

**TRADE MARKS ACT 1994**

**IN THE MATTER OF:**

**TRADE MARK APPLICATIONS No. 2512392 AND No. 2512470**

**IN THE NAME OF ALISON J. HENDRICK**

**AND CONSOLIDATED OPPOSITIONS THERETO UNDER Nos. 99597 AND 99437**

**IN THE NAME OF TONY KNIGHT**

**IN THE MATTER OF:**

**INVALIDITY APPLICATION No. 83630**

**IN THE NAME OF ALISON J. HENDRICK**

**TO TRADE MARK REGISTRATION No. 2518310**

**IN THE NAME OF TONY KNIGHT TRADING AS TOO FAST TO LIVE TOO YOUNG TO DIE APPAREL Co.**

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**DECISION**

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Opposition No. 99597 to Application No. 2512392

1. On 30 March 2009, Alison Hendrick applied under number 2512392 to register the following device as a trade mark for use in relation to the goods identified below:



Class 24

Textiles and textile goods; bed and table covers; travellers' rugs, textiles for making articles of clothing; duvets; covers for pillows, cushions or duvets

Class 25

Clothing, footwear, headgear; underwear, scarves, sweaters, wristbands, t-shirts, outerwear

2. The application for registration was opposed by Mr. Tony Knight under number 99597 on the grounds identified in a Notice of Opposition and Statement of Grounds filed on 6 October 2009. Mr. Knight objected to registration under the following provisions of the Trade Marks Act 1994: Section 3(6) (application made in bad faith); Section 5(4)(a) (earlier right by virtue of the law of passing off to prevent use of the mark in suit); and Section 5(4)(b) (earlier right by virtue of the law of copyright, design right or registered designs to prevent use of the mark in suit). The Statement of Grounds provided no details in support of his objection under Section 5(4)(b). His objections under Sections 3(6) and 5(4)(a) were supported by averments to the effect that the mark in suit was virtually identical to a device mark he had been using (*'in constant use since 1994'*) in relation to

goods falling within Class 25. The device mark he claimed to have been using since 1994 was shown in ‘*attached artwork*’:



At page 6G of the documentary materials attached to a witness statement he subsequently made on 5 May 2010 there was a ‘University of Saint Artjunkie’ emblem containing an almost, but not quite, identical representation of that device. Beneath the emblem the following text appeared in handwritten form: ‘*University of Saint Artjunkie. Emblem designed on the 18<sup>th</sup> April 2000 and is own and managed by Tony Knight of Saint Artjunkie Clothing and Copy Right as from this day. Signed by [signature]. Tony Knight 18<sup>th</sup> April 2000*’. There was on the face of the documentation filed by Mr. Knight a discrepancy in dates with regard to his claim to have been using ‘*since 1994*’ an emblem ‘*designed on the 18<sup>th</sup> April 2000*’.

3. Ms. Hendrick joined issue with Mr. Knight on the Grounds of Opposition and put him to proof of the claims he had made. In the Counterstatement filed on her behalf on 25 November 2009 it was positively asserted that ‘*the opponent has taken her intellectual property and is passing off his wares as those of the applicant*’.

Opposition No. 99437 to Application No. 2512470

4. Also on 30 March 2009, Ms. Hendrick applied under number 2512470 to register the following designation as a trade mark for use in relation to the goods identified below:

**Artjunkie**

Class 24

Textiles and textile goods; bed and table covers; travellers' rugs, textiles for making articles of clothing; duvets; covers for pillows, cushions or duvets.

Class 25

Clothing, footwear, headgear, T-shirts, jeans, outerwear, sweatshirts, accessories, scarfs, underwear.

5. The application for registration was opposed by Mr. Knight under number 99437 on the grounds identified in a Notice of Opposition and Statement of Grounds filed on 28 July 2009. He objected under Section 5(4)(a) of the Act (earlier right by virtue of the law of passing off to prevent use of the mark in issue) on the basis of averments to the following effect:

Saint Art junkie is Apperal Company established in 1994 in Manchester England. It has strong reputation to bring street urban fashion to the high street and our clothes are sold worldwide though authorised retailers and on our website.

Saint Art junkie is part of the Red planet clothing group.

We do not have any issues for the applicant to register the name artjunkie in class 24 but we do oppose the class 25 footwear headgear clothing.

We feel this would cause confusion to our customer new and our already customer base.

The applicant also has a reputation for stealing other companies trademarks to which she uses with out consent of the trademark owners.

6. Ms. Hendrick joined issue with Mr. Knight on his Grounds of Opposition and put him to proof of the claims he had made. In the Counterstatement filed on her behalf on 25 November 2009 it was positively asserted that *'the opponent has highjacked her Marks and is passing off its goods as being of hers'* and that *'the opponent uses the intellectual property of others in a flagrant fashion, namely both the famous Miffy Rabbit and the Chanel CC Logo on its wares'*.

Application No. 83630 for invalidity of Registration No. 2518310

7. The following trade mark was registered under number 2518310 on 16 October 2009, with effect from 11 June 2009, for use in relation to the goods identified below:



Death before Dishonour

Class 25

T-shirts, jeans, trousers, shirts, blouses, skirts, underwear, coats, hats, gloves, scarfs, socks, footwear.

The mark was registered on the application of Mr. Knight using the trading name Too Fast To Live Too Young To Die Apparel Co. In his evidence in defence of the registration, Mr. Knight identified the device as his '*Shutter Glasses Skull design copyright 16.9.2002*' (Exhibit TK2 under cover sheet 'Exhibit TK2/TK2A/TK2AB' dated 16 January 2010).

8. In support of her claim for invalidity filed on 24 November 2009, it was contended on behalf of Ms. Hendrick that the registration should be declared invalid under the following provisions of the 1994 Act: Section 3(6) (application made in bad faith); Section 5(4)(a) (earlier right by virtue of the law of passing off to prevent use of the mark in suit); and Section 5(4)(b) (earlier right by virtue of the law of copyright, design right or registered designs to prevent use of the mark in suit).

9. Under Section 3(6) it was averred:

The Registrant was aware that the subject of the Trade Mark Registration was the Intellectual Property of the Applicant and it was aware that the application to register the Trade Mark ... should not have been filed in its name.

Under Section 5(4)(a) it was averred that Ms. Hendrick had since 7 July 2008 established a goodwill and reputation in her sign by use of it throughout the United Kingdom (*'product sold through e-Bay auction site'*) in relation to '*clothing, namely, t-shirts*' with

the consequence that use by Mr. Knight of the mark in suit would result in misrepresentation actionable in passing off.

10. The claim for invalidity under Section 5(4)(b) was put forward on the following basis:

The SKULL Device which is included in the registered Mark is subject to copyright, being a graphic work, and the copyright belongs to the applicant for invalidity, being the author of the said work and not having transmitted it by way of assignment nor having it automatically transferred by virtue of a contract of employment or similar provision.

The image was created by the applicant for invalidity at least as early as June 2008 and was first published on the e-Bay auction site at least as early as July 2008.

It is the applicant's contention that the registrant took the image of the SKULL Device from e-Bay electronically and applied to register the Trade Mark in suit. Consequently, the registration offends against the provisions of Section 5(4)(b) of the Trade Mark Act 1994.

11. This is the Skull device on which she relied for the purposes of her claim for invalidity:



By letter dated 7 December 2009 her trade mark attorneys informed the Registry that the allegation of copying was relied on in support of her objection under Section 3(6): *'It is the Applicant's contention that the Registered Proprietor, being aware of the Applicant's use through eBay, copied the image of the SKULL Device and applied to register it as part of the Trade Mark registration in suit'*.

12. Mr. Knight responded to the application for invalidity in a Counterstatement filed on 1 February 2010, in which he maintained as follows:

1. This design was created by me on the 16-9-2002. I have the original rough sketch drawing. So we will ask section 3.6 of this form be thrown out.
2. Some time people think they are first to produce a drawing but in fact they are not. I will be producing witness statements to prove my case, we have also downloaded the full content of your clients eBay account and find no item that bears this design, we have also downloaded the full content of Mrs Hendricks my space account to which there is no evidence.
3. We also ask that section 54.a.b, be thrown out as this is false claim made by your client to infringe on my trademark,
4. On several occasions we have asked for copyright details in which you and your client have failed to supply, to which this left me to make a formal complaint into your practises.
5. We therefore ask you and your client to withdraw your invalidation claim.
6. We will also ask for costs to be submitted to your client.



### The Hearing Officer's Decision

13. Mr. Knight's oppositions to Ms. Hendrick's applications for registration were rejected and Ms. Hendrick's claim for invalidity of Mr. Knight's trade mark registration succeeded for the reasons given by Mr. David Landau on behalf of the Registrar of Trade Marks in a 107-page Decision issued under reference BL O/307/11 on 1 September 2011. I shall refer to this as the 'Principal Decision'.

14. The Hearing Officer summarised his determinations in the following terms:

[1] With regard to copying:

276) It is not within the bounds of probability that Ms. Hendrick and Mr. Knight created the skull image separately and co-incidentally. One person created the image and another copied it.

277) From the evidence before me, I find that the image of the skull with the shutter shades was created by Ms. Hendrick on 15 June 2008 and that Mr. Knight has copied that image.

[2] With regard to Ms. Hendrick's trade mark application number 2512392:

304) Ms. Hendrick used the trade mark the subject of the application in relation to clothing prior to Mr. Knight's use of the sign upon which he relies. She is the senior user. Mr. Knight has not established that he authored the work he claims prior to Ms. Hendrick's authorship. Consequently, it is decided that Mr. Knight copied the work of Ms. Hendrick. The grounds of opposition under sections 5(4)(a) and (b) of the Act are dismissed. The ground of opposition under section 3(6) of the Act is inextricably linked to the other grounds and is, therefore, dismissed.

[3] With regard to Ms. Hendrick's trade mark application number 2512470:

299) Ms. Hendrick has established that she is the senior user of the name Artjunkie in relation to clothing. The ground of opposition under section 5(4)(a) of the Act is dismissed.

Having decided that Ms. Hendrick is the senior user of Artjunkie, the ground of opposition under section 3(6), which is inextricably linked to the ground under section 5(4)(a) of the Act is also dismissed.

[4] With regard to the claim for invalidity of Mr. Knight's trade mark registration number 2518310:

280) At the time of making his application Mr. Knight knew of the work of Ms. Hendrick. He knew that she had created it. By filing for the registration of the trade mark he was not only using an image to which he had no right but also potentially depriving Ms. Hendrick from using that image both as an image and as a trade mark. I have no doubt from the evidence in these proceedings, that it was Mr. Knight's intention to so deprive Ms. Hendrick of the fruits of her labour.

281) It is difficult to conceive of a more cut and dried case of bad faith. It is such a clear case of bad faith that I do not consider it necessary to consider the other grounds of invalidation.

282) The registration was made in contravention of section 3(6) of the Act and in accordance with section 47(6) of the Act the registration is deemed never to have been made.

[5] With regard to the evidence tendered by Mr. Knight in support of his claims:

270) Ms. Hendrick has through her evidence substantiated the claim that Mr. Knight falsified evidence. This is obviously a serious matter and one that will be considered in relation to the award of costs.

### The Hearing Officer's order as to costs

15. The Hearing Officer ordered Mr. Knight to pay a total of £22,312.09 by way of costs in relation to the proceedings he had brought and defended unsuccessfully. The basis upon which he acted is apparent from paragraphs [306] to [309] of the Principal Decision:

306) Mr. Knight has constantly flouted the rules and directions. He has falsified evidence. His behaviour throughout the proceedings is such that an award of costs on an indemnity basis is considered appropriate.

307) Consequently, Murgitroyd & Company have three weeks from the date of this decision to give a breakdown of the costs incurred by Ms. Hendrick in these proceedings. If possible the costs in relation to the application for invalidation and the consolidated oppositions should be separate. However, if this is not possible an estimate as to the proportion of costs relating to the application for invalidation and the opposition proceedings should be given.

308) A copy of the breakdown should be sent to Mr. Knight, who will have two weeks from the date of sending of the breakdown to comment upon the quantum of costs and the quantum of costs only. Owing to the problems that have arisen with the sending of correspondence and documentation to Mr. Knight, the copy of the breakdown should be sent by e-mail, ordinary post and recorded delivery.

309) Once the time for Mr. Knight to comment upon the quantum of the costs has expired a supplementary decision will be issued in relation to the costs. The appeal period for the substantive decision will run from the date of the issue of the supplementary decision.

16. He explained the quantification of his costs award in paragraphs [2] to [7] of a Supplementary Decision issued under reference BL O/342/11 on 10 October 2011:

2) On 21 September 2011 a breakdown of costs was received from Murgitroyd & Company, a breakdown which was copied to Mr. Knight. No comment upon the quantum of costs has been received from Mr. Knight in the time allowed.

3) An enquiry was sent to Murgitroyd & Company by the Intellectual Property Office in relation to whether Ms. Hendrick could reclaim VAT; which would affect the amount of the costs awarded. Murgitroyd & Company advised that Ms. Hendrick could not reclaim VAT. Consequently, the VAT element of the costs will be included in the award.

4) Murgitroyd & Company have not given an estimate of the proportion of costs arising separately from the opposition and invalidation proceedings. Viewing the breakdown of costs it does not seem possible to separate the proceedings in terms of costs. Consequently, it is considered appropriate to divide the costs of the proceedings by two, after taking into account the fee for invalidation paid by Ms. Hendrick.

5) In the substantive decision the status of Mr. Knight in the invalidation proceedings was considered:

271) I wrote to the parties prior to the hearing re the legal status of the registered proprietor:

‘In relation to the invalidation the registration is in the name Too Fast To Live Too Young To Die Apparel Co, this does not appear to be a legal entity. Only a legal entity can hold property and only a legal entity can be a party in proceedings. It is noted that there is now a registered company with the name Too Fast To Live Too Young To Die Ltd but this has a date of incorporation of 12 November 2010, so cannot have been the applicant for registration; the application having been made on 11 June 2009. It would appear, therefore, from all of the correspondence and evidence, that Too Fast To Live To Young To Die Apparel Co is a trading name of Mr. Knight and should be treated as such. (It is also noted that in the statement of grounds in respect of opposition no 99437 Mr. Knight states that he owns and manages the Death Before

Dishonour brand.) The parties are invited to make submissions on this matter at the hearing.’

At the hearing Mr. Knight accepted that Too Fast To Live Too Young To Die Apparel Co was him. Mr. Knight will be treated as the registered proprietor and Too Fast To Live Too Young To Die Apparel Co as a trading name. (A non-legal entity could neither apply for a trade mark nor defend an application for invalidation.) This means that Mr. Knight is a party to the invalidation proceedings and will be liable for any costs award made against him.”

Consequently, the award of costs in relation to the invalidation application is made against Mr. Knight.

6) Having considered the breakdown of costs, it is considered appropriate to award the full amount requested by Murgitroyd & Company, £22,312.09.

7) In relation to the application for invalidation Mr. Tony Knight is ordered to pay Ms. Alison J. Hendrick the sum of £11,256.04. In relation to the opposition proceedings Mr. Tony Knight is ordered to pay Ms. Alison J. Hendrick the sum of £11,056.05. These sums are to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of the cases if any appeal against his decision is unsuccessful.

#### The Hearing Officer’s findings as to use in commerce

17. The Hearing Officer was satisfied on the basis of the evidence before him (as to which see paragraphs [217] to [228] of the Principal Decision) that Ms. Hendrick had been using the trade mark **Artjunkie** since about November 2004 and had also been using it in combination with the device mark shown in paragraph 1 above since about November 2005 for goods within the scope of her applications for registration which she had marketed in the course of carrying on business as a sole trader down to November

2009 and thereafter through a company called Artjunkie Ltd which she incorporated in Scotland under number SC368108 on 6 November 2009.

18. He was further satisfied on the evidence before him (as to which see paragraphs [140] to [151]) that Ms. Hendrick had been using the Skull device mark shown in paragraph 11 above since about July 2008 for items of apparel which she had likewise marketed as a sole trader down to November 2009 and thereafter through her company, Artjunkie Ltd.

19. It was Mr. Knight's position going into the opposition proceedings that *'Saint Art junkie is Apperal Company established in 1994 in Manchester England. It has strong reputation to bring street urban fashion to the high street and our clothes are sold worldwide though authorised retailers and on our website'*: see paragraph [5] above. In a letter received by the Registry on 3 November 2009, Mr. Knight reiterated: *'1. Saint Art junkie is a fashion brand established in 1994 in Manchester England. 2. It has strong reputation in the fashion market place to bring high quality designs to the consumers in classes 25 18 14 (clothes, footwear, head gear, Bags, wallets, underwear, and jewellery). 3. The brand Saint Art junkie has well established customer base not only in the UK but all over the world including customers from USA, Hong Kong, Australia. Please read our Testimonials on our website'*.

20. In paragraphs [274] and [298] of the Principal Decision, the Hearing Officer drew attention to the absence of any commensurate proof of use in commerce of the 'Shutter Glasses Skull' registered by Mr. Knight as part of trade mark number 2518310 or of either the device mark shown in paragraph 2 above or the word mark ARTJUNKIE on

which he relied for the purposes of his oppositions to Ms. Hendrick's trade mark applications:

274) There is nothing to suggest that Mr. Knight is an artist or has a training in art. None of the evidence shows any of the creative process. Unlike Ms. Hendrick, he has adduced no clear evidence from third parties who are clearly at arm's length eg eBay details or PayPal details. There is not a shred of evidence to show any sales or business in relation to the image prior to 15 June 2008. This despite Mr. Knight using the internet for sales, which by its nature produces documentary evidence of sales. Details of past web pages are regularly filed in proceedings by way of the Wayback Machine; as Ms. Hendrick has done in the opposition proceedings.

...

298) In relation to his claims re the use of Saint Artjunkie there is a noticeable absence of evidence from third parties at arm's length. Mr. Knight does not provide any evidence of use by reference to third parties at arm's length eg PayPal payments and eBay purchase details. He has not furnished any evidence from the Internet to show his use prior to Ms. Hendrick, evidence that can be obtained from the Wayback Machine, evidence that Ms. Hendrick has provided in relation to her own use. Despite the claim that he has been using the name Saint Artjunkie since March 1994 and has used it in relation to export sales he has furnished no tax records, no VAT records and no customs records.

21. These omissions would have counted against the claims that Mr. Knight was making, even if the evidence on which he relied had been plausible. They were all the more significant given that the evidence on which he relied was found to be false and unreliable on consideration of the numerous points taken against it - and against him - as noted in the Principal Decision at paragraphs [157] to [160], [163], [174], [175], [179], [213], [214], [234] to [241], [244], [245], [288] to [298] and [303]. Mr. Knight's

assertions of prior use in commerce of the marks on which he relied were therefore rejected for lack of any satisfactory or sufficient evidence that such use had (or even could have) occurred when he said it did.

#### The Hearing Officer's condemnation of Mr. Knight's behaviour

22. As shown by the detailed account of correspondence and events in paragraphs [4], [5], [15] to [51], [55] to [118] and [139] of Principal Decision, Mr. Knight was tirelessly obstructive and persistently unreliable in his conduct of the proceedings and aggressive when challenged. In correspondence with Ms. Hendrick's professional representatives in September 2010, he was totally dismissive of their concerns that evidence he claimed to have sent to them had not been received:

'go away you sad person your company are liars please don't email me any more have I made myself clear if you i will make formal compalint to greater manchester police. now piss off'

'God your boring me now please do not email infuture i require letters if you persist to ignore my request i will make a formal complaint to your company and ask the scottish police to investigate you for harassment have I made myself clear you silly bitch'

There was ample justification for the Hearing Officer's condemnation of Mr. Knight's approach to the conduct of the litigation.

23. The Hearing Officer was fully entitled to insist upon any evidence tendered by Mr. Knight pursuant to the various Case Management directions and rulings which had been given and made at a hearing on 26 May 2011 (and recorded in an official letter of 1 June



2011) being filed in due time and in properly solemnised form. Mr. Knight had no one but himself to blame for the rejection of his subsequent attempt to rely on two witness statements (one in the name of Chris George, the other in the name of Martin Dunkley) that were not in a form acceptable for filing: see paragraphs [124], [132], [137], [138] and the Annex to the Principal Decision.

24. At the Case Management hearing on 26 May 2011, Mr. Knight was given permission to file any evidence in reply he considered appropriate in the opposition proceedings he had brought against Ms. Hendrick's trade mark applications. That enabled him to respond, if he wished to do so, to the evidence filed by and on behalf of Ms. Hendrick accusing him, in some considerable detail, of relying on false evidence in support of his objections to registration. However, he did not take the opportunity to file any such evidence in reply pursuant to the permission that was given.

25. The absence of the originals of questioned documents was the subject of specific comment in paragraph 37 of a witness statement made by Ms. Hendrick on 28 February 2011:

37. I believe that it is unacceptable that Mr. Knight should be able to rely on what my Trade Mark Attorney advised are poor quality scanned in copies of documents. I believe therefore that the original document should be provided, or if they are not available, the full sized photocopies of these documents should be provided. If Mr. Knight is unable to provide them, he should not be able to rely on them.

Even so, Mr. Knight did not produce either the originals or better copies of any questioned documents.

26. The evidence on file was exhaustively examined by the Hearing Officer in paragraphs [140] to [259] of the Principal Decision. The process of evaluating the evidence in detail began in paragraph [260] and ran through to paragraph [304]. He found multiple instances of inherent implausibility and manifest deficiency in assertions made and information provide by Mr. Knight: paragraphs [265], [268], [273], [274], [288], [290] to [298] and [303].

27. Three matters, in particular, reflected badly on Mr. Knight. Firstly, paragraphs [153], [154], [158], [273] and [274] pointed to the improbability of his '*Shutter Glasses Skull design copy right 16.9.2002*' (see paragraph [7] above) having been produced, let alone exploited commercially, prior to the emergence of 'Shutter Shades' so-called in 2007: see paragraphs 9 and 10 and Exhibit AJH 14 of Ms. Hendrick's witness statement dated 7 January 2011.

28. Secondly, paragraph [163] contained a table in four columns extending over twelve pages in which 5 particular items of evidence relied on by Mr. Knight were juxtaposed with the analysis of a professional investigator (Mr. Tim Dabin of Priaulx Associates) set alongside Mr. Knight's comments in response to the investigator's analysis. This pointed to the absence of any satisfactory explanation for the anomalies and discrepancies identified in the table.

29. Thirdly, paragraphs [160], [179], [263], [264] and [284] pointed to the manipulation of 2 documents for the purpose of enabling Mr. Knight to put forward false versions of them: see [1] the witness statement of Joanne McCormack and her Exhibits JM 1 and JM 2 dated 6 January 2011, refuting paragraph 5 of Mr. Knight's witness statement under cover sheet 'Exhibit TK 1' dated 9 August 2010 and the authenticity of the '*peckinpie*' document he exhibited under cover sheet 'Exhibit TK 5' dated 14 February 2010; and [2] paragraph 47 and Exhibit AJH 14 of Ms. Hendrick's witness statement dated 28 February 2011, refuting the authenticity of the '*All Saints*' document exhibited at 'Page 12' of the attachment to Mr. Knight's witness statement dated 5 May 2010.

30. It was inevitable in these circumstances that Mr. Knight would be condemned for being the source of false and unreliable evidence if the Hearing Officer found (as he did in paragraphs [299] and [304]) that Ms. Hendrick was the senior user not only of the device mark shown in paragraph 1 above, but also of the word mark **Artjunkie** and found (as he did in paragraphs [272] to [277]) that the Skull device shown in paragraph [11] above was created by Ms. Hendrick and that Mr. Knight had copied that image.

### The Appeal

31. Mr. Knight appealed to an Appointed Person under Section 76 of the 1994 Act on the basis of a 2-page Statement of Grounds of Appeal complaining that the Hearing Officer had '*failed to carry out a full and proper investigation into the evidence I sent*' and '*made some slanderous comments which are being dealt with by the courts*'. The Form TM 55 Notice of Appeal to the Appointed Person was accompanied by a Grounds

of Appeal Bundle containing '*Appeal Evidence SA/TK/AJ-1 to SA/TK/AJ-7*' under cover of a 4-page letter complaining of the way the litigation had proceeded in the Registry and of the Hearing Officer's findings and proposing to refute the findings with additional documentary evidence.

32. The Appeal was listed to be heard before me on 18 September 2012. On 17 September 2012, Mr. Knight indicated that he would not be attending the hearing because he was incapacitated through pain associated with a lower back injury sustained in a motor accident on 8 December 2011. On the same day, he sent more than 60 pages of documentation to the Treasury Solicitor's Department in connection with his Appeal. To the extent that the latter material did not duplicate the material which accompanied the Notice of Appeal, it appeared to be intended to supplement it.

33. On 18 September 2012, the Appeal was called on in the presence of solicitors and counsel acting for Ms. Hendrick. A number of case management matters were discussed. The hearing was then adjourned upon the basis that I would be giving directions in writing for the further conduct of the Appeal and the parties would be provided with a copy of the Transcript of the adjourned hearing when it became available. On 19 September 2012 I issued directions in writing under Rules 62(1)(a), 62(2) and 73(4) of the Trade Marks Rules 2008 with a view to preventing any misunderstanding as to the need for permission to put additional documents in evidence on appeal and in order to provide a framework for the orderly determination of any request for permission.

34. Mr. Knight thereafter adopted much the same approach to the conduct of the Appeal as he had adopted in relation to the conduct of the proceedings in the Registry. He

was tirelessly obstructive, persistently unreliable and aggressive when challenged. The position as at 8 February 2013 (following on from the Directions issued on 19 September 2012, a Default Notice issued on 12 November 2012, a Case Management hearing on 10 January 2013 and subsequent communications of the parties) was summarised in the Case Management Review I issued at that time. A copy of that document is attached as Annex A to this Decision.

35. Soon after that, there was a request on behalf Ms. Hendrick for permission to adduce further evidence on appeal in the form of three witness statements, including one from Mr. Knight's brother, Frank Knight. Predictably, that led to further requests by Mr. Knight for permission to adduce further evidence on appeal, including witness statements from his sisters Jennifer Knight and Karen Knight. The parties were informed by email on 8 July 2013 that both sides' pending applications for permission to adduce further evidence would be dealt with as preliminary matters at the hearing of the Appeal. On 19 July 2013 Mr. Knight submitted a request for permission to adduce yet further evidence on appeal in the form of 5 pages of bank statements.

36. The hearing of the Appeal took place on 6 September 2013. Both sides filed Skeleton Arguments. Mr. Knight attended and addressed the Tribunal in support of his Appeal. Ms. Hendrick did not attend and was not represented at the hearing. The Registrar was not represented.

37. I refused both sides' applications for permission to adduce further evidence, essentially on the basis that they were endeavouring to turn the Appeal into a hearing de novo on the merits of their claims and seeking to do so by deploying statements and

materials which succeeded in raising more questions than they purported to answer in relation to the contentions and counter-contentions of the parties relative to those claims. That, together with the rulings and defaults in compliance with directions noted in my Case Management Review of 8 February 2013, resulted in the evidence and materials for consideration on Appeal being those - and only those - which had been duly filed in the Registry proceedings.

38. At the hearing before me Mr. Knight maintained that he had not had a procedurally fair hearing in the Registry and (over and above that) that the Hearing Officer could not and should not have made the findings that he (the Hearing Officer) made against him (Mr. Knight) on the basis of the evidence and materials on file. Members of staff in the Registry were said to have lost evidence, which the Hearing Officer therefore did not see. Registry officials were said to have been rude to him, ignored his complaints and refused to communicate with him when he tried to communicate with them.

39. He told me that he had asked (and the documents on file would show he had asked) for the substantive hearing of the Registry proceedings which took place on 10 August 2011 to be adjourned, but his request was ignored; that he had asked (and the documents on file would show he had asked) for the hearing to be a face-to-face hearing rather than a telephone hearing, but his request was ignored; and that he had asked (and the documents on file would show that he had asked) to cross-examine Ms. Hendrick, Ms. McCormack and Mr. Dabin on their witness statements, but his request was ignored.

40. He pointed out (correctly) that it was for the opposite party to prove that there had been fabrication of documents as she alleged. He asserted that if he had been asked to produce the originals of documents on which he was relying, he could and would have done so. He contended that the Hearing Officer had no reason or basis for finding that he had provided false and unreliable evidence and further, that in making that finding, the Hearing Officer had been influenced by statements made in judgments delivered by His Honour Judge Birss (as he then was) in proceedings which had been brought against him by Dame Vivienne Westwood OBE in the Patents County Court.

41. I will deal with these points in more or less reverse order. The Hearing Officer expressly rejected the suggestion that the judgment delivered by His Honour Judge Birss under reference [2011] EWPC 8 in the proceedings brought against Mr. Knight by Dame Vivienne Westwood could serve as the source of ‘similar fact’ evidence of a propensity by Mr Knight to manipulate documents: paragraph [262]. He affirmed that the present proceedings ‘*must be decided upon the evidence that has been presented and the findings arising from that evidence*’: paragraph [261]. I cannot see any sign of the Hearing Officer having done anything other than that. I reject Mr. Knight’s assertions to the contrary.

42. With regard to his reliance on questioned documents, Mr. Knight was challenged in paragraph 37 of Ms. Hendrick’s witness statement of 28 February 2011 (see paragraph [25] above) to produce the originals or at least better copies. He was also given an opportunity to deal with that and any other aspects of the disputes as to authenticity by filing evidence in reply if he wished to do so: see paragraph [24] above. If, as he told me,

he was in a position to produce the originals of questioned documents, he would naturally have wanted to do so as part of his refutation of the accusations made against him. However, he attempted to refute those accusations by denigrating them without either producing the originals of questioned documents or providing any clarification as to their existence and availability.

43. He now wants it to be found as a fact by this Tribunal that he took that course despite being ready, willing and able to produce the originals. I refuse to make any such finding. Firstly, it is not likely in the circumstances in which it is said to have happened, that there were originals in existence which Mr. Knight saw no benefit or advantage in producing for consideration by the Registrar's Hearing Officer. Secondly, he has taken no steps in relation to the asserted originals to comply with the requirements of the Directions I issued on 19 September 2012 (see paragraphs [7] and [8] of the Case Management Review at Annex A to this Decision) for the purpose of obtaining permission to put them before the Tribunal for consideration on appeal. Thirdly, it would be procedurally unfair to Ms. Hendrick to allow Mr. Knight to ignore those requirements and advance a contention on appeal that she would plainly have wished to contest if she had been given proper notice of it. The missing originals at first instance therefore remain missing originals on appeal.

44. There was no mention of any requests to the effect referred to in paragraph [39] above (adjournment, face-to-face hearing and cross-examination) in the Skeleton Argument filed by Mr. Knight on 22 July 2011 or in the Skeleton Argument filed on behalf of Ms. Hendrick on 18 August 2011 for the purposes of the hearing which took



place before the Hearing Officer on 10 August 2011. I can find no reference to any such requests in the Registry files for these proceedings or in the Hearing Officer's Principal Decision issued on 1 September 2011 or in his Supplementary Decision issued on 10 October 2011. Nor can I find any reference to any such requests in the 2-page Statement of Grounds of Appeal or the 4-page letter referred to in paragraph [31] above. There is no support for Mr. Knight's assertions in the Transcript of the hearing on 10 August 2011. In the circumstances, it appears to me that I was given a substantially inaccurate and unreliable account of the hearing which took place before the Hearing Officer on 10 August 2011 in the version of events which Mr. Knight recounted to me at the hearing of the present Appeal.

45. The suggestion that registry officials were rude to him, ignored his complaints and refused to communicate with him when he tried to communicate with them appears to me to be a mischaracterisation. Mr. Knight is prone to be rude and overbearing in his communications with people who, as he sees it, oppose him and his way of doing things. That is observable in his communications with Ms. Hendrick's representatives, in his communications with the Registry and in his communications with this Tribunal in connection with the present proceedings. What he regards as the unwillingness of others to communicate with him is better regarded as their reluctance to become embroiled in argumentative disagreement with him about what he wants. What he regards as the failure of others to deal with his complaints is better regarded as their unwillingness to deal with his complaints in the way he wants them to be dealt with. It does not appear to me that Mr. Knight was treated inappropriately still less improperly with respect to his conduct of the present proceedings. And as I have already indicated, it appears to me that there was

ample justification for the Hearing Officer's condemnation of Mr. Knight's approach to the conduct of the litigation.

46. I now turn to his contention about evidence having been lost or wrongly excluded. In among the 60-plus pages of documentation which Mr. Knight sought to lodge in connection with this Appeal on 17 September 2012 was a copy of a letter to the Treasury Solicitor's Department dated 5 September 2012 in which he wrote:

...

8. I also now must point out that as the IPO John Alty has also failed to work with me in regards to this case and the fact that [NAMED] and [NAMED] has lost or misplaced evidence which was sent in June 2009 goes to show how corrupt the companies are until the ombudsman get involved.

9. Copies of the missing evidence is attached to this letter.

...

June 2009 was prior to commencement of the opposition and invalidity proceedings. There is no indication in the Principal or Supplementary Decisions (and I have not seen any indication in the Registry files) that Mr. Knight took any steps to introduce the supposedly 'missing evidence' into the proceedings at first instance.

47. His contention to the effect that evidence had been lost became tangled up with his requests for permission to file further evidence on Appeal (made in a 5-page document dated 20 September 2012 and subsequently in a 4-page revision of it dated 7 December 2012) which he put forward in the manner and circumstances described in paragraphs [7] to [15] of the Case Management Review at Annex A to this Decision.

48. Concentrating at this point on the ‘missing evidence’ supposedly sent to the Registry in June 2009, the position reached at the Case Management hearing which took place before me on 10 January 2013 was that Mr. Knight was claiming to have sent ‘14 Correspondents letter’ to the Registry on 1 June 2009 and to have sent further copies to the Registry on 26 June 2010, having also sent a bundle of evidence to the Registry on 24 June 2010. He was further claiming that the Registry confirmed receipt of these materials when he contacted them on 29 July 2010: see paragraphs [19] and [20] of the Case Management Review at Annex A to this Decision.

49. On 10 January 2013, I permitted Mr. Knight to contend at the substantive hearing of the present Appeal that the Hearing Officer had incorrectly refused to receive or take notice of the ‘14 Correspondents letter’ on condition that he promptly sent the Tribunal (and at the same time provided everyone else on the relevant email circulation with) copies of the recorded delivery receipts on which he was relying for proof of receipt of the filings he claimed to have made in June 2009 and June 2010: see paragraphs [18(1)] and [21] of the Case Management Review at Annex A to this Decision.

50. A sequence of communications then ensued in which Mr. Knight failed to provide any recorded delivery receipts. He sent only a single Post Office slip for receipt of payment dated 1 June 2009; he sent that at 12:31:34 + 0000 on 10 January 2013 only to the solicitors acting for Ms. Hendrick on this Appeal; and then subsequently, on 15 January 2013, he sent the Tribunal a copy of the 10 January 2013 email timed at 12:31:34 + 0000 which appeared to have been manipulated for the purpose of enabling him to assert that it had been sent to the Tribunal at the same time as it had been sent to Ms.

Hendrick's solicitors: see paragraphs [22] to [27] of the Case Management Review at Annex A to this Decision.

51. With particular reference to the dates referred to in paragraph [48] above i.e. 1 June 2009; 24 June 2010; 26 June 2010; and 29 July 2010; I have not seen any documents in the Registry files made available to me for the purposes of this Appeal which would support the claims made by Mr. Knight at the 10<sup>th</sup> January 2013 Case Management hearing.

52. It does not appear to me that the supposedly 'missing evidence' was filed in the Registry proceedings. As a result of Mr. Knight's failure to comply with the condition for doing so, it is in any event not open to him to contend that the Hearing Officer incorrectly refused to receive or take notice of the '14 Correspondents letter'. Further as a result of the rulings and defaults in compliance with directions noted in the Case Management Review at Annex A to this Decision, Mr. Knight has no permission to put the supposedly 'missing evidence' before this Tribunal for consideration on Appeal.

53. Upon the basis that the evidence and materials for consideration on this Appeal consist only of the evidence and materials duly filed in the Registry proceedings, the issue raised by Mr. Knight with reference to the witness statements in the names of Chris George and Martin Dunkley is whether they were duly filed. Mr. Knight rightly observes that these witness statements were listed as part of the evidence on file in the invalidity proceedings in an official letter dated 11 March 2011:

### **Registered Proprietors evidence and/or submissions**

Witness Statement of Tony Knight with exhibits TK1-TK7 (exhibit TK6 consists of a Witness Statement by Martin Dunkley, exhibit TK7 consists of a Witness Statement by Chris George)

However, he wishes to ignore the subsequent rulings and directions made and given in that connection.

54. The Tribunal Section Operations Manager wrote to Mr. Knight on 26 April 2011 for the purpose of correcting the irregular filing of these witness statements:

The Registrar has identified a number of irregularities in respect of the evidence that you have previously submitted into these proceedings. Firstly, the witness statements of both Mr. Chris George and Mr. Martin Dunkley, have been submitted without any reference to their place of residence or, in the alternative, details of their business address and neither one contains a statement of truth. Furthermore, in respect of Mr. George's witness statement, there is no indication given as to his relationship with you. In view of these omissions, the Registrar will allow you 21 days from the date of this letter within which to resubmit new witness statements containing the information required, otherwise this evidence will be treated as inadmissible and it will be struck out from the proceedings. If you wish to challenge this decision, then you must request a hearing within 14 days from the date of this letter.

55. A Case Management hearing subsequently took place on 26 May 2011. As notified to Mr. Knight in the official letter of 1 June 2011 recording the directions and rulings given and made at that hearing:

## **Witness statements of Messrs. George & Dunkley**

Following discussion, you confirmed that you do intend to resubmit the statements mentioned and I drew your attention to Practice Direction 32 of the Civil Procedure Rules this requires inter alia:

“18.1 The witness statement must, if practicable, be in the intended witness’s own words, the statement should be expressed in the first person and should also state:

- (1) the full name of the witness,
- (2) his place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer,
- (3) his occupation, or if he has none, his description, and
- (4) the fact that he is a party to the proceedings or is the employee of such a party if it be the case.

20.1 A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence; it must include a statement; it must include a statement by the intended witness that he believes the facts in it are true.

20.2 To verify a witness statement the statement of truth is as follows:

‘I believe that the facts stated in this witness statement are true’.

20.3 Attention is drawn to rule 32.14 which sets out the consequences of verifying a witness statement containing a false statement without an honest belief in its truth.”

I allowed you 21 days from the date of the hearing i.e. until 16 June to resubmit the witness statements. Failure to do so will result in the evidence being considered inadmissible and it will be struck out.

56. Mr. Knight did not comply with these directions and, as I have already said, he had no one but himself to blame for the rejection of his subsequent attempt to rely on the witness statements in the names of Chris George and Martin Dunkley that were not in a form acceptable for filing: see paragraph [23] above. Those witness statements were not duly filed in the Registry proceedings and are not before this Tribunal for consideration on Appeal. Even if that had not been the position, I would have agreed with the Hearing Officer in thinking that they contained evidence of no real weight or probative value: see Annex A to the Principal Decision.

57. I do not doubt that Mr. Knight accurately stated his overarching objective in relation to the Appeal when he told me at the substantive hearing: *'All I have asked for really in this whole appeal is for it to be re-trialled, re-done. That is all I have ever wanted'* (Transcript p. 37, lines 10 to 12). In pursuit of that objective he has persistently tried to force the whole case into a process of re-determination of the parties' claims de novo. However, this Tribunal is bound to proceed, as an appellate tribunal, in conformity with the proposition that *'the trial is not a dress rehearsal. It is the first and last night of the show'*: FAGE UK Ltd v. Chobani UK Ltd [2014] EWCA Civ 5 at para. [114(ii)] per Lewison LJ. From that perspective, the Hearing Officer's Principal Decision and Supplementary Decision stand to be upheld in the absence of manifest error or serious procedural irregularity.

58. I note that the Supplementary Decision on costs is not said to be affected by manifest error or serious procedural irregularity. The Appeal has been conducted on the footing that the Supplementary Decision stands or falls with the Principal Decision. With

regard to the Principal Decision, I am mindful of the fact that the Hearing Officer proceeded to determine serious allegations of wrongdoing without the benefit of cross-examination of any of the relevant witnesses on their witness statements and also without requiring the safeguards that would be applied to the giving of expert evidence in High Court proceedings under CPR 35 to be applied to the evidence tendered in support of the accusations of document fabrication made against Mr. Knight. This was a less than ideal state of affairs. More might have been done at the Case Management hearing on 26 May 2011 to provide for the parties to raise the standard of presentation of their respective cases at the substantive hearing of the proceedings. These matters did not separately or together amount to or involve serious procedural irregularity, but they have prompted me to engage in a far more detailed review of the Hearing Officer's Decisions than might have been regarded as necessary or appropriate in other circumstances.

59. I discussed the considerations and constraints applicable to the determination of serious allegations made and defended 'on paper' in Registry proceedings in CLUB SAIL Trade Marks BL O-174-10; [2010] RPC 32 at paragraphs [32] to [41]. On reviewing the Hearing Officer's Decisions with those observations in mind, I am satisfied that he analysed and assessed the evidence and materials before him with all due care and that he was entitled to make the findings that he did in relation to the central points (i.e. those covered by the findings he made in paragraphs [272] to [277], [299] and [304] of the Principal Decision) from which all else followed. His determinations are not vulnerable to reversal on appeal. I therefore dismiss the Appeal.



60. By letter dated 28 December 2011, the solicitors acting for Ms. Hendrick informed the Treasury Solicitor's Department that they would not be applying (out of time) for the Appeal to be transferred to the High Court under Section 76(3) of the 1994 Act. They also asked for their letter to be treated as a Respondent's Notice under Rules 71(4) to (6) of the Trade Marks Rules 2008 for the purpose of contending on Appeal that the Hearing Officer should additionally or alternatively have held that Trade Mark No. 2518310 was invalidly registered under Sections 5(4)(a) and 5(4)(b) of the Act.

61. At the hearing which took place before me on 18 September 2012, it was noted that the letter of 28 December 2011 had not been filed at the Registry within the period of 21 days prescribed by Rule 71(4) and that any request for an extension of the period prescribed by that Rule would, in accordance with the provisions of Rule 77, need to be made to the Registrar in the first instance: Transcript p.11, line 11 to p.13, line 10. So far as I am aware, no extension of time was sought or obtained. There is accordingly no extant Respondent's Notice in the present proceedings.

62. Ms. Hendrick has been represented in her defence of this Appeal by solicitors and counsel acting *pro bono publico*. She has therefore incurred no legal costs. Her representatives accept that a costs order in her favour would be inappropriate as it would offend against the indemnity principle. They are not parties to the proceedings. There is no power under Rules 67 and 73(4) of the 2008 Rules to make an award in Registry proceedings, at first instance or on appeal to the Appointed Person, in respect of costs incurred by a non-party.

63. In the Respondent's Skeleton Argument it is noted as follows:

38. Under section 194 of the Legal Services Act 2007 and CPR Part 44.3C, costs may be awarded in cases where the legal representation was *pro bono*. That provision, though, is limited to proceedings in a “civil court”, which is defined as including the Court of Appeal (Civil), the High Court and any county court. In the published guidelines on such orders, they state that a tribunal cannot make such an award.

64. It is suggested that the present proceedings on Appeal under Section 76 of the 1994 Act could proceed to a substantive determination before the Appointed Person without referral to the Court under Section 76(3) and then, if the outcome was favourable to Ms Hendrick, be referred to the Court under that Section so as to become with retroactive effect *‘proceedings in a civil court’* in relation to which an award of costs could be made under and in accordance with the provisions of Section 194 of the Legal Services Act 2007.

65. It is not apparent to me how the procedural requirements for referral to *‘the court’* under Section 76(3) and Rule 72 could or would be satisfied at this late stage of the present proceedings. The simple position is that Mr. Knight has made no request for referral and in her solicitors letter of 28 December 2011 it was specifically confirmed that Ms. Hendrick *‘was content for the Appointed Person to hear the case’*. Moreover the power of referral to *‘the court’* under Section 76(3) is not exercisable by the Appointed Person in addition to proceeding in the manner specified in Section 76(4): *‘Where an appeal is made to an appointed person and he does not refer it to the court, he shall hear and determine the appeal and his decision shall be final’*. It follows that I would need to refrain from determining the present Appeal if I were not only able, but also willing, to act upon the suggestion that it be referred to *‘the court’* as a way of assisting Ms.

Hendrick to seek an award of costs under Section 194 of the 2007 Act. In that event, the Appeal as a whole would come before *'the court'* on referral under Section 76(3) (assuming that Mr. Knight took the steps necessary to pursue it) as an undetermined Appeal from the Registrar. I can see that the proceedings following such referral would be *'proceedings in a civil court'* for the purposes of Section 194. I do not see how the proceedings before me prior to referral could be (or, by virtue of the referral, become) *'proceedings in a civil court'* for those purposes. And if they remained outside the scope of Section 194, the order for referral would not achieve the result envisaged by Ms. Hendrick's legal team.

66. Having regard to the considerations noted in the preceding paragraph, I decline to embark upon the process envisaged by the suggestion for referral to the court. The Appeal is dismissed with no order as to costs. The Hearing Officer's order for costs in respect of the proceedings in the Registry remains in place and establishes a requirement for payment of costs by Mr Knight to Ms Hendrick that stands to be complied with.

67. I have considered the suggestion made on behalf of Ms. Hendrick that the papers in this case should be referred to the Director of Public Prosecutions on the basis that Mr. Knight has, by falsifying evidence, attempted to pervert the course of justice. Anyone who considers that a crime of that kind has been committed may raise the matter with the appropriate authorities. My understanding is that no special weight is given to a referral made by a tribunal in the position of this Tribunal. Further, my expectation is that a referral in the circumstances of the present case would kill any prospects and possibilities there might otherwise be for the parties to disengage from the hostilities in which they

have long been enmeshed. I do not propose to add to the strife between the parties or to act antagonistically towards one party (Mr. Knight) at the behest of the other (Ms. Hendrick) by seeking to instigate a criminal investigation into his behaviour. His behaviour stands condemned by the decisions which have been issued at first instance and on appeal in the present proceedings. If there remains a desire on the part of Ms. Hendrick and her legal advisers to seek further censure by way of criminal proceedings, I think that the taking of steps to that end should, in the circumstances of this case, be a matter for them and not this Tribunal to decide upon.

Geoffrey Hobbs QC

17 July 2014

Mr. Knight represented himself.

Written submissions were received from Michael Edenborough QC, Sophie Holcombe and Adil Mohamedbhai instructed by Jeffrey Green Russell, all acting pro bono publico on behalf of Ms. Hendrick.

The Registrar was not represented at the hearing and did not participate in the Appeal.

**ANNEX A TO DECISION DATED 17 JULY 2014**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF:**

**TRADE MARK APPLICATIONS 2512392 AND 2512470**

**IN THE NAME OF ALISON J. HENDRICK**

**AND CONSOLIDATED OPPOSITIONS THERETO UNDER Nos. 99597 AND 99437**

**IN THE NAME OF TONY KNIGHT**

**IN THE MATTER OF:**

**INVALIDITY APPLICATION No. 83630**

**IN THE NAME OF ALISON J. HENDRICK**

**TO TRADE MARK REGISTRATION 2518310**

**IN THE NAME OF TONY KNIGHT TRADING AS  
TOO FAST TO LIVE TOO YOUNG TO DIE APPAREL Co.**

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**CASE MANAGEMENT REVIEW**

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Following on from the Directions issued on 19 September 2012, the Default Notice issued on 12 November 2012, the Case Management hearing which took place on 10 January 2013 and the subsequent communications of the parties, the Tribunal confirms and directs as follows for the reasons summarised in numbered paragraphs 1 to 46 below:

[A] The Tribunal confirms:

- (1) that Mr. Knight is not permitted to put additional documents of his own choosing in evidence on appeal without seeking and obtaining the permission of the Tribunal to do so;
- (2) that the documents at Parts 1 to 11 of the bundles delivered to the Tribunal by the Treasury Solicitor's Department on 25 January 2013 are not (and will not be treated as) evidence in the Appeal unless and until the Tribunal proceeds to issue a decision to that effect;
- (3) that the determinations made at the Case Management hearing which took place on 10 January 2013 have not been varied or discharged and remain in place to the effect noted at numbered paragraphs 18(1) to 18(9) below;
- (4) that there is no extant application by Ms. Hendrick for permission to adduce further evidence on appeal and no sufficient or proper basis for any proposed application for permission has been put before the Tribunal on her behalf;
- (5) that Mr. Knight is not obliged to disclose the contents of any complaint(s) he may have made to any other person or body about this Tribunal.

[B] With regard to the determination noted at numbered paragraph 18(1) below, the Tribunal confirms that the permission given in relation to the '14 Correspondents

letter' was subject to a condition for production of recorded delivery receipts which has not been complied with.

[C] The Tribunal directs that the application for permission to adduce further evidence pursuant to the determination noted at numbered paragraph 18(2) below be stayed for lack of a witness statement fulfilling the requirements specified at the hearing on 10 January 2013 for detailed substantiation of Mr. Knight's assertions relating to the retrieval of documents by CY4OR from a broken hard drive delivered to them in February 2012.

[D] The Tribunal directs that any application Mr. Knight might wish to make for the stay to be lifted must be made in writing by no later than 5.00pm on Friday, 22 February 2013 and accompanied by a detailed witness statement from a responsible person with direct knowledge explaining what CY4OR did, when they did it and what they found, so as to fulfil the requirements established at the Case Management hearing on 10 January 2013 (Transcript p.10, line 8 to p.14, line 23) and thereby establish an adequate basis for continuing with his application for permission to put documents retrieved by CY4OR Ltd in evidence on appeal.

[E] If a fully compliant application for the stay to be lifted has been made as specified in [D] above by 5:00pm on Friday, 22 February 2013, the Tribunal will proceed to give directions for the further conduct of Mr. Knight's application for permission to put documents retrieved by CY4OR Ltd in evidence on appeal.

[F] If no fully compliant application for the stay to be lifted has been made as specified in [D] above by 5:00pm on Friday 22 February 2013 the stay will remain in place and the Tribunal will proceed to set a date for the hearing of the Appeal.

### Background

1. The Registry proceedings in these matters were determined adversely to Mr. Knight for the reasons given in written decisions issued by Mr. David Landau on behalf of the Registrar of Trade Marks on 1 September 2011 and 10 October 2011 under reference numbers BL O-307-11 and BL O-342-11.
2. Mr. Knight appealed to an Appointed Person under Section 76 of the Trade Marks Act 1994 on 29 September 2011. His Appeal was listed to be heard before me at 10:30am on Tuesday, 18 September 2012.
3. On Monday, 17 September 2012, Mr. Knight indicated that he would not be attending the hearing because he was incapacitated through pain associated with a lower back injury sustained in a motor accident on 8 December 2011. In that connection, he provided copies of the following documents relating to his medical condition: (1) a Report by Dr. Charles J. Simenoff dated 1 February 2012; (2) a doctor's appointment record for 18 September 2012 countersigned by Dr. Naveed Saeed and an accompanying prescription record of the same date.
4. The hearing was adjourned upon the basis that I would be giving directions in writing for the further conduct of the Appeal and that the parties would be



provided with a copy of the Transcript of the adjourned hearing when it became available.

#### Additional documentation

5. Mr. Knight's Notice of Appeal was accompanied by a 'Grounds of Appeal Bundle' containing various documents grouped together in 'Appeal Evidence' attachments SA/TK/AJ-1 to SA/TK/AJ-7. On 17 September 2012, he sent more than 60 pages of documentation to the Treasury Solicitor's Department in connection with his Appeal. To the extent that the latter material did not duplicate the material which accompanied the Notice of Appeal, it appeared to have been intended to supplement it.

#### Further evidence on appeal

6. Mr. Knight was not entitled to put the above documentation (or any other additional documentation i.e. documentation additional to that which was before the Hearing Officer for his consideration) in evidence before me for consideration on appeal without seeking and obtaining permission to do so. The following summary of the law and practice relating to applications for permission to adduce further evidence on appeal is taken (with footnotes omitted) from paragraph 5-155 of Kerly's Law of Trade Marks and Trade Names (15<sup>th</sup> Edn., 2011):

On appeal before the court or the Appointed Person new evidence may be admitted only with leave. The onus is on the party applying for leave to admit the evidence to justify the exercise of discretion in his favour but there are no

express limits placed upon the discretion or criteria set for its exercise, save that the discretion should be exercised in accordance with the overriding objective and the concept of proportionality. Relevant factors are likely to include the following:

- (1) Whether the evidence could have been filed earlier and, if so, how much earlier.
- (2) If it could have been, what explanation for the late filing has been offered to explain the delay.
- (3) The nature of the mark.
- (4) The nature of the objections to it.
- (5) The potential significance of the new evidence.
- (6) Whether the other side will be significantly prejudiced by the admission of the evidence in a way which cannot be compensated, for example by an order for costs.
- (7) The desirability of avoiding multiplicity of proceedings.
- (8) The public interest in not admitting onto the Register invalid marks.

#### Directions issued on 19 September 2012

7. On 19 September 2012 the Tribunal issued directions in writing under Rules 62(1)(a), 62(2) and 73(4) of the Trade Marks Rules 2008 with a view to preventing any misunderstanding as to the need for permission to put additional documents in evidence on appeal and in order to provide a framework for the orderly determination of any request for permission.
8. It was specifically directed as follows with regard to the making of any request for permission that Mr. Knight might wish to make:

***“(1) If Mr. Knight wishes to apply for permission to put any additional documentation in evidence before me for consideration on appeal, he must by no later than 5:00pm on Friday, 5 October 2012 send me by email a request in writing accompanied by a list in***

*which each of the documents to which the request relates is: (i) separately itemised and dated; and (ii) clearly and conspicuously marked with an asterisk if he is able to produce the original of that document for inspection.*

- (2) *Mr. Knight must within 14 days of making a request under (1) above send me by email a witness statement verified by a statement of truth explaining in relation to each of the documents itemised in the list accompanying his request: (i) where it was located at the time of the hearing which took place before the Registrar's Hearing Officer on 10 August 2011; (ii) why it was not produced for consideration by the Registrar's Hearing Officer in connection with the opposition and invalidity proceedings in the Registry; (iii) what it is said to show of relevance for the purposes of the present Appeal."*

The 5-page document dated 20 September 2012

9. On 24 September 2012 Mr. Knight sent the Tribunal a copy of a 5-page document dated 20/09/2012. This contained 20 sequentially numbered paragraphs of text in which comments about the proceedings to date were interspersed with references to: (1) '14 Correspondents letter'; (2) 'evidence obtained by CY4OR'; (3) '2 letters and 2 Voice Recordings between me and Tim Dabin'; (4) 'an envelope dated 2002'; (5) 'the eBay membership account set up in 2001'; (6) 'a letter from Al Skilton'; (7) involvement of the Parliamentary Ombudsman 'to investigate the conduct of the IPO' and 'certain staff and senior staff at the PCC'.

Default Notice issued on 12 November 2012

10. Mr. Knight did not comply with the directions requiring a list in specified form by no later than 5:00pm on Friday, 5 October 2012, followed within 14 days by a

witness statement verified by a statement of truth providing specified information with regard to each of the documents itemised in the list.

11. More specifically, the 5-page document referred to in paragraph 9 above was plainly deficient for the purpose of complying with the relevant directions and nothing fulfilling the requirements for a list and witness statement was otherwise provided.
12. A Default Notice was issued on 12 November 2012 specifying in accordance with the provisions of Rules 62(3)(b) and 73(4) of the 2008 Rules that if by 5:00pm on Monday, 3 December 2012 Mr. Knight had not sent the Tribunal a list complying with the requirements of the direction reproduced in bold italics in paragraph 8(1) above and also a witness statement complying with the requirements of the direction reproduced in bold italics in paragraph 8(2) above, he would without further order (that is to say automatically with effect from 3 December 2012) be taken to have abandoned any request he might otherwise have wanted or intended to pursue for permission to put additional documentation in evidence on appeal.

#### Extension of time to 11 December 2012

13. In correspondence following the issue of the Default Notice, Mr. Knight sought and obtained an extension of the deadline for compliance with the requirements of that Notice from 5:00pm on Monday 3 December 2012 to 5:00pm on Tuesday 11 December 2012.

The 4-page document dated 7 December 2012

14. On 7 December 2012 Mr. Knight sent the Tribunal a copy of a 4-page document carrying that date. This was an edited version of the 5-page document referred to in paragraph 9 above. Some text had been omitted. A relatively small amount of text had been added.
15. Mr. Knight was informed by email on 13 December 2012 that the Tribunal was considering whether and, if so, to what extent his 4-page document of 7 December 2012 complied with the requirements of the Default Notice dated 12 November 2012 and Directions dated 19 September 2012.

Notice under Rules 62(4) and 73(4)

16. On 21 December 2012 the parties were notified that the Tribunal required them to attend a Case Management hearing under Rules 62(4) and 73(4) of the Trade Marks Rules 2008 for the purpose of considering with their assistance:
  - (1) whether and, if so, to what extent the 4-page document which Mr. Knight submitted by email on 7 December 2012 complied with the requirements of the Default Notice dated 12 November 2012 and Directions dated 19 September 2012; and
  - (2) what, if any, further directions should be given for the further conduct of the Appeal having regard to the present state of progress relative to the Directions given on 19 September 2012.

### Case Management hearing on 10 January 2013

17. The Case Management hearing took place on 10 January 2013 with Ms. Hendrick's legal representatives attending on her behalf and Mr. Knight attending by telephone. The official shorthand writers' transcript of the proceedings was emailed to the parties by the Treasury Solicitor's Department on 11 January 2013. Mr. Knight recorded the proceedings at his end of the telephone line: see Transcript p.1, line 19 to p.2, line 9.

### Outcome of the Case Management hearing

18. The matters raised by Mr. Knight in his 4-page document of 7 December 2012 were considered and determined by the Tribunal as follows:

- (1) Paragraphs 2 to 4 of the 4-page document; Transcript p.3, line 3 to p.10, line 7.

Mr. Knight was permitted to contend at the substantive hearing of the Appeal that the Hearing Officer had incorrectly refused to receive or take notice of the '14 Correspondents letter'. However, that was subject to prompt compliance with the condition referred to in paragraphs 19 to 29 below.

- (2) Paragraphs 5 to 7 of the 4-page document; Transcript p.10, line 8 to p.14, line 23.

For the purpose of enabling Mr. Knight to pursue his application for permission to adduce further evidence based on the retrieval of documents

by CY4OR Ltd from a broken hard drive delivered to them in February 2012, he was allowed 14 days within which to submit a detailed witness statement from a responsible person with direct knowledge explaining what CY4OR did, when they did it and what they found. It was confirmed that further directions would thereafter be given for the conduct of the application for permission to put the 'CY4OR documents' in evidence on appeal: Transcript page 14, lines 5 to 16.

- (3) Paragraphs 8 and 9 of the 4-page document; Transcript p.14, line 24 to p.29 line 5 and p.33, line 21 to p.34, line 17.

Permission to put the '2 letters and 2 x Voice Recordings' in evidence on appeal was refused for lack of any substance in Mr. Knight's contention that they involved or amounted to some form of retraction or wavering or some kind of doubt being raised by Mr. Dabin about his own testimony in the Registry proceedings.

- (4) Transcript p.29, line 7 to p.33, line 19 and p.35, line 14 to p.42 line 2.

There was a general attempt by Mr. Knight to put additional documents of his own choosing in evidence on appeal without regard to the constraints imposed by the Directions issued on 19 September 2012 (see paragraph 8 above). That was rejected.

- (5) Paragraphs 10 of the 4-page document; Transcript p.42 line 3 to p.43 line 11.

Mr. Knight's request for permission was refused in relation to the 'envelope dated 2002' and such if any of the other documents referred to in paragraph 10 of his 4-page document as may not have been before the Hearing Officer and looked at by him.

- (6) Paragraph 11 of the 4-page documents; Transcript p.43 line 12 to p.45 line 3

Permission to put 'eBay membership' in evidence on appeal was refused.

- (7) Paragraph 12 of the 4-page document; Transcript p.45 lines 3 to 25

On the basis that the 'letter from Al Skilton' was part of the official correspondence, it was determined that no permission was required to refer to it on appeal in the Registry proceedings.

- (8) Paragraph 13 of the 4-page document; Transcript p.46, line 1 to p.47 line 14

It was determined that if, as Mr. Knight contended, the witness statements of Martin Dunkley and Chris George had been officially accepted into evidence in the Registry proceedings, the question for consideration on appeal would be whether the Hearing Office had correctly decided not to regard them as evidentially significant.



- (9) Paragraphs 13 to 17 of the 4-page document; Transcript p.47, line 15 to p.50 line 11

It was made clear that complaints and grievances relating to matters which did not arise for determination in the context of the particular rights claimed by the parties in the present proceedings would not be examined on this Appeal.

The condition applicable to the ‘14 Correspondents letter’

19. In his 4-page document of 7 December 2012 Mr. Knight maintained:

- that the ‘14 Correspondents letter’ were all sent to the IPO on 1 June 2009 ‘by royal mail recorded signed for months prior to the hearing’ (paragraph 2)
- with reference to a bundle of evidence he sent to the IPO on 24 June 2010 ‘Please attachment of proof of postage’ (paragraph 3)
- with reference to the ‘14 Correspondents letter’, he decided to resend ‘more copies of the letters with the amended statement on Saturday 26<sup>th</sup>/6/2010. Please attached proof of delivery’ (paragraph 3)
- that he contacted the IPO on 29 June 2010 and was told ‘that both the bundle evidence sent on the 24<sup>th</sup>/6/2010 was received on the 25<sup>th</sup>/6/2010 (please see attachment of receipt) and that the amended witness statement attached to the 14 letters was also received on Monday 28<sup>th</sup> June 2010 (Please attachment)’. (paragraph 4)

20. At the Case Management hearing on 10 January 2013, Mr. Knight confirmed these statements (Transcript p.3, lines 7 to 19) and further confirmed that 'all my correspondence is sent by recorded mail; every single one of them' (Transcript p.4 line 25 to p.5 line 2). The recorded delivery receipts referred to in his 4-page document were not attached to it, but Mr. Knight indicated that copies of them could easily be provided: Transcript p.6 lines 11 to 21.
21. There are uncertainties surrounding the filing of documents by Mr. Knight in the Registry proceedings (see paragraphs 15 to 20, 24, 28, 74, 75 and 100 of the Hearing Officer's decision dated 10 October 2011). Against that background it was a condition of the permission he was given to contend at the substantive hearing of the Appeal that the Hearing Officer had incorrectly refused to receive or take notice of the '14 Correspondents letter' that he should promptly send copies of the recorded delivery receipts he was relying upon to the Tribunal and at the same time on copy to everyone else on the relevant email circulation: Transcript p.9, line 18 to p.10 line 7).
22. Later the same day Mr. Knight sent an email timed at 12:31:34 + 0000 to the solicitors acting for Ms. Hendrick stating:

Dear Mr. Hobbs

as requested the proof of delivery slip from royal mail  
1<sup>st</sup>/6/2009 cc. to Jeffery green

Neither that email nor any *'proof of delivery slip'* was actually sent to the Tribunal at that time.

23. However, the existence of the email timed at 12:31:34 + 0000 on 10 January 2013 was subsequently noticed when it was appended to an email sent to the Tribunal by Mr. Knight on 11 January 2013. Having thus been alerted the existence of the email of 10 January 2013, the Tribunal immediately sent an email to all (including Mr. Knight) on the relevant circulation stating:

In order to maintain transparency of communication, I am copying you into an email with attachments sent to me by Mr Knight at 07:17 this morning (below).

Beneath that email on the same thread is an email timed at 12:31 on 10 January suggesting that Mr Hobbs has been sent a proof of delivery slip.

Neither the email nor any proof of delivery slip have been received by Mr Hobbs or by me on his behalf.

Yours sincerely,

Jade Cassell  
Clerk to Geoffrey Hobbs QC

24. Mr. Knight subsequently sent an email to the Tribunal on 15 January 2013 with an altered version of his email timed at 12:31:34 + 0000 on 10 January 2013 appended to it. The alteration consisted of the addition of an email address ([jc@oeclaw.co.uk](mailto:jc@oeclaw.co.uk), the email address for communications with the Tribunal) that was not present on the version of the email which had come to the attention of the Tribunal on 11 January 2013.
25. On 17 January 2013, Ms. Hendrick's solicitors confirmed that the email address for communications with the Tribunal ([jc@oeclaw.co.uk](mailto:jc@oeclaw.co.uk)) was not present on the

email timed at 12:31:34 + 0000 on 10 January 2013 which Mr. Knight had sent to them at [vxs@jgrlaw.co.uk](mailto:vxs@jgrlaw.co.uk). Since the Tribunal had not been provided with a copy of the 'proof of delivery slip' which they had received from Mr. Knight, they provided a copy of it with their email. Thereafter on 21 January 2013 they provided print-outs of the source code (revealed by using the Microsoft '> right click > view source' facility in Outlook) for each of the two versions of the 10 January email referred to in paragraphs 22 to 25 above.

26. This is the 'proof of delivery slip' they received from Mr. Knight:



27. The slip is in fact a Post Office receipt for payment of ‘1<sup>st</sup> Class Lg Letter £0.90, Recorded £0.75, Receipt £0.00’ totalling £1.65 in respect of a 0.166kg letter put in the post at 16:33 on 01/06/2009 with Barcode reference DV942829570GB. It is not a recorded delivery receipt and the Tribunal has not otherwise been provided with the recorded delivery receipts required as a condition of the permission Mr. Knight was given to contend at the substantive hearing of the Appeal that the Hearing Officer had incorrectly refused to receive or take notice of the ‘14 Correspondents letter’. Mr. Knight appears to be either unable or unwilling to comply with the applicable condition. No application has been made for the condition to be varied or discharged.

Retrieval of the ‘CY4OR documents’ from a broken hard drive

28. Mr. Knight’s position at the Case Management hearing was as stated in his 4-page document of 7 December 2012 in the following terms:

5. I also seek permission to add the evidence obtained by CY4OR a computer forensic computer as I did not know at the time of the hearing that data could be retrieved of a broken computer which stopped working in 2006. It was only when I spoke to a Trademark solicitor in regards to this appeal she asked if I had any old company computers that may obtain information so I said I would after check storage and she recommended Cy4or.

6. Cy4or is a well respected company who used by the police and courts in retrieving lost data they have managed to retrieved vital evidence that would show sales invoices going back 2000 and they also retrieved a lot more. Cy4or has also provided a written witness statement and placed the information on a cdr read only disc so this cannot be tampered with and placed the hard drive in sealed evidence bag this was done in February of this year.

7. Mrs. Hendricks and her Representatives were informed of this and were asked if they would like to meet me to discuss the contents they declined on 5 separate occasions as this is vital evidence I ask that it allowed into the hearing.”

He said at the hearing that about 800 documents had been retrieved: Transcript p.10, line 14 to p.11, line 1.

29. At 13:34 on 10 January 2013, Mr. Knight sent the Tribunal an unsigned draft of a witness statement of Tom Hall of CY4OR Ltd dated Friday, 17 February 2012. In the covering email Mr. Knight stated:

Please find attached Witness Statement from Tim Hall from Cy4OR I have also requested a signed copy of the statement but Tom hall is of now till Monday of next week.

I must also stipulate that Cy4oR will not discuss with any other party any information in this case and they have been notified in tany other company tries to contact them theyd must contact me first as this falls in line with Data protection.

30. However, this unilateral ‘stipulation’ could not override the rule that there is, in principle, no property in a witness (including an expert witness) who is able to provide relevant testimony without resorting to the use of information protected by unwaived legal advice or litigation privilege: Harmony Shipping Co SA v. Saudi Europe Line Ltd [1979] 1 WLR 1380 (CA) and Meat Corporation of Namibia Ltd v. Dawn Meats (UK) Ltd [2011] EWHC 474 (Ch) at paragraphs [35] to [42]. Within those parameters Ms. Hendrick’s solicitors were and would remain free to approach CY4OR Ltd and Tom Hall with a request for information and assistance

and also to apply to the Tribunal for appropriate directions with regard to the attendance of Tom Hall for cross-examination on any witness statement he might provide.

31. On 14 January 2013, Mr. Knight sent an email to the Tribunal saying (among other things) that *'the evidence from CY4or will be printed from the CD Rom and sent to you by Friday of this week'*.
32. In response, the Tribunal informed him as follows in an email sent at 12:09 on 15 January 2013:

CY4OR

An unsigned draft witness statement of 'Tom Hall' was attached to the email you sent me at 13:34 on 10 January 2013.

That draft witness statement does not comply with the directions given at the hearing which took place on 10 January 2013.

Please note that the directions which must be complied with are recorded in the Transcript of the hearing at page 13 line 2 to page 14 line 23.

At the hearing which took place on 10 January 2013 you informed the Tribunal that you held a list of the documents that were said to have been retrieved by CY4OR Ltd from a hard drive you delivered to them in February 2012.

However, you filed no list of any such documents either in response to the Directions issued by the Tribunal on 19 September 2012 or in response to the Default Notice issued by the Tribunal on 12 November 2012 and as matters presently stand you do not have permission to put copies of any such documents in evidence before the Tribunal on appeal.

Please note that no documents sent to the Tribunal in that connection will be (or be treated as) evidence in the appeal unless and until the Tribunal proceeds to issue a decision to that effect.

You should therefore not seek to pre-empt the outcome of your application for permission by sending the Tribunal copies of documents said to have been retrieved by CY4OR 'by Friday of this week' as intimated in paragraph (1) of the email you sent at 09:30 this morning (below).

As decided at the hearing which took place on 10 January 2013, your application for permission to put copies of such documents in evidence before the Tribunal on appeal will be further considered: (a) if and in the event that the directions given at the hearing on 10 January 2013 for the filing of a witness statement from CY4OR Ltd are fully and properly complied with; and (b) in accordance with the procedural directions which will in that event be given by the Tribunal for an orderly determination of the application for permission.

33. On 24 January 2013 Mr. Knight proceeded to send the Tribunal a 152-page document identified as 'cy4or Index.pdf' under cover of an email which stated *'This is the Cy4or Index which goes with Bundle A and B of that of Tom Hall which was sent by recorded mail to both parties yesterday'*. The 152-page 'Index' is largely incomprehensible.
34. On 25 January 2013, the Tribunal received from the Treasury Solicitor's Department 2 bundles of documents respectively marked Bundle A and Bundle B. At the front of each bundle there was a *'CY4OR EVIDENCE Index'*. At 'Part O' of Bundle A there was a Witness Statement of Tom Hall dated 17 February 2012. Parts 1 to 11 of the bundles were each preceded by internal indexes. From these it appears that Bundles A and B may contain a total of approximately 636



documents said to have been retrieved by CY4OR Ltd from a hard drive delivered to them in February 2012.

35. The documents at Parts 1 to 11 of the bundles delivered to the Tribunal by the Treasury Solicitor's Department are not (and will not be treated as) evidence in the Appeal unless and until the Tribunal proceeds to issue a decision to that effect.
36. A copy of the 2-page Witness Statement of Tom Hall is attached. Being a Witness Statement dated 17 February 2012 it cannot have been prepared in response to the requirement for a witness statement dealing in detail with the matters specified at the Case Management hearing on 10 January 2013 (Transcript p.10, line 8 to p.14, line 23).
37. The Witness Statement is tersely written and presented in the form of a document intended for use in criminal proceedings under the Criminal Justice Act 1967 and/or the Magistrates Court Act 1980. It relates to a case reference 'CY4-105688-Pendan' for which no context or details are given and in respect of which no information has otherwise been provided to this Tribunal. The request referred to in paragraph 6, the delivery of the hard drive referred to in paragraph 7 and the operations referred to in paragraphs 9 to 14 of the Witness Statement are also not recounted with enough context or details to fulfil the requirements established at the Case Management hearing. The Witness Statement is essentially embryonic from that point of view.

38. No application has been made for an extension of the 14-day period allowed at the Case Management hearing for the purpose of enabling Mr. Knight to substantiate his assertions by means of a detailed witness statement from a responsible person with direct knowledge of the matters in question. The Witness Statement of Tom Hall raises more questions than it answers from the perspective of an application for permission to put further evidence before this Tribunal on appeal.

#### Resistance to directions of the Tribunal

39. Since receiving the Default Notice issued on 12 November 2012, Mr. Knight has repeatedly attacked the Tribunal for its approach to dealing with his application for permission to adduce further evidence on appeal. He has done so in verbally abusive and procedurally obstructive terms which indicate that he is basically unwilling to accept the necessity for an orderly resolution of his application in accordance with the principles governing such applications (see paragraph 6 above).
40. A matter to which he returns in his communications is his willingness to pursue complaints and grievances against tribunals and their administrative staff. Thus in paragraph 15 of his 5-page document of 20 September 2012 he stated:

15. I have been accused of a lot and this has caused me great depression in the fact that I had to argue with the IPO to have the problems raised of lost/mislaid evidence in which they still refuse to investigate. So I have now had to involve the **Parliamentary Ombudsman** to investigate the conduct of the IPO prior to the hearing and the behaviour of Mr. Landau and certain IPO staff. This is not the first time I have had to involve the **Parliamentary Ombudsman** in regards

to bad conduct. I draw your attention to Mr. Landau's reference to the Westwood V Knight Case and also heavily based his decision on this outcome and I informed him that this case was being appealed and sent Mr. Landau a copy of the Appeal form and recorded slip and informed him that the case was being investigated at the time due to the fact that 5 bundles of evidence had been misplaced by the Patent County court and they denied having received this evidence and made out I was lying. When the Ombudsman got involved it was proved without a shadow of a doubt I had sent the evidence and certain staff and senior staff at the PCC had lied and never investigated my complaint, they now face criminal proceeding along with court action. The IPO staff are currently being investigated for a similar offence.

41. Complaints and grievances about this Tribunal began to be added to those against the Intellectual Property Office and the Patents County Court in communications received from Mr. Knight following the issue of the Default Notice dated 12 November 2012. In an email sent to the Tribunal on 13 November 2012 he wrote *'you clearly feel you are above the law and this will not be tolerated. I ask that you be removed from this case while the PARLIMNETRY OMBUDSMAN or your investigates my concerns'* and in an email sent to the Tribunal early the next day he wrote *'please bear in mind i am not afraid to take legal action against you like i did against the patent county court were corrupt in which I prove the courts failed in the conduct'*. These and subsequent communications in the same vein are evidently intended to deflect or deter the Tribunal from proceeding on any basis which Mr. Knight does not regard as acceptable to him. He seems now to be focused on pursuing complaints against this Tribunal on an ongoing basis. He has identified the Treasury Solicitor, the Office for Judicial Complaints, the Lord Chancellor, his MP and the Parliamentary Ombudsman as actual or intended recipients of such complaints.

42. In the circumstances, there does not appear to be any imminent prospect of Mr. Knight applying himself productively in response to directions from the Tribunal to the task of establishing an adequate basis for continuing with his application for permission to put documents retrieved by CY4OR Ltd in evidence on appeal. But if Mr. Knight wishes to apply himself productively to that task he shall have a final opportunity to do so.

Respondent's statement of position

43. On 5 February 2013 the solicitors acting for Ms. Hendrick sent an email to the Tribunal setting out her position in the following terms:

We are writing to you in order to place before the Appointed Person a number of issues. It appears to us that there are currently five matters that need to be addressed by the Tribunal, namely:

- (a) Mr Knight's Application to adduce new evidence on appeal;
- (b) Ms Hendrick's right to file evidence in answer to that Application, if so advised;
- (c) Ms Hendrick's own application to adduce new evidence on appeal, and Mr Knight's right to respond to that evidence;
- (d) the Complaint raised by Mr Knight against various people; and,
- (e) the consequences of that Complaint on the future conduct of this case.

Dealing with each of those points in turn:

Mr Knight's Application

With respect to this Application, it is understood that the Appointed Person is currently considering whether or not Mr Knight's Application satisfies the various Directions that have been given. If the Appointed Person were to hold that

the Application did not satisfy those Directions, then the Application would be refused without further ado. If the Appointed Person requires Ms Hendrick to make submissions on whether or not those Directions have been satisfied, then we ask that he gives appropriate further Directions in that regard. However, to deal with the matter proportionately and so as not to delay matters further, Ms Hendrick is content for the Appointed Person to rule upon this issue without any submissions from her.

#### Ms Hendrick's Right to Answer the Application

If the Appointed Person were to hold that Mr Knight's Application is properly formulated, then Ms Hendrick has the right to adduce evidence-in-answer, and to make submissions as to why that evidence should not, in any event, be admitted on the appeal. In this regard, we would ask that the Appointed Person issued further Directions so as to allow Ms Hendrick the opportunity to file evidence-in-answer. These Directions would also need to ensure that the documents purportedly recovered by Cy4or were made available to Ms Hendrick's solicitors for investigation, and that her own expert could be instructed on the matter.

#### Ms Hendrick's own Application

The behaviour of Mr Knight on this appeal has already necessitated Ms Hendrick to conduct various investigations into the recent events. Those investigations bear directly upon the credibility of the central finding of Mr Landau in the first instance decision. Ms Hendrick hereby seeks permission to adduce that evidence on appeal in any event, regardless of the outcome of Mr Knight's Application. While still at a preliminary stage, the evidence uncovered so far *prima facie* directly supports the allegation that Mr Knight forged certain evidence that was placed before Mr Landau. As such, it materially supports the conclusion reached at first instance, and so supports the dismissal of the Appeal. Mr Knight should, in turn, be allowed to file his own evidence-in-answer to Ms Hendrick's Application.

#### Mr Knight's Complaint

Apparently, Mr Knight has made a complaint about certain people. However, the relevant correspondence has not been copied to us. In particular, the letter of Complaint itself and Mr Sims' response are missing. These should be copied to us

as soon as possible in order to maintain transparency in these proceedings.

#### The Consequences of Mr Knight's Complaint

The TM55 Notice of Appeal is dated 22<sup>nd</sup> September 2011. There have been two interim CMCs and three sets of interim Directions so far. There is an unresolved Application by Mr Knight for permission to adduce new evidence on the Appeal, and a further, similar Application by Ms Hendrick. Now a Complaint has been filed, apparently against, *inter alia*, the Appointed Person. So far, there has been no indication what effect that Complaint might have on the progress of this Appeal, in particular on the likely time frame in which that Complaint might be resolved. In the meanwhile, there remains uncertainty surrounding the outcome of the Appeal, which is undesirable. Accordingly, if possible, it would be appreciated if some clear indication could be given by the Appointed Person as to the conduct of the Complaint and how that affects the future conduct of the Appeal

44. With regard to point (a) Mr. Knight's Application, that is the principal subject of the present review. With regard to point (b) Ms. Hendrick's Right to Answer the Application, it was confirmed at the Case Management hearing on 10 January 2013 that directions would be given for the purpose of enabling Ms. Hendrick to respond if and when Mr. Knight proceeded to file a witness statement establishing an adequate basis for continuing with his application for permission to put documents retrieved by CY40R Ltd in evidence on appeal: Transcript page 14, lines 5 to 16.
45. With regard to point (d) Mr. Knight's Complaint and point (e) The Consequences of Mr. Knight's Complaint, it is a matter for the addressee(s) of such complaint(s) to consider whether and, if so, how to respond to whatever Mr. Knight may have

raised by way of complaint about this Tribunal. Mr. Knight is not obliged to disclose the contents of any such complaint(s) to the Tribunal or to Ms. Hendricks. For its part, the Tribunal adheres to the position notified to Mr. Knight on more than one occasion: it is not a valid ground of objection to the constitution of the Tribunal that he has been called upon to comply with the directions given for the conduct of his application for permission to adduce further evidence on appeal; and his appeal under Section 76 of the Trade Marks Act 1994 remains in place and ongoing before me notwithstanding the complaints he has made or intends to make in that connection.

46. With regard to point (c) Ms. Hendrick's own Application, it is necessary to point out **firstly** that there is no extant application by Ms. Hendrick for permission to adduce further evidence on appeal and **secondly** that there is no sufficient or proper basis for any proposed application for permission in the bare statement '*Ms. Hendrick seeks permission to adduce that evidence on appeal in any event*' made with reference to unspecified information uncovered by unspecified investigations that are acknowledged to be '*still at a preliminary stage*'.

Geoffrey Hobbs QC

8 February 2013

**RESTRICTED (when complete)**

**WITNESS STATEMENT**

(CJ Act 1967, s.9; MC Act 1980, s.s.5A (3)(a) and 5B; MC Rules 1981, r.70)


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Statement of: Tom Hall

Age if under 18: Over 18 (if over 18 insert "over 18") Occupation: Forensic Technician

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature: 

Date: Friday 17<sup>th</sup> February 2012

Tick if witness evidence is visually recorded  (supply witness details on rear)

**EXAMINER DETAILS**


1. I am Tom Hall a Forensic Technician employed by CY4OR Limited.
2. I have over five years general computer experience and over 10 months experience in the Computer Forensic Industry. In addition I have obtained the Access Data® Certified Examiner qualification and am currently studying BSc Computer Forensics.
3. This statement refers to the case, reference: CY4-105688\_Pendan.

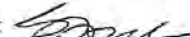
**EXAMINATION**

4. Examination of all media in this case has been carried out in accordance with the ACPO (Association of Chief Police Officers) Good Practice Guide for Computer based Electronic Evidence.
5. Various hardware and software tools are utilised during forensic examinations, including EnCase and FTK Imager. EnCase is a forensic investigation software tool used by many police forces and other forensic computer investigators to investigate computer systems. I am experienced in the use of EnCase and FTK Imager and have been trained in their use.

**ANALYSIS OBJECTIVES**

6. I was requested to create a forensic image of the supplied hard drive, hereby referenced as DW/01 and to extract all documents, and photographs contained on the drive.

Signature: 

Signature witnessed by: 



**RESTRICTED (when complete)**

Continuation of Statement of Tom Hall

Page 2 of 2

**EXHIBITS**

7. The drive referenced as DW/01 was delivered to the CY4OR Bury office on 9<sup>th</sup> February 2012. This was received by Daniel Williams a Computer Forensic Investigator employed by CY4OR Limited.

**PHYSICAL EXAMINATION**

8. DW/01 is a Seagate Model ST340823A 40GB IDE hard drive, with the serial number 5EF02WAM.
9. On 14<sup>th</sup> February 2012 at 10:59am I connected the drive DW/01 to an acquisition machine. This was done using a Tableau v5.2 hardware writeblocker.
10. Using FTK Imager v3.1.0 I created a forensic image of the drive DW/01.

**ANALYSIS**

11. On 14<sup>th</sup> February 2012 at 12:20am I loaded the forensic images of DW/01 into the EnCase v6.19.1 forensic software.
12. I ran the recover folders utility across the volume labelled C: within EnCase; This produced 405 recovered folders.
13. I then ran a file signature process within EnCase to verify the file type of the files within the drive DW/01.
14. I exported all documents and photo's contained on the drive, which consisted of; BMP, DOC, GIF, JPG, PNG, PUB, TIF and TXT file types. These were produced onto a DVD referenced as TH-01.**END OF STATEMENT**

Signature:



Signature witnessed by:

