evidence elsewhere had been sufficiently clear and cogent to persuade me of the Opponent's use of the sign in trade at a date before the Applicant started using its logo (in 2017), then that business use would have accounted for the source of the copying. Given the closeness of the sign and the mark, clearly one is copied and not an "original work".
67. **For the reasons given, the copyright claim under section 5(4)(b) of the Act fails.**

SUMMARY

68. **The opposition fails in its entirety.**

COSTS

69. The Applicant has successfully defended against this opposition and is entitled to a contribution towards its costs. In its skeleton argument, the Applicant sought costs off the normal scale "in light of the Opponent's obvious and deliberate failure to provide any evidence of any earlier rights in the Opponent's Sign, which has resulted in significant time and effort by the Opponent in filing, unnecessarily, counter-evidence. The Opposition was, as shown by the publicity material, filed with the sole intent of causing harm to the Applicant."
70. I keep in mind the Applicant's allegations and Chen Hao's expressed assumption that the Opposition was filed with the intent to cause harm to the Applicant's business and to disrupt its legitimate interests in protecting its brand. I have noted that the Opponent's response to those counter-allegations was very muted. I have also considered whether, despite the Applicant having made its position very clear, the evidence was so insufficient, that the

opposition may be considered vexatious. However, I have also borne in mind that I found the overall narrative on both sides lacking in corroboratory evidence. While I find serious doubts arise from the rather unexplained and unsubstantiated creation date, I also acknowledge that a copyright registration is relevant prima facie evidence that could justify the bringing of an opposition. Overall, I consider that I should resist the Applicant's request for costs off the normal scale.

71. Nonetheless, I note that the Opponent maintained its bad faith claim despite being cautioned as to the seriousness of such an allegation. I also note that its evidence fell long short of sustaining a bad faith claim, and that no real attempt was made at the hearing even to address the issue. I therefore consider it warranted to award costs at the higher end of the scale as published in the annex to Tribunal practice notice (2/2016), in order to take account of the unnecessary evidence and submissions filed in relation to that ground.

Preparing a statement and considering the other side's statement	£500
Preparing evidence and considering and commenting on the other side's evidence	£1600 ¹²
Preparing for and attending a hearing	£1200
Total	£3300

72. I order Guangzhou Renren Management Consulting Co., Ltd to pay Guangdong Puss Investment Co., Ltd. the sum of £3300 (three thousand three hundred pounds). This sum is to be paid within 21 days of the end of the period allowed for appeal or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

Dated this 18th day of December 2019

Matthew Williams

For the Registrar

¹² This figure takes into account the expense to the Opponent of having to deal with the late evidence from the Applicant that I admitted into the proceedings.