

O-402-14

**TRADE MARKS ACT 1994  
IN THE MATTER OF APPLICATION  
Nos. 3006361, 3006362 & 3006356  
BY IVAN DIMITROV DIMITROV  
TO REGISTER THE TRADE MARKS  
IDH INTEGRATED DENTAL HOLDINGS /  
IDH INTEGRATED DENTAL HOLDING (A SERIES OF TWO MARKS)  
&  
IDH GROUP  
&  
INTEGARTED DENTAL HOLDINGS /  
INTEGRATED DENTAL HOLDING (A SERIES OF TWO MARKS)  
IN CLASS 44**

**AND**

**IN THE MATTER OF CONSOLIDATED OPPOSITIONS  
THERE TO UNDER Nos. 400745, 400892 & 400893 BY  
INTEGRATED DENTAL HOLDINGS LIMITED**

**AND**

**IN THE MATTER OF UK REGISTRATION No. 3006360  
STANDING IN THE NAME OF  
IVAN DIMITROV DIMITROV  
AND**

**IN THE MATTER OF A REQUEST FOR A DECLARATION  
OF INVALIDITY THERE TO UNDER No.500166  
BY  
INTEGRATED DENTAL HOLDINGS LIMITED**

## BACKGROUND

1) On 16 May 2013 and 17 May 2013 Ivan Dimitrov Dimitrov (hereafter Mr Dimitrov) applied to register the following trade marks:

Number	Mark	Filing Date	Class	Goods
3006361	<p>IDH INTEGRATED DENTAL HOLDINGS</p> <p>IDH INTEGRATED DENTAL HOLDING</p> <p>A series of two marks</p>	17.05.13	44	<p>Dental hygienist services;Dental services;Dentist services;Dentistry;Advice relating to cosmetics;Advice relating to dentistry;Advisory services relating to beauty treatment;Advisory services relating to dental instruments;Advisory services relating to health;Advisory services relating to medical instruments;Advisory services relating to medical problems;Advisory services relating to medical services;Advisory services relating to surgical instruments;Advisory services relating to the treatment of degenerative diseases;Application of cosmetic products to the body;Application of cosmetic products to the face;Arranging of medical treatment;Beauty care;Beauty care for human beings;Beauty consultancy;Beauty consultation;Beauty treatment;Beauty treatment services;Behavioural analysis for medical purposes;Clinic (Medical -) services;Clinic services (medical-);Clinics;Clinics (medical-);Compilation of medical reports;Conducting of medical examinations;Consultancy relating to cosmetics;Consultancy relating to health care;Consultancy relating to nutrition;Consultancy services related to nutrition;Consultancy services relating to beauty;Consultancy services relating to cosmetics;Consultancy services relating to surgery;Consultation services relating to beauty care;Consultation services relating to skin care;Consulting services relating to health care;Cosmetic analysis;Cosmetic dentistry;Cosmetic treatment;Cosmetic treatment for the face;Cosmetician services;Cosmetics consultancy services;Emergency medical assistance;Facial beauty treatment services;Fitting of prosthetic devices;Health advice and information services;Health assessment surveys;Health care;Health care consultancy services [medical];Health care in the nature of health maintenance organizations;Health care services;Health centers;Health centres;Health clinic services;Health clinic services [medical];Health screening;Health spa services;Healthcare;Health-care;Healthcare services;Health-care services;Hiring of dental instruments;Hiring of medical instruments;Hiring of surgical instruments;Home health care services;Hygienic and beauty care;Hygienic and beauty care for human beings;Hygienic and beauty care for humans;Hygienic and beauty care services;Hygienic care for human beings;Information services relating to health care;Issuing of medical reports;Location of emergency health care;Location of medical facilities for emergency medical treatment;Maintaining files and records concerning the medical condition of individuals;Maintaining personal medical history records and files;Managed health care services;Medical advisory services;Medical analysis services;Medical assistance;Medical assistance consultancy provided by doctors and other specialized medical personnel;Medical assistance services;Medical care;Medical care services;Medical clinic services;Medical consultation;Medical consultations;Medical counseling;Medical counselling;Medical equipment rental;Medical evaluation services;Medical examination of individuals;Medical</p>

				<p>examination of individuals (provision of reports relating to the-);Medical health assessment services;Medical, hygienic and beauty care;Medical imaging services;Medical information;Medical information (provision of-);Medical information retrieval services;Medical information services;Medical nursing;Medical screening;Medical services;Medical services for treatment of the skin;Medical spa services;Medical testing;Medical treatment services;Nursing services;Orthodontic services;Preparation and dispensing of medications;Preparation of reports relating to health care matters;Preparation of reports relating to medical matters;Professional consultancy relating to diet;Professional consultancy relating to health;Professional consultancy relating to health care;Professional consultancy relating to nutrition;Providing health care information by telephone;Providing health information;Providing information about beauty;Providing medical information;Providing news and information in the field of medicine;Provision of health care services;Provision of health care services in domestic homes;Provision of information relating to behavioural modification;Provision of information relating to medical practitioners;Provision of information relating to medical specialists;Provision of information relating to medicine;Provision of medical assistance;Provision of medical facilities;Provision of medical information;Provision of medical services;Provision of medical treatment;Rental of equipment for medical purposes;Rental of medical equipment;Rental of medical machines and apparatus;Rental of medical x-ray apparatus;Residential medical advice services;Residential medical treatment services;Services for the preparation of medical reports;Services for the provision of medical care information;Services for the provision of medical facilities;Surgery;Surgery (cosmetic-);Surgical diagnostic services;Surgical treatment services;Technical consultancy services relating to medical health;Teeth whitening services;Therapeutic treatment of the face;Therapy services;X-ray services;X-ray technician services.</p>
3006362	IDH GROUP	17.05.13	44	<p>Dental hygienist services;Dental services;Dentist services;Dentistry;Advice relating to cosmetics;Advice relating to dentistry;Advisory services relating to beauty treatment;Advisory services relating to degenerative diseases;Advisory services relating to dental instruments;Advisory services relating to diet;Advisory services relating to health;Advisory services relating to medical instruments;Advisory services relating to medical problems;Advisory services relating to medical services;Advisory services relating to nutrition;Application of cosmetic products to the body;Application of cosmetic products to the face;Arranging of medical treatment;Beautician services;Beauty care;Beauty care for human beings;Beauty consultancy;Beauty consultation;Beauty counselling;Beauty salon services;Beauty treatment;Beauty treatment services;Charitable services, namely providing medical services;Charitable services, namely, providing medical services to needy persons;Clinic (Medical -) services;Clinic services (medical-);Clinics;Clinics (medical-);Compilation of medical reports;Conducting of medical examinations;Consultancy relating to cosmetics;Consultancy relating to health care;Consultancy relating to nutrition;Consultancy services related to nutrition;Consultancy services</p>

			<p>relating to beauty;Consultancy services relating to cosmetics;Consultancy services relating to personal behaviour;Consultancy services relating to prosthetic implants;Consultancy services relating to surgery;Consultation services relating to beauty care;Consultation services relating to skin care;Consulting services relating to health care;Cosmetic analysis;Cosmetic body care services;Cosmetic dentistry;Cosmetic treatment;Cosmetic treatment for the body;Cosmetic treatment for the face;Cosmetician services;Cosmetics consultancy services;Counselling relating to diet;Counselling relating to nutrition;Counselling relating to the social treatment of medical ailments;Emergency medical assistance;Facial beauty treatment services;Fitting of prosthetic devices;Fitting of prosthetics;Health advice and information services;Health assessment surveys;Health care;Health care consultancy services [medical];Health care in the nature of health maintenance organizations;Health care services;Health centers;Health centres;Health clinic services;Health clinic services [medical];Health risk assessment surveys;Health screening;Health spa services;Healthcare;Health-care;Healthcare services;Health-care services;Hiring of medical instruments;Hiring of plants;Hiring of surgical instruments;Home health care services;Hygienic and beauty care;Hygienic and beauty care for human beings;Hygienic and beauty care for humans;Hygienic care for human beings;Information services relating to health care;Issuing of medical reports;Leasing of medical equipment;Leasing skin care equipment;Location of emergency health care;Location of medical facilities for emergency medical treatment;Maintaining files and records concerning the medical condition of individuals;Maintaining personal medical history records and files;Managed health care services;Medical advisory services;Medical analysis services;Medical assistance;Medical assistance consultancy provided by doctors and other specialized medical personnel;Medical assistance services;Medical care;Medical care services;Medical clinic services;Medical consultation;Medical consultations;Medical counseling;Medical counselling;Medical equipment rental;Medical evaluation services;Medical examination of individuals;Medical examination of individuals (provision of reports relating to the-);Medical health assessment services;Medical, hygienic and beauty care;Medical imaging services;Medical information;Medical information (provision of-);Medical information retrieval services;Medical information services;Medical nursing;Medical screening;Medical services;Medical services for the diagnosis of conditions of the human body;Medical services for the treatment of conditions of the human body;Medical services for treatment of the skin;Medical spa services;Medical treatment services;Mounting gemstones in dentures;Music therapy services;Nursing care;Nursing care (provision of-);Nursing care services;Nursing, medical;Nursing (medical-);Nursing services;Nutrition consultancy;Nutrition counseling;Nutritional advisory and consultation services;Nutritional advisory services;Nutritional guidance;Performing diagnosis of diseases;Preparation and dispensing of medications;Preparation of reports relating to health care matters;Preparation of reports relating to medical matters;Professional consultancy relating to diet;Professional consultancy relating to health;Professional consultancy relating to health</p>
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				care;Professional consultancy relating to nutrition;Providing health care information by telephone;Providing health information;Providing information about beauty;Providing information to patients in the field of administering medications;Providing laser therapy for treating medical conditions;Providing long-term care facilities;Providing medical information;Providing news and information in the field of medicine;Provision of health care services;Provision of health care services in domestic homes;Provision of information relating to behavioural modification;Provision of information relating to medical practitioners;Provision of information relating to medical specialists;Provision of information relating to medicine;Provision of information relating to nutrition;Provision of medical assistance;Provision of medical facilities;Provision of medical information;Provision of medical services;Provision of medical treatment;Rental of equipment for medical purposes;Rental of medical equipment;Rental of medical machines and apparatus;Rental of medical x-ray apparatus;Rental of plants;Rental of ultrasonic diagnostic apparatus;Residential medical advice services;Residential medical treatment services;Services for the care of the face;Services for the preparation of medical reports;Services for the provision of medical care information;Services for the provision of medical facilities;Stress management services;Surgery;Surgery (cosmetic-);Surgical diagnostic services;Surgical treatment services;Technical consultancy services relating to medical health;Teeth whitening services;Therapeutic treatment of the body;Therapeutic treatment of the face.
3006356	INTEGRATED DENTAL HOLDINGS  INTEGRATED DENTAL HOLDING  A series of two marks	16.05.13	44	Dental hygienist services;Dental services;Dentist services;Dentistry;Advice relating to dentistry;Advisory services relating to dental instruments;Advisory services relating to health;Advisory services relating to medical problems;Advisory services relating to medical services;Arranging of medical treatment;Clinic (Medical - ) services;Clinic services (medical-);Clinics;Clinics (medical-);Consultancy relating to health care;Consulting services relating to health care;Cosmetic dentistry;Cosmetic treatment;Dental hygienist services;Dental services;Dentist services;Dentistry;Health advice and information services;Health care;Health care consultancy services [medical];Health care services;Health centers;Health centres;Health clinic services;Health clinic services [medical];Health screening;Health spa services;Healthcare;Health-care;Healthcare services;Health-care services;Hiring of dental instruments;Home health care services;Information services relating to health care;Location of emergency health care;Location of medical facilities for emergency medical treatment;Medical advisory services;Medical analysis services;Medical assistance;Medical care;Medical care services;Medical clinic services;Medical consultation;Medical consultations;Medical counseling;Medical counselling;Medical equipment rental;Medical evaluation services;Medical health assessment services;Medical information;Medical information services;Medical services;Medical treatment services;Professional consultancy relating to health;Professional consultancy relating to health care;Providing health care information by telephone;Providing health information;Providing medical information;Providing news and information in the field of medicine;Provision of health care services;Provision of information relating to medical practitioners;Provision of information relating to medical

			specialists;Provision of information relating to medicine;Provision of information relating to nutrition;Provision of medical assistance;Provision of medical facilities;Provision of medical information;Provision of medical services;Provision of medical treatment;Rental of medical machines and apparatus;Services for the care of the face;Services for the preparation of medical reports;Services for the provision of medical care information;Services for the provision of medical facilities;Spas;Surgery;Surgery (cosmetic-);Surgical diagnostic services;Surgical treatment services;Technical consultancy services relating to medical health;Teeth whitening services.
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2) The applications were examined and accepted, and subsequently published for opposition purposes on 28 June 2013 (3006361) and 21 June 2013 (3006362 & 3006356) in Trade Marks Journal No.2013/026 and No. 2013/025 respectively.

3) On 22 August 2013 (3006361) and 23 September 2013 (3006362 & 3006356) Integrated Dental Holdings Limited (hereinafter IDH) filed notices of opposition, subsequently consolidated. The grounds of opposition are in summary:

- a) IDH claims that it is the largest dental corporate company in both the UK and Europe with a network of 550 dental practices covering over 10 million patients in the UK alone. IDH claims to have been using the marks
  - i) IDH;
  - ii) IDH Integrated Dental Holdings;
  - iii) IDH Group;
  - iv) Integrated Dental Holdings

in the UK since 1996. IDH points out that most of the services applied for can only be carried out by a dental professional and that the services applied for are similar and/or identical to those it has offered since its inception. IDH claims that it has substantial goodwill and reputation in the industry and that use of the marks in suit would cause misrepresentation and damage. Therefore, the applications offend against Section 5(4)(a) of the Act.

- b) IDH states that an Ivan Dimitrov was interviewed for a position as a dentist with IDH, in July /August 2008. However, the interviewee demonstrated behaviour and language which were not compatible with the standards of IDH and so no job offer was made to this person. IDH point out that Dimitrov is a highly unusual surname for a dentist in the UK, and so it is believed that it is the same person. IDH contend that given this and the fact that no dental professional in the UK would not have heard of them that the applications were made in bad faith and therefore offend against section 3(6) of the Act.

4) On 6 December 2013 Mr Dimitrov filed three counterstatements. These stated:

“I deny all grounds of the other party statement [sic]. Relating to the opposition based on section 5(4) the trademark is not contrary to law [sic]. I disagree with the opposition based on section 3. The application was made in good faith.”

5) The following trade mark is registered in the name of Ivan Dimitrov Dimitrov:

Mark	Number	Date of filing & registration	Class	Specification
IDH	3006360	17.05.13 06.09.13	44	Dental hygienist services;Dental services;Dentist services;Dentistry;Advice relating to dentistry;Advisory services relating to dental instruments;Advisory services relating to health;Advisory services relating to medical instruments;Advisory services relating to medical problems;Advisory services relating to medical services;Advisory services relating to nutrition;Advisory services relating to surgical instruments;Application of cosmetic products to the body;Application of cosmetic products to the face;Beauty treatment;Charitable services, namely providing medical services;Charitable services, namely, providing medical services to needy persons;Clinic services (medical-);Clinics;Clinics (medical-);Compilation of medical reports;Conducting of medical examinations;Consultancy relating to cosmetics;Consultancy relating to health care;Consultancy relating to nutrition;Consultancy services related to nutrition;Consultancy services relating to beauty;Consultancy services relating to personal behaviour;Consultancy services relating to surgery;Consulting services relating to health care;Cosmetic analysis;Cosmetic dentistry;Cosmetic treatment;Cosmetic treatment for the face;Cosmetician services;Counselling relating to diet;Counselling relating to nutrition;Dental hygienist services;Dental services;Dentist services;Dentistry;Emergency medical assistance;Facial beauty treatment services;Fitting of prosthetic devices;Fitting of prosthetics;Health advice and information services;Health assessment surveys;Health care;Health care consultancy services [medical];Health care in the nature of health maintenance organizations;Health care services;Health centers;Health centres;Health clinic services;Health clinic services [medical];Health farm services [medical];Health hydro services;Health resort services [medical];Health risk assessment surveys;Health screening;Health spa services;Healthcare;Health-care;Healthcare services;Health-care services;Hiring of dental instruments;Hiring of medical instruments;Hiring of plants;Hiring of surgical instruments;Home health care services;Homeopathic clinical services;Hygienic and beauty care;Hygienic and beauty care for humans;Hygienic and beauty care services;Information services relating to health care;Issuing of medical reports;Maintaining files and records concerning the medical condition of individuals;Maintaining personal medical history records and files;Managed health care services;Medical advisory services;Medical analysis services;Medical assistance;Medical assistance consultancy provided by doctors and other specialized medical personnel;Medical assistance services;Medical care;Medical care services;Medical clinic services;Medical consultation;Medical consultations;Medical counseling;Medical counselling;Medical equipment rental;Medical evaluation services;Medical examination of individuals;Medical examination of individuals (provision of reports relating to the-);Medical health assessment services;Medical, hygienic and beauty care;Medical imaging services;Medical information;Medical information (provision of-);Medical information retrieval services;Medical information services;Medical

				nursing;Medical screening;Medical services;Medical services for the diagnosis of conditions of the human body;Medical services for the treatment of conditions of the human body;Medical spa services;Medical testing;Medical treatment services;Nursing care services;Nursing, medical;Nursing services;Orthodontic services;Preparation of reports relating to health care matters;Preparation of reports relating to medical matters;Professional consultancy relating to health;Professional consultancy relating to health care;Providing health care information by telephone;Providing health information;Providing information about beauty;Providing medical information;Provision of health care services;Provision of health care services in domestic homes;Provision of information relating to medicine;Provision of medical assistance;Provision of medical facilities;Provision of medical information;Provision of medical services;Provision of medical treatment;Rental of equipment for medical purposes;Rental of medical equipment;Rental of medical machines and apparatus;Rental of medical x-ray apparatus;Rental of ultrasonic diagnostic apparatus;Residential medical advice services;Services for the preparation of medical reports;Services for the provision of medical care information;Services for the provision of medical facilities;Surgery;Surgery (cosmetic-);Surgical diagnostic services;Surgical treatment services;Teeth whitening services;Therapy services;X-ray services;X-ray technician services.
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6) By an application dated 27 September 2013, IDH applied for a declaration of invalidity in respect of this registration. The grounds are identical to those for the oppositions set out in paragraph 3 above.

7) Mr Dimitrov provided a counterstatement, dated 5 December 2013, stating

“I deny all grounds of the other party statement [sic]. Relating to the opposition based on section 5(4) the trademark is not contrary to law [sic]. I disagree with the opposition based on section 3. The application was made in good faith.”

8) Only IDH filed evidence. Both seek an award of costs in their favour. Neither side wished to be heard, and only Mr Dimitrov provided written submissions which I shall refer to in my decision as required.

## **IDH’S EVIDENCE**

9) IDH filed a witness statement, dated 12 February 2014, by Steven Jennings its Trade Mark Attorney. He states that he has full access to the records of IDH. He questions whether there is such a person as Ivan Dimitrov Dimitrov, and also points out that there would appear to be no other trade marks held by this person worldwide, based on a search of all available websites. Mr Jennings points out that most of the services applied for/registered are highly regulated and the body responsible for ensuring standards are met is the Care Quality Commission (CQC) and also the General Dental Council (GDC). In order to work as a dentist in the UK one has to be registered with the GDC. He states that there is no Ivan Dimitrov Dimitrov registered with the GDC.



10) He provides a history of the company and also the following UK turnover figures:

Year	Turnover £ million
2010	185.5
2011	220.4
2012	309.8
2013	348.9

11) Mr Jennings states that, as of March 2013, more than 2,000 independently contracted dentists worked in IDH's 543 dental practices (as of April 2013), which are spread throughout the UK. These were supplemented by 230 dentists used as locums and 4,900 dental and central support staff. He states that IDH owns the NHS contracts and infrastructure whilst contracting with self employed dentists for provision of dental services. He points out that Mr Dimitrov has not denied being the person interviewed for a job with IDH. He also provides the following exhibits:

- 1: An extract from the CQC website showing numerous entries for IDH where they are listed as the provider albeit the services locally are supplied via a dental practice such as Falmouth Dental Practice. The entries for IDH all start with the letters "IDH" then a three digit number and the word "Limited". This suggests that each location is registered under a different legal entity, but part of the IDH group.
- 2: A full extract for entry IDH331 of the CQC website, the Falmouth Dental Practice. The extract also notes that the service provider is IDH 331 Limited.
- 3: Extract from the GDC website showing that no-one called Ivan Dimitrov or Ivan Dimitrov Dimitrov is registered.
- 4: The front pages from two reports filed with Companies House for IDH Group Limited and Integrated Dental Holdings Limited which shows that the name IDH Group was adopted in March 2006 and Integrated Dental Holdings Ltd was adopted in November 2004.
- 5-8: Extracts of search on Google UK and Google Bulgaria under the terms "Integrated Dental Holdings" and "IDH". These show a number of hits for dental practices throughout the UK as well as various references to newspaper articles where the company has been named, jobs advertisements for positions within the company, and comments from dentists who sold their practices to IDH. There are other references under the IDH mark such as the Sustainable Trade Initiative (IDH); one for electric cables and one in respect of mediation.
- 9: A list of the 650 domain names owned by IDH centered around the letters "IDH".

- 10: A large number of press cuttings from 1997 to May 2013 which mention IDH. These include articles from, inter alia, *Winsford Guardian*, *Lawyer Online*, *PR Newswire Europe*, *Westlaw*, *Newcastle Evening Chronicle*, *Northern Echo*, *Birmingham Post*, *Dereham Times*, *UK Government News*, *Hull Daily Mail*, *Recruiter Online*, *York Press*, *Legal Week*, *Daily Telegraph*, *Lancashire Telegraph* and *The Mail on Sunday*. Most referred to IDH as Integrated Dental Holdings, although a large number also added the letters IDH in brackets after the full version of the name. Approximately 85% of this vast exhibit was a complete waste of time, having no relevance to the case. Clearly someone pressed a button on a search engine and filed every result instead of considering precisely what the search revealed. It is very much the case of “never mind the quality, feel the width”.

12) That concludes my summary of the evidence filed, insofar as I consider it necessary.

## **DECISION**

13) The invalidity and opposition grounds are identical and so I shall deal with them collectively and simply refer to them as grounds of opposition. The first ground of opposition is under section 5(4)(a) which reads:

“5. (4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

14) In deciding whether the marks in question offend against this section, I intend to adopt the guidance given by the Appointed Person, Mr Geoffrey Hobbs QC, in the *WILD CHILD* case [1998] RPC 455. In that decision Mr Hobbs stated that:

“The question raised by the grounds of opposition is whether normal and fair use of the designation WILD CHILD for the purposes of distinguishing the goods of interest to the applicant from those of other undertakings (see section 1(1) of the Act) was liable to be prevented at the date of the application for registration (see Article 4(4)(b) of the Directive and section 40 of the Act) by enforcement of rights which the opponent could then have asserted against the applicant in accordance with the law of passing off.

A helpful summary of the elements of an action for passing off can be found in Halsbury’s Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph

165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townsend & Sons (Hull) Ltd* [1979] AC 731 is (with footnotes omitted) as follows:

'The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

(1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

15) First I must determine the date at which IDH's claim is to be assessed; this is known as the material date. In this regard, I note the judgment of the General Court (GC) in *Last Minute Network Ltd v Office for Harmonization in the Internal Market* (Trade Marks and Designs) (OHIM) Joined Cases T-114/07 and T-115/07. In that judgment the GC said:

"50 First, there was goodwill or reputation attached to the services offered by LMN in the mind of the relevant public by association with their get-up. In an action for passing off, that reputation must be established at the date on which the defendant began to offer his goods or services (*Cadbury Schweppes v Pub Squash* (1981) R.P.C. 429).

51 However, according to Article 8(4) of Regulation No 40/94 the relevant date is not that date, but the date on which the application for a Community trade mark was filed, since it requires that an applicant seeking a declaration of invalidity has acquired rights over its non registered national mark before the date of filing, in this case 11 March 2000."

16) Mr Dimitrov applied for his marks on the 16 and 17 May 2013. If Mr Dimitrov had used his trade marks prior to this then this use must also be taken into account. It could, for example, establish that Mr Dimitrov is the senior user, or that there had been common law acquiescence, or that the status quo should not be disturbed; any of which could mean that Mr Dimitrov's use would not be liable to be prevented by the law of passing-off – the comments in *Croom's Trade Mark Application* [2005] RPC 2 and *Daimlerchrysler AG v Javid Alavi (T/A Merc)* [2001] RPC 42 refer. However, Mr Dimitrov has not provided any evidence hence 16 and 17 May 2013 are the material dates.

17) I turn to assess the evidence filed in the present proceedings as set out earlier in this decision. In doing so I take into account the comments of Mr Arnold Q.C (as he was) when acting as the Appointed Person in *Extreme* BL/161/07 where he commented on the issue of unchallenged evidence and cross examination:

*“Unchallenged evidence*

33. *Phipson on Evidence* (16th ed) states at paragraph 12-12:

In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases as it does in criminal. In general the CPR does not alter that position.

This rules [sic] serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficult in submitting that the evidence should be rejected.

However the rule is not an inflexible one...

34. The authority cited in support of this statement of the law is the decision of the House of Lords in *Browne v Dunn* (1894) 6 R 67. The relevant passages from the speeches are set out in the judgment of Hunt J in *Allied Pastoral Holdings v Federal Commissioner of Taxation* (1983) 44 ALR 607, the material parts of which are quoted in the judgment of the Court of Appeal in *Markem Corp v Zipher Ltd* [205] EWCA Civ 267, [2005] RPC 31 at [59]-[60].

35. In my judgment the learned editors of *Phipson* are correct to say that the rule is not an inflexible one. There are at least two well-established exceptions to it. The first is that, as the speech of Lord Herschell LC in *Browne v Dunn* makes clear, it may not be necessary to cross-examine on a point if the witness has been given full notice of it before making his statement. As I pointed out in *BRUTT Trade Marks* [2007] RPC 19 at [23], this may be significant in registry proceedings where evidence is given sequentially. The second is that a court is not obliged to accept a witness's evidence in the absence of cross-examination if it is obviously incredible: see *National Westminster Bank plc v Daniel* [1993] 1 WLR 1453.

36. Where, however, evidence is given in a witness statement filed on behalf of a party to registry proceedings which is not obviously incredible and the opposing party has neither given the witness advance notice that his evidence is to be challenged nor challenged his evidence in cross-examination nor adduced evidence to contradict the witness's evidence despite having had the opportunity to do so, then I consider that the rule in *Brown v Dunn* applies and it is not open to the opposing party to invite the tribunal to disbelieve the witness's evidence.

37. Despite this, it is not an uncommon experience to find parties in registry hearings making submissions about such unchallenged evidence which amount to cross-examination of the witness in his absence and an invitation to the hearing officer to disbelieve or discount his evidence. There have been a number of cases in which appeals have been allowed against the decisions of hearing officers who have accepted such submissions. Two recent examples where this appears to have happened which were cited by counsel for the proprietor are *Score Draw Ltd v Finch* [2007] EWHC 462 (Ch), [2007] *BusLR* 864 and *EINSTEIN Trade Mark* (O/068/07). Another recent example is *Scholl Ltd's Application* (O/199/06). I consider that hearing officers should guard themselves against being beguiled by such submissions (which is not, of course, to say that they should assess evidence uncritically)."

18) It is clear from the evidence that IDH owns a large number of dental practices throughout the UK which have contracts with the NHS and are monitored by the CQC. As of March 2013 it owned 543 dental practices and employed or contracted with over 7,000 dentists, support staff and central office staff. The turnover in the three years prior to 2013 averaged approximately £238 million. It is clear that the dental profession and others such as the NHS, CQC and GDC all recognise IDH / Integrated Dental Holdings as the provider of a full range of dental services, even though these contracts may be via one of the myriad of companies in the group who all share the initial letters IDH. From the website evidence it is also clear that the company uses the terms IDH / Integrated Dental Holdings in its interactions with the public, albeit as a "house mark" along with the name of the practice such as Falmouth Dental Practice. The evidence also shows that numerous articles have appeared in the press which identifies IDH / Integrated Dental Holdings as the provider of dental services, albeit some of the stories were less than flattering to the company dealing with issues of fraud of the NHS etc. It is clear that the evidence is not without fault and that in an ideal world additional information would have been filed such as the manner in which various practices use the mark IDH / Integrated Dental Holdings. Equally it would have preferable that an officer of the company provide the witness statement rather than its trade mark attorney. However, that said I believe that there is enough evidence and a reasonably cogent narrative regarding IDH's evidence to accept that it has a significant reputation in the marks "IDH" and "Integrated Dental Holdings" in respect of the provision of dental services.

19) It is well established that it is not necessary for the parties to a passing-off action to be in the same area of trade or even a related area of trade. The point can be supported by reference to the following passage from Millet L.J.'s judgment in *Harrods Ltd v Harrodian School Ltd* [1996] RPC 697:

"There is no requirement that the defendant should be carrying on a business which competes with that of the plaintiff or which would compete with any natural extension of the plaintiff's business. The expression "common field of activity" was coined by Wynn-Parry J. in *McCulloch v May* [1948] 65 RPC 58 when he dismissed the plaintiff's claim for want of this factor. This was contrary to

numerous previous authorities (see, for example, *Eastman Photographic Materials Co. Ltd v John Griffiths Cycle Corporation Ltd* (1898) 15 RPC 105 (cameras and bicycles); *Walter v Ashton* (1902) 2 Ch. 282 (The Times Newspaper and bicycles) and is now discredited. In the *Advocaat* case Lord Diplock expressly recognised that an action for passing-off would lie although “the plaintiff and the defendant were not competing traders in the same line of business”. In the *Lego* case Falconer J. acted on evidence that the public had been deceived into thinking that the plaintiffs, who were manufacturers of plastic toy construction kits, had diversified into the manufacture of plastic irrigation equipment for the domestic garden. What the plaintiff in an action for passing-off must prove is not the existence of a common field of activity but likely confusion among the common customers of the parties.

The absence of a common field of activity, therefore is not fatal; but it is not irrelevant either. In deciding whether there is a likelihood of confusion, it is an important and highly relevant consideration.”

20) Also:

“It is not in my opinion sufficient to demonstrate that there must be a connection of some kind between the defendant and the plaintiff, if it is not a connection which would lead the public to suppose that the plaintiff has made himself responsible for the quality of the defendant’s goods or services.”

21) And:

“Passing off is a wrongful invasion of a right of property vested in the plaintiff, but the property which is protected in an action for passing off is not the plaintiff’s proprietary right in the name or get-up which the defendant has misappropriated but the goodwill and reputation of the business which is likely to be harmed by the defendant’s misrepresentations.”

22) I will take into account the comments of Morritt L J in the Court of Appeal in *Neutrogena Corporation and Another. v Golden Limited and Another* [1996] RPC 473, when he said, in effect, that the correct test on the issue of deception or confusion was whether, on the balance of probabilities, a substantial number of members of the public would be misled into purchasing the applicant’s services in the belief that they were the registered proprietor’s.

23) Having found that IDH has goodwill and reputation in respect of dental services, the question I have to address is whether the relevant public seeing Mr Dimitrov’s marks used on the services applied for /registered would be likely to believe the services were being offered by IDH. The marks applied for/registered are as follows:

- 3006361: IDH INTEGRATED DENTAL HOLDINGS / IDH INTEGRATED DENTAL HOLDING

- 3006362: IDH GROUP
- 3006356: INTEGRATED DENTAL HOLDINGS / INTEGRATED DENTAL HOLDING
- 3006360: IDH

24) It is clear that the above marks are identical or very highly similar to the marks for which IDH has goodwill. Each of Mr Dimitrov's marks has a different specification. However, they do fall broadly into a number of headings of Dental; Medical; Nutritional; Beauty and Cosmetic and other. I have provided a summary at annex A. It is clear that a number of the services which Mr Dimitrov seeks to register / has registered are exactly the types of services which the average consumer might expect IDH to offer. Clearly dental services fall into this category, whilst the services listed under Medical, Nutritional, Beauty and Cosmetic are, to varying degrees the types of services which one might expect a dental service to offer as part of a wider remit. However, even where the services are in a completely different field such as the "renting of plants"; using trade marks which are identical or very highly similar will undoubtedly, in my opinion, deceive the consumer into believing that the services of Mr Dimitrov are being offered by IDH.

#### DAMAGE

25) I must now go on to consider if IDH has suffered, or is likely to suffer, damage as a result of this misrepresentation. Lord Fraser in *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1980] RPC 31 HL, stated that the claimant must show that "he has suffered, or is really likely to suffer, substantial damage to his property in the goodwill".

26) Mr Dimitrov has not provided any evidence that he has used his marks. In a *quia timet* action it is clearly not possible to show that damage has been suffered. In *Draper v Trist and Trisbestos Brake Linings Ltd* 56 RPC 429 Goddard L.J. stated:

"But in passing-off cases, the true basis of the action is that the passing-off by the defendant of his goods as the goods of the plaintiff injures the right of property in the plaintiff, that right of property being his right to the goodwill of his business. The law assumes, or presumes, that if the goodwill of a man's business has been interfered with by the passing-off of goods, damage results therefrom. He need not wait to show that damage has resulted, he can bring his action as soon as he can prove passing-off; because it is one of the class of cases in which the law presumes that the Plaintiff has suffered damage. It is in fact, I think, in the same category in this respect as an action for libel. We know that for written defamation a plaintiff need prove no actual damage. He proves his defamation. So, with a trader; the law has always been particularly tender to the reputation and goodwill of traders. If a trader is slandered in the way of his business, an action lies without proof of damage."

27) Consequently, in the instant case, as IDH has established a goodwill and shown deception then damage can be considered as the automatic sequitur in relation to the services in class 44 and the three elements of the classic trinity of passing-off will have

been established. The use of Mr Dimitrov's marks in relation to these services will erode the distinctiveness of the earlier marks and/or result in a loss of control of the goodwill associated with IDH / Integrated Dental Holdings. **The opposition under Section 5(4) therefore succeeds in total.**

28) I next deal with the ground of opposition under Section 3(6) which reads:

"3.(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith."

29) Section 3(6) has its origins in Article 3(2)(d) of the Directive, the Act which implements Council Directive No. 89/104/EEC of 21 December 1988 which states:

"Any Member State may provide that a trade mark shall not be registered or, if registered, shall be liable to be declared invalid where and to the extent that....

(c) the application for registration of the trade mark was made in bad faith by the applicant."

30) I refer to case O/094/11 *Ian Adam* where Mr Hobbs QC acting as the Appointed Person said:

"32. Any attempt to establish bad faith must allow for the fact that there is nothing intrinsically wrong in a person exercising *'the right to apply the rules of substantive and procedural law in the way that is most to his advantage without laying himself open to an accusation of abuse of rights'* as noted in paragraph [121] of the Opinion delivered by Advocate General Trstenjak in Case C-482/09 Budejovicky Budvar NP v. Anheuser-Busch Inc on 3 February 2011. In paragraph [189] of his judgment at first instance in Hotel Cipriani SRL v. Cipriani (Grosvenor Street) Ltd [2009] EWHC 3032 (Ch); [2009] RPC 9 Arnold J. likewise emphasised:

"... that it does not constitute bad faith for a party to apply to register a Community trade mark merely because he knows that third parties are using the same mark in relation to identical goods or services, let alone where the third parties are using similar marks and/or are using them in relation to similar goods or services. The applicant may believe that he has a superior right to registration and use of the mark. For example, it is not uncommon for prospective claimants who intend to sue a prospective defendant for passing off first to file an application for registration to strengthen their position. Even if the applicant does not believe that he has a superior right to registration and use of the mark, he may still believe that he is entitled to registration. The applicant may not intend to seek to enforce the trade mark against the third parties and/or may know or believe that the third parties would have a defence to a claim for infringement on one of the bases discussed above. In particular, the applicant may wish to secure exclusivity in the bulk of the Community while knowing that third parties have local rights in certain areas.



An applicant who proceeds on the basis explicitly provided for in Art. 107 can hardly be said to be abusing the Community trade mark system.”

These observations were not called into question in the judgment of the Court of Appeal in that case: [2010] EWCA Civ 110; [2010] RPC 16. They were re-affirmed by Arnold J. in *Och-Ziff Management Europe Ltd v. Och Capital LLP* [2011] ETMR 1 at paragraph [37].

33. The line which separates legitimate self-interest from bad faith can only be crossed if the applicant has sought to acquire rights of control over the use of the sign graphically represented in his application for registration in an improper manner or for an improper purpose. The appropriate remedy will in that case be rejection of the offending application for registration to the extent necessary to render it ineffective for the purpose which made it objectionable in the first place.

34. In a case where the relevant application fulfils the requirements for obtaining a filing date, the key questions are: (1) what, in concrete terms, is the objective that the applicant has been accused of pursuing? (2) is that an objective for the purposes of which the application could not properly be filed? (3) is it established that the application was filed in pursuit of that objective? The first question serves to ensure procedural fairness and clarity of analysis. The second question requires the decision taker to apply a moral standard which, in the absence of any direct ruling on the point from the Court of Justice, is taken to condemn not only dishonesty but also *‘some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined’*: *Gromax Plasticulture Ltd v. Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 (Lindsay J). The third question requires the decision taker to give effect to the principle that innocence must be presumed in the absence of evidence sufficient to show that the applicant has acted improperly as alleged.

35. In assessing the evidence, the decision taker is entitled to draw inferences from proven facts provided that he or she does so rationally and without allowing the assessment to degenerate into an exercise in speculation. The Court of Justice has confirmed that there must be an overall assessment which takes into account all factors relevant to the particular case: Case C-529/07 *Chocoladefabriken Lindt & Sprüngli AG v. Franz Hauswirth GmbH* [2009] ECR I-4893 at paragraph [37]; Case C-569/08 *Internetportal und Marketing GmbH v. Richard Schlicht* [2010] ECR I-00000 at paragraph [42]. As part of that assessment it is necessary as part of that approach to consider the intention of the applicant at the time when the application was filed, with intention being regarded as a subjective factor to be determined by reference to the objective circumstances of the particular case: *Chocoladefabriken Lindt & Sprüngli GmbH* (above) at paragraphs [41], [42]; *Internetportal und Marketing GmbH* (above) at paragraph [45]. This accords with the well-established principle that ‘national courts may, case by case, take account -on the basis of objective evidence -of abuse or fraudulent conduct on the part of

the persons concerned in order, where appropriate, to deny them the benefit of the provisions of Community law on which they seek to rely': Case C16/05 The Queen (on the applications of Veli Tum and Mehmet Dari) v. Secretary of State for the Home Department [2007] ECR I-7415 at paragraph [64].

36. The concept of assessing subjective intention objectively has recently been examined by the Court of Appeal in the context of civil proceedings where the defendant was alleged to have acted dishonestly: Starglade Properties Ltd v. Roland Nash [2010] EWCA Civ 1314 (19 November 2010). The Court considered the law as stated in Royal Brunei Airlines v. Tan [1995] 2 AC 378 (PC), Twinsectra Ltd v Yardley [2002] 2 AC 164 (HL), Barlow Clowes International Ltd v. Eurotrust International Ltd [2006] 1 WLR 1476 (PC) and Abu Rahman v. Abacha [2007] 1 LL Rep 115 (CA). These cases were taken to have decided that there is a single standard of honesty, objectively determined by the court and applied to the specific conduct of a specific individual possessing the knowledge and qualities that he or she actually possessed: see paragraphs [25], [28], [29] and [32]. This appears to me to accord with treating intention as a subjective factor to be determined by reference to the objective circumstances of the particular case, as envisaged by the judgments of the Court of Justice relating to the assessment of objections to registration on the ground of bad faith."

31) In the case of *Red Bull GmbH v Sun Mark Limited, Sea Air & Land Forwarding Limited* [2012] EWCH 1929 (Ch) Arnold J. Set out the general principles of what constitutes "Bad Faith" as follows:

"130 A number of general principles concerning bad faith for the purposes of section 3(6) of the 1994 Act/ Article 3(2)(d) of the Directive/ Article 52 (1)(b) of the Regulation are now fairly well established. (For a helpful discussion of many of these points, see N.M. Dawson, "Bad faith in European trade mark law" [2011] IPQ 229.)

131 First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see Case-529/07 *Chocoladenfabriken Lindt & Sprungli AG v Franz Hauswirth GmbH* [2009] ECR I-4893 at [35].

132 Secondly, although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date: see *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2009] EHW 3032 (Ch), [2009] RPC 9 at [167] and cf. Case C-259/02 *La Mer Technology Inc. V Laboratoires Goemar SA* [2004] ECR I-1159 at [31] and Case C-192/03 *Alcon Inc v OHIM* [2004] ECR I-8993 at [41].

133 Thirdly, a person is presumed to have acted in good faith unless the contrary is proved. An allegation of bad faith is a serious allegation which must be distinctly proved. The standard of proof is on the balance of probabilities but cogent

evidence is required due to the seriousness of the allegation. It is not enough to prove facts which are also consistent with good faith: see *BRUTT Trade Marks* [2007] RPC 19 at [29], *von Rossum v Heinrich Mack Nachf. GmbH & Co KG* (Case R 336/207–2, OHIM Second Board of Appeal, 13 November 2007) at [22] and *Funke Kunststoffe GmbH v Astral Property Pty Ltd* (Case R 1621/2006-4, OHIM Fourth Board of Appeal, 21 December 2009) at [22].

134 Fourthly, bad faith includes not only dishonesty, but also “some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined”: see *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 and *DAAWAT Trade Mark* (Case C000659037/1, OHIM Cancellation Division, 28 June 2004 ) at [8].

135 Fifthly, section 3(6) of the 1994 Act, Article 3(2)(d) of the Directive and Article 52(1)(b) of the Regulation are intended to prevent abuse of the trade mark system: see *Melly’s Trade Mark Application* [2008] RPC 20 at [51] and *CHOOSI Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) at [21]. As the case law makes clear, there are two main classes of abuse. The first concerns abuse vis-à-vis the relevant office, for example where the applicant knowingly supplies untrue or misleading information in support of his application; and the second concerns abuse vis-à-vis third parties: see *Cipriani* at [185].

136 Sixthly, in order to determine whether the applicant acted in bad faith, the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case: see *Lindt v Hauswirth* at [37].

137 Seventhly, the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant’s conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant’s own standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry: see *AJIT WEEKLY Trade Mark* [2006] RPC 25 at [35]-[41], *GERSON Trade Mark* (Case R 916/2004-1, OHIM First Board of Appeal, 4 June 2009) at [53] and *Campbell v Hughes* [2011] RPC 21 at [36].

138 Eighthly, consideration must be given to the applicant’s intention. As the CJEU stated in *Lindt v Hauswirth* :

“41. ... in order to determine whether there was bad faith, consideration must also be given to the applicant’s intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant’s intention at the relevant time is a

subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 48).”

32) It is well established (*Chocoladenfabriken Lindt & Sprungli AG v Franz Hauswirth GmbH; Nonogram Trade Mark* [2001] RPC 21 and *Hotpicks Trade Mark* [2004] RPC 42) that the relevant date for consideration of a bad faith claim are the applications / registered mark's filing date or at least a date no later than that. In the instant case the relevant dates are 16 May 2013 and 17 May 2013.

33) In asserting that the marks were applied for in bad faith, the onus rests with the opponent to make a prima facie case. A claim that a mark was applied for in bad faith implies some action by the applicant which a reasonable person would consider to be unacceptable behaviour or, as put by Lindsay in the *Gromax* trade mark case [1999] RPC 10:

“includes some dealings which fall short of the standards of acceptable commercial behaviour”.

34) The issue must be determined on the balance of probabilities. On the basis of these authorities it is clear that a finding of bad faith may be made in circumstances which do not involve actual dishonesty. Furthermore, it is not necessary for me to reach a view on Mr Dimitrov's state of mind regarding the applications for registration / registered mark if I am satisfied that his actions in applying for the mark in the light of all the surrounding circumstances would have been considered contrary to normally accepted standards of honest conduct.

35) In the instant case IDH made a very specific allegation:

“that an Ivan Dimitrov was interviewed for a position as a dentist with IDH, in July /August 2008. However, the interviewee demonstrated behaviour and language

which were not compatible with the standards of IDH and so no job offer was made to this person. IDH point out that Dimitrov is a highly unusual surname for a dentist in the UK, and so it is believed that it is the same person. IDH contend that given this and the fact that no dental profession in the UK would not have heard of them that the applications were made in bad faith.”

36) In response to this highly specific allegation Mr Dimitrov filed a counterstatement in which, for reasons unknown, he chose not to deal with this charge other than in the most general terms, as follows:

“I deny all grounds of the other party statement [sic]. Relating to the opposition based on section 5(4) the trademark is not contrary to law [sic]. I disagree with the opposition based on section 3. The application was made in good faith.”

37) In its evidence IDH pointed out that the allegation had not been denied and also that Mr Dimitrov did not appear to be registered as a dentist in the UK as required if one is to carry out dental procedures. IDH showed that they had a considerable reputation and goodwill in the marks IDH / Integrated Dental Holdings. Mr Dimitrov chose not to file any evidence, therefore the evidence of IDH is unchallenged (see paragraph 17 above). However, Mr Dimitrov did provide written submissions in which he states (inter alia):

- “A search of the Register showed the trade marks are not being registered and therefore anyone is free to do so.”
- “I have never stated that I am a dentist neither dental care professional. One does not have to be a dentist or to be included in the mentioned GDC register to be able to register intellectual property right in class 44, neither to use a trade mark of this class.”
- “With regard to the assumptions and allegations made by the opponent I would like to confirm that I am not a dentist, I have never been interviewed by the mentioned Mr A Grindrod neither have I been seeking employment opportunities at the opponent’s companies.”

38) Given the highly specific allegations made by IDH it is surprising that Mr Dimitrov chose not to deal with the matter in his counterstatement /evidence rather than relying upon submissions which must be given less weight. Whilst his comments are broadly correct, in that one does not need to be a qualified dentist to apply for a trade mark in relation to dental services it does leave the question open as to how can the mark be used. Certainly not by an unqualified individual in the UK where dental services are, thankfully, highly regulated. Of course it is open for Mr Dimitrov to employ /license a qualified dentist to provided the services under the marks applied for / registered. However, one would have expected that an individual who claims to have searched the Register to ascertain if the marks were registered might have also carried out due diligence upon the GDC register and the internet at large. The marks applied for are not

the most obvious and yet Mr Dimitrov makes no comment as to how he came up with his marks.

39) Taking all of the above into consideration, on the balance of probabilities I believe that Mr Dimitrov was aware of the existence and reputation of IDH and finding that they had not registered their marks sought to register not just those marks used by IDH but also other combinations which are highly similar. In so doing he acted in bad faith and therefore the ground of opposition based upon Section 3(6) succeeds in full.

## **CONCLUSION**

40) The opposition has succeeded under both grounds in respect of both the registered mark and the three applications for marks.

## **COSTS**

41) As IDH has been completely successful it is entitled to a contribution towards its costs. I have taken into account the similarity in the pleadings:

Preparing a statement and considering the other side's statement x4	£500
Expenses	£800
Preparing evidence	£800
<b>TOTAL</b>	<b>£2100</b>

42) I order Mr Ivan Dimitrov Dimitrov to pay Integrated Dental Holdings Limited the sum of £2,100. This sum to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 16th day of September 2014**

**George W Salthouse  
For the Registrar,  
the Comptroller-General**

## ANNEX A

### Dental services:

**3006361:** Dental hygienist services; Dental services; Dentist services; Dentistry; Advice relating to dentistry; Advisory services relating to dental instruments; Cosmetic dentistry; Hiring of dental instruments; Orthodontic services; Teeth whitening services;

**3006362:** Dental hygienist services; Dental services; Dentist services; Dentistry; Advice relating to dentistry; Advisory services relating to dental instruments; Cosmetic dentistry; Mounting gemstones in dentures; Teeth whitening services

**3006356:** Dental hygienist services; Dental services; Dentist services; Dentistry; Advice relating to dentistry; Advisory services relating to dental instruments; Dental hygienist services; Dental services; Dentist services; Dentistry; Cosmetic dentistry; Hiring of dental instruments; Teeth whitening services.

**3006360:** Dental hygienist services; Dental services; Dentist services; Dentistry; Advice relating to dentistry; Advisory services relating to dental instruments; Cosmetic dentistry; Dental hygienist services; Dental services; Dentist services; Dentistry; Hiring of dental instruments; Orthodontic services; Teeth whitening

### Medical Services:

**3006361:** Advisory services relating to health; Advisory services relating to medical problems; Advisory services relating to medical services; Arranging of medical treatment; Advisory services relating to the treatment of degenerative diseases; Advisory services relating to medical instruments; Advisory services relating to surgical instruments; Behavioural analysis for medical purposes; Clinic (Medical -) services; Clinic services (medical-); Clinics; Clinics (medical-); Compilation of medical reports; Conducting of medical examinations; Consultancy relating to health care; Consultancy services relating to surgery; Consulting services relating to health care; Cosmetic treatment; Cosmetic treatment for the face; Cosmetician services; Emergency medical assistance; Fitting of prosthetic devices; Health advice and information services; Health assessment surveys; Health care; Health care consultancy services [medical]; Health care in the nature of health maintenance organizations; Health care services; Health centers; Health centres; Health clinic services; Health clinic services [medical]; Health screening; Healthcare; Health-care; Healthcare services; Health-care services; Hiring of medical instruments; Hiring of surgical instruments; Home health care services; Information services relating to health care; Issuing of medical reports; Location of emergency health care; Location of medical facilities for emergency medical treatment; Maintaining files and records concerning the medical condition of individuals; Maintaining personal medical history records and files; Managed health care services; Medical advisory services; Medical analysis services; Medical assistance; Medical assistance consultancy provided by doctors and other specialized medical personnel; Medical assistance services; Medical care; Medical care services; Medical clinic services; Medical consultation; Medical consultations; Medical counseling; Medical counselling; Medical

equipment rental; Medical evaluation services; Medical examination of individuals; Medical examination of individuals (provision of reports relating to the-); Medical health assessment services; Medical, hygienic and beauty care; Medical imaging services; Medical information; Medical information (provision of-); Medical information retrieval services; Medical information services; Medical nursing; Medical screening; Medical services; Medical services for treatment of the skin; Medical spa services; Medical testing; Medical treatment services; Nursing services; Preparation and dispensing of medications; Preparation of reports relating to health care matters; Preparation of reports relating to medical matters; Professional consultancy relating to health; Professional consultancy relating to health care; Hygienic care for human beings; Hygienic care; Hygienic care for human beings; Hygienic care for humans; Hygienic care services; Providing health care information by telephone; Providing health information; Providing medical information; Providing news and information in the field of medicine; Provision of health care services; Provision of health care services in domestic homes; Provision of information relating to behavioural modification; Provision of information relating to medical practitioners; Provision of information relating to medical specialists; Provision of information relating to medicine; Provision of medical assistance; Provision of medical facilities; Provision of medical information; Provision of medical services; Provision of medical treatment; Rental of equipment for medical purposes; Rental of medical equipment; Rental of medical machines and apparatus; Rental of medical x-ray apparatus; Residential medical advice services; Residential medical treatment services; Services for the preparation of medical reports; Services for the provision of medical care information; Services for the provision of medical facilities; Surgery; Surgery (cosmetic-); Surgical diagnostic services; Surgical treatment services; Technical consultancy services relating to medical health; Therapeutic treatment of the face; Therapy services; X-ray services; X-ray technician services.

**3006362:** Advisory services relating to health; Advisory services relating to medical problems; Advisory services relating to medical services; Arranging of medical treatment; Advisory services relating to degenerative diseases; Advisory services relating to medical instruments; Charitable services, namely providing medical services; Charitable services, namely, providing medical services to needy persons; Clinic (Medical -) services; Clinic services (medical-); Clinics; Clinics (medical-); Compilation of medical reports; Conducting of medical examinations; Consultancy relating to health care; Consultancy services relating to personal behaviour; Consultancy services relating to prosthetic implants; Consultancy services relating to surgery; Consultation services relating to skin care; Consulting services relating to health care; Counselling relating to the social treatment of medical ailments; Emergency medical assistance; Fitting of prosthetic devices; Fitting of prosthetics; Health advice and information services; Health assessment surveys; Health care; Health care consultancy services [medical]; Health care in the nature of health maintenance organizations; Health care services; Health centers; Health centres; Health clinic services; Health clinic services [medical]; Health risk assessment surveys; Health screening; Healthcare; Health-care; Healthcare services; Health-care services; Hiring of medical instruments; Hiring of surgical instruments; Home health care services; Hygienic care for human beings; Hygienic care; Hygienic care for human beings; Hygienic care for humans; Hygienic care for human beings; Information services relating to health care; Issuing of medical reports; Leasing of medical equipment; Leasing skin care equipment; Location of emergency health care; Location of medical facilities for emergency medical treatment; Maintaining files and records concerning the medical condition of individuals; Maintaining personal medical



history records and files; Managed health care services; Medical advisory services; Medical analysis services; Medical assistance; Medical assistance consultancy provided by doctors and other specialized medical personnel; Medical assistance services; Medical care; Medical care services; Medical clinic services; Medical consultation; Medical consultations; Medical counseling; Medical counselling; Medical equipment rental; Medical evaluation services; Medical examination of individuals; Medical examination of individuals (provision of reports relating to the-); Medical health assessment services; Medical and hygienic care; Medical imaging services; Medical information; Medical information (provision of-); Medical information retrieval services; Medical information services; Medical nursing; Medical screening; Medical services; Medical services for the diagnosis of conditions of the human body; Medical services for the treatment of conditions of the human body; Medical services for treatment of the skin; Medical spa services; Medical treatment services; Nursing care; Nursing care (provision of-); Nursing care services; Nursing, medical; Nursing (medical-); Nursing services; Performing diagnosis of diseases; Preparation and dispensing of medications; Preparation of reports relating to health care matters; Preparation of reports relating to medical matters; Professional consultancy relating to health; Professional consultancy relating to health care; Providing health care information by telephone; Providing health information; Providing information to patients in the field of administering medications; Providing laser therapy for treating medical conditions; Providing long-term care facilities; Providing medical information; Providing news and information in the field of medicine; Provision of health care services; Provision of health care services in domestic homes; Provision of information relating to behavioural modification; Provision of information relating to medical practitioners; Provision of information relating to medical specialists; Provision of information relating to medicine; Provision of medical assistance; Provision of medical facilities; Provision of medical information; Provision of medical services; Provision of medical treatment; Rental of equipment for medical purposes; Rental of medical equipment; Rental of medical machines and apparatus; Rental of medical x-ray apparatus;

**3006356:** Advisory services relating to health; Advisory services relating to medical problems; Advisory services relating to medical services; Arranging of medical treatment; Clinic (Medical - ) services; Clinic services (medical-); Clinics; Clinics (medical-); Consultancy relating to health care; Consulting services relating to health care; Cosmetic treatment; Health advice and information services; Health care; Health care consultancy services [medical]; Health care services; Health centers; Health centres; Health clinic services; Health clinic services [medical]; Health screening; Health spa services; Healthcare; Health-care; Healthcare services; Health-care services; Home health care services; Information services relating to health care; Location of emergency health care; Location of medical facilities for emergency medical treatment; Medical advisory services; Medical analysis services; Medical assistance; Medical care; Medical care services; Medical clinic services; Medical consultation; Medical consultations; Medical counseling; Medical counselling; Medical equipment rental; Medical evaluation services; Medical health assessment services; Medical information; Medical information services; Medical services; Medical treatment services; Professional consultancy relating to health; Professional consultancy relating to health care; Providing health care information by telephone; Providing health information; Providing medical information; Providing news and information in the field of medicine; Provision of health care services; Provision of information relating to medical practitioners; Provision of information relating to medical specialists; Provision of information

relating to medicine; Provision of medical assistance; Provision of medical facilities; Provision of medical information; Provision of medical services; Provision of medical treatment; Rental of medical machines and apparatus; Services for the care of the face; Services for the preparation of medical reports; Services for the provision of medical care information; Services for the provision of medical facilities; Surgery; Surgery (cosmetic-); Surgical diagnostic services; Surgical treatment services; Technical consultancy services relating to medical health;

**3006360:** Advisory services relating to health; Advisory services relating to medical problems; Advisory services relating to medical services; Advisory services relating to medical instruments; Advisory services relating to surgical instruments; Charitable services, namely providing medical services; Charitable services, namely, providing medical services to needy persons; Clinic services (medical-); Clinics; Clinics (medical-); Compilation of medical reports; Conducting of medical examinations; Consultancy relating to health care; Consultancy services relating to personal behaviour; Consultancy services relating to surgery; Consulting services relating to health care; Emergency medical assistance; Fitting of prosthetic devices; Fitting of prosthetics; Health advice and information services; Health assessment surveys; Health care; Health care consultancy services [medical]; Health care in the nature of health maintenance organizations; Health care services; Health centers; Health centres; Health clinic services; Health clinic services [medical]; Health farm services [medical]; Health hydro services; Health resort services [medical]; Health risk assessment surveys; Health screening; Health spa services; Healthcare; Health-care; Healthcare services; Health-care services; Hiring of medical instruments; Hiring of surgical instruments; Home health care services; Homeopathic clinical services; Hygienic and beauty care; Hygienic and beauty care for humans; Hygienic and beauty care services; Information services relating to health care; Issuing of medical reports; Maintaining files and records concerning the medical condition of individuals; Maintaining personal medical history records and files; Managed health care services; Medical advisory services; Medical analysis services; Medical assistance; Medical assistance consultancy provided by doctors and other specialized medical personnel; Medical assistance services; Medical care; Medical care services; Medical clinic services; Medical consultation; Medical consultations; Medical counselling; Medical counselling; Medical equipment rental; Medical evaluation services; Medical examination of individuals; Medical examination of individuals (provision of reports relating to the-); Medical health assessment services; Medical, hygienic and beauty care; Medical imaging services; Medical information; Medical information (provision of-); Medical information retrieval services; Medical information services; Medical nursing; Medical screening; Medical services; Medical services for the diagnosis of conditions of the human body; Medical services for the treatment of conditions of the human body; Medical spa services; Medical testing; Medical treatment services; Nursing care services; Nursing, medical; Nursing services; Preparation of reports relating to health care matters; Preparation of reports relating to medical matters; Professional consultancy relating to health; Professional consultancy relating to health care; Providing health care information by telephone; Providing health information; Providing medical information; Provision of health care services; Provision of health care services in domestic homes; Provision of information relating to medicine; Provision of medical assistance; Provision of medical facilities; Provision of medical information; Provision of medical services; Provision of medical treatment; Rental of equipment for medical purposes; Rental of medical equipment; Rental of medical machines and apparatus; Rental of medical x-ray apparatus; Rental of ultrasonic diagnostic apparatus; Residential medical advice services;

Services for the preparation of medical reports; Services for the provision of medical care information; Services for the provision of medical facilities; Surgery; Surgery (cosmetic-) Surgical diagnostic services; Surgical treatment services; services; Therapy services; X-ray services; X-ray technician services.

### **Nutritional services:**

**3006361:** Consultancy relating to nutrition; Consultancy services related to nutrition; Professional consultancy relating to diet; Professional consultancy relating to nutrition;

**3006362:** Advisory services relating to diet; Advisory services relating to nutrition; Consultancy relating to nutrition; Consultancy services related to nutrition; Counselling relating to diet; Counselling relating to nutrition; Nutrition consultancy; Nutrition counseling; Nutritional advisory and consultation services; Nutritional advisory services; Nutritional guidance; Professional consultancy relating to diet; Professional consultancy relating to nutrition; Provision of information relating to nutrition; Rental of ultrasonic diagnostic apparatus; Residential medical advice services; Residential medical treatment services; Services for the care of the face; Services for the preparation of medical reports; Services for the provision of medical care information; Services for the provision of medical facilities; Stress management services; Surgery; Surgery (cosmetic-); Surgical diagnostic services; Surgical treatment services; Technical consultancy services relating to medical health; Therapeutic treatment of the body; Therapeutic treatment of the face.

**3006356:** Provision of information relating to nutrition;

**3006360:** Advisory services relating to nutrition; Consultancy relating to nutrition; Consultancy services related to nutrition; Counselling relating to diet; Counselling relating to nutrition;

### **Beauty and Cosmetic services:**

**3006361:** Advice relating to cosmetics; Advisory services relating to beauty treatment; Application of cosmetic products to the body; Application of cosmetic products to the face; Beauty care; Beauty care for human beings; Beauty consultancy; Beauty consultation; Beauty treatment; Beauty treatment services; Consultancy relating to cosmetics; Consultancy services relating to beauty; Consultancy services relating to cosmetics; Consultation services relating to beauty care; Consultation services relating to skin care; Cosmetic analysis; Cosmetics consultancy services; Facial beauty treatment services; Health spa services; Beauty care; Beauty care for human beings; Beauty care for humans; Beauty care services; Providing information about beauty

**3006362:** Advice relating to cosmetics; Advisory services relating to beauty treatment; Application of cosmetic products to the body; Application of cosmetic products to the face; Beautician services; Beauty care; Beauty care for human beings; Beauty consultancy; Beauty consultation; Beauty counselling; Beauty salon services; Beauty treatment; Beauty treatment services; Consultancy relating to cosmetics; Consultancy services relating to beauty;

Consultancy services relating to cosmetics; Consultation services relating to beauty care; Cosmetic analysis; Cosmetic body care services; Cosmetic treatment; Cosmetic treatment for the body; Cosmetic treatment for the face; Cosmetician services; Cosmetics consultancy services; Facial beauty treatment services; Health spa services; Beauty care; Beauty care for human beings; Beauty care for humans; Beauty care; Providing information about beauty

**3006356:** none

**3006360:** Application of cosmetic products to the body; Application of cosmetic products to the face; Beauty treatment; Consultancy relating to cosmetics; Consultancy services relating to beauty; Cosmetic analysis; Cosmetic treatment; Cosmetic treatment for the face; Cosmetician services; Facial beauty treatment services; Providing information about beauty;

**Other services:**

**3006361:** none

**3006362:** Hiring of plants; Music therapy services; Rental of plants;

**3006356:** Spas;

**3006360:** Hiring of plants;