

O/150/18

TRADE MARKS ACT 1994

IN THE MATTER OF CONSOLIDATED APPLICATION

Nos. 501547 & 501548

**BY KUNERT FASHION GMBH
FOR REVOCATION OF TRADE MARK**

Nos. 1402041 & 1077699

**STANDING IN THE NAME OF
HARVIE & HUDSON LIMITED**

BACKGROUND

1) The following trade marks are registered in the name of Harvie & Hudson Ltd (hereinafter HH).

Mark	Number	Date registered	Class	Specification
HARVIE & HUDSON	1402041	18.09.92	40	Tailoring services included in Class 40.
HARVIE AND HUDSON	1077699	16.04.80	25	Shirts, trousers, jackets, suits, scarves, cravats, cardigans, jumpers, pyjamas, dressing gowns, suspenders (braces), waistcoats, coats, raincoats; ties and belts, all for wear; all for men.




2) By applications both dated 3 February 2017 Kunert Fashion GmbH (hereinafter KF) applied for the revocation of the registrations shown above under the provisions of Section 46(1)(a) and (b). In respect of section 46(1)(a) KF claims there has been no use of the trade marks on the goods and services for which they are registered in the five year period from the date of their registration. Revocation dates of 19 September 1997 and 17 April 1985 are sought. Under section 46(1)(b) KF alleges that there has been no use of either mark for the goods/services for which they are registered in the periods 2 January 2000 -1 January 2005; 2 December 2008-1 December 2013 and 2 January 2012 – 1 January 2017 with revocation dates of 2 January 2005, 2 December 2013 and 2 January 2017 sought.

3) On 18 April 2017 and 17 May 2017 HH filed its counterstatements. It contends that its marks have been used during the specified periods on all the goods and services for which they are registered.

4) Only HH filed evidence, although KF provided observations regarding the evidence. Neither side wished to be heard. Only HH provided written submissions which I shall refer to as and when necessary in my decision, along with KF's observations.

HH'S EVIDENCE

5) HH filed a witness statement dated 21 June 2017 by Richard Harvie a director of the company a position he has held since 1997. He confirms that his company has used the marks in suit since 1949 in respect of the goods and services for which they are registered. He states that his company has also used the wording "Harvie and Hudson" in a script or signature style and also the H&H logo as shown below:

Logo A	
Logo B	
Logo C	

6) Mr Harvie states that these versions are mere modernisation of the marks registered. He states that the mark was first used in 1949 and that since the incorporation of the company in 1955 it has been used upon a number of stores in London in respect of men's clothing and tailored men's clothing, such as, *inter alia*, shirts, suits, blazers, trousers, boxer shorts, pyjamas, robes, coats, hats scarves, cufflinks, socks, handkerchiefs, belts, collars, braces and bow ties. He claims that since 1997 the company has also sold their goods and services via the internet. He states that these are from the whole of the UK as well as globally. Figures are provided which are claimed to show that over 1,700 transactions per annum originate from within the UK. Details are provided in the exhibits below. He also provides the following turnover figures for both goods and services under the marks in suit:

Year	Turnover £ million
2010	3.0
2011	3.0

2012	2.7
2013	2.7
2014	2.7
2015	2.9
2016	2.9

7) Mr Harvie states that the company undertakes promotions of its goods and services under the marks in suit by way of signs in the windows of the shops and also advertising displayed at Royal Ascot. He states that his company is frequently mentioned in articles in newspapers and magazines (exhibit RH9 & 10). The company also attends trade shows in the UK and worldwide (exhibit RH11 refers). The marks are used on swing tags, packaging and sewn-in labels on the items of clothing (exhibit RH12 refers). HH commissioned a brand audit in 2013 and a copy of the report is provided at exhibit RH13. He states that the marks are also used on all company stationary and invoices. He provides examples at exhibits RH 14 & 15. He provides the following exhibits:

- RH2: photos of shop fronts which show use of logos a, b & c (see paragraph 5 above) upon shop fronts, showing the name of the retailer. It also shows a shop called the Emporium with a sign in the window using logo c advertising jackets, coats and suits.
- RH3: Copy of internet registration, dated 1997, for harvieandhudson.com.
- RH4: copies of pages from the “wayback machine” showing use of the mark on the internet. These are dated from 2004 -2017 and show use of the marks in suit. For instance at page 39 dated 25 September 2013 the website name is very clear and it offers general tailoring, ready-made and bespoke shirts and on page 40 (dated 15 May 2013) the mark in suit is present with screens for shirts, ties, tailoring, clothing, evening wear, underwear and nightwear and accessories and photographs of a silk tie and a linen jacket and the price for each. At page 41 (dated 15 May 2013) the mark in suit is used and the page explains that the company are makers of men’s shirts, ties, suits, trousers and accessories. It also offers its tailoring services for suits, blazers and trousers. The page mentions that they also offer a range of men’s

clothing. These pages are typical of those in this exhibit. On page 57 (dated October 2015) it is just possible to make out use of logo A on the neck label of shirts. Although clearly a retailer, no mark other than those of HH are shown anywhere.

- RH5: This shows the number of hits on the website, but more importantly the number of transactions and the location of the transaction. It shows transactions from all over the UK. Whilst it does not state what goods these transactions involved on an individual basis, the witness statement is clear that they were in relation to the men's clothing items for which the marks are registered.
- RH6: This is similar to RH5 but related to transactions on the internet globally.
- RH7: Samples of promotional materials, which appear to be dated 2010-2011. He confirms that these are either dated on the actual page, or can be dated from attached emails. I accept the criticism made by KF that these are the internal mock-ups used to produce the posters which were used on the website and indeed on the windows of the stores. However, there are emails from the company Colour Print Direct Ltd relating to the production of the actual items. The criticism also mentioned that no brochures were provided in the exhibits, however, given the business model of HH this is not surprising as they do not sell to anyone other than customers of their own shops/outlets or on the website.
- RH8: Royal Ascot advertising dated 6 June 2013 which shows use of the term H&H.
- RH9 & 10: Press articles which mention HH. These include a number of social media sites as well as Country Life (December 2014), British Heritage Travel (September 2014) both of which mentions HH by name and state that they are manufacturers of shirts and the Daily Mail (5 September 2011) which mentions HH by name and states that they offer bespoke tailored shirts.
- RH11: Promotional material for trade fairs all in the USA.

- RH12: Examples of labels used on clothing. This consists of photographs of shirts with Logo A and logo B sewn into the necks of shirts. It also has a label which shows Logo B & C as well as the website address and a swing tag with logo A upon it.
- RH13: A copy of a brand audit report which whilst critical of many aspects of the range of clothing and design etc. makes it clear the range of items manufactured and sold by HH under the mark in suit and the three logo devices shown earlier.
- RH14& 15: Examples of company paperwork including invoices. The invoices in particular are very poorly set out being photocopied on top of the sales ledger for the particular entry. It would have been better to simply photocopy the invoices in clear date order and made sure that the individual items were clearly legible and in the relevant period. However, page 8 is dated November 2013.

8) That concludes my review of the evidence. I now turn to the decision.

DECISION

9) The revocation action is based upon Sections 46(1)(a) & 46(1)(b) of the Trade Marks Act 1994, the relevant parts of which read as follows:

“Section 46(1) of the Act states that:

“The registration of a trade mark may be revoked on any of the following grounds-

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c).....

(d).....

(2) For the purpose of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made to the registrar or to the court, except that –

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from –

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

10) Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

11) Revocation is sought under Section 46(1)(a) in respect of the time periods 19 September 1992-18 September 1997 (Mark 1402041) and 17 April 1980-16 April 1985 (Mark 1077699). Revocation is therefore sought from 19 September 1997 and 17 April 1985 respectively. Revocation is also sought under Section 46(1)(b) in respect of both marks regarding the time periods 2 January 2000- 1 January 2005; 2 December 2008-1 December 2013 and 2 January 2012 – 1 January 2017. Revocation is therefore sought from 2 January 2005, 2 December 2013 and 2 January 2017. The revocation actions were filed on 3 February 2017.

12) In determining whether HH has used its trade marks I take into account the case of *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, where Arnold J. summarised the case law on genuine use of trade marks. He said:

“217. *The law with respect to genuine use.* In *Stichting BDO v BDO Unibank Inc* [2013] EWHC 418 (Ch), [2013] FSR 35 I set out at [51] a helpful summary by Anna Carboni sitting as the Appointed Person in *SANT AMBROEUS Trade Mark* [2010] RPC 28 at [42] of the jurisprudence of the CJEU in Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439 , Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159 and Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759 (to which I added references to Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237). I also referred at [52] to the judgment of the CJEU in Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16 on the question of the territorial extent of the use.

Since then the CJEU has issued a reasoned Order in Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and that Order has been persuasively analysed by Professor Ruth Annand sitting as the Appointed Person in *SdS InvestCorp AG v Memory Opticians Ltd* (O/528/15).

218. An important preliminary point to which Prof Annand draws attention in her decision is that, whereas the English versions of Articles 10(1) and 12(1) of the Directive and Articles 15(1) and 51(1)(a) of the Regulation use the word “genuine”, other language versions use words which convey a somewhat different connotation: for example, “ernsthaft” (German), “efectivo” (Spanish), “sérieux” (French), “effettivo” (Italian), “normaal” (Dutch) and “sério/séria” (Portuguese). As the Court of Justice noted in *Ansul* at [35], there is a similar difference in language in what is now recital (9) of the Directive.

219. I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

13) KF provided detailed submissions relating to individual paragraphs and sentences in the written statement and also commenting upon the exhibits provided. This has been responded to by HH’s Trade Mark Attorney in its submissions rather than by filing additional evidence, although the submissions did include exhibits which I have not taken into account as they have not been correctly filed. 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 rule [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 difficulty 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* [2005] 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)."

14) I also look to *Awareness Limited v Plymouth City Council*, Case BL O/230/13, where Mr Daniel Alexander Q.C. as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

and further at paragraph 28:

“28. I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

15) I also note that in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric*

Industrial Co. v. Comptroller- General of Patents [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

16) In considering the evidence provided by HH I must first consider the usage of the three logos shown at paragraph 5 of this decision. In *Nirvana Trade Mark*, BL O/262/06, Mr Richard Arnold Q.C. (as he then was) as the Appointed Person summarised the test under s.46(2) of the Act as follows:

"33. The first question [in a case of this kind] is what sign was presented as the trade mark on the goods and in the marketing materials during the relevant period...

34. The second question is whether that sign differs from the registered trade mark in elements which do not alter the latter's distinctive character. As can be seen from the discussion above, this second question breaks down in the sub-questions, (a) what is the distinctive character of the registered trade mark, (b) what are the differences between the mark used and the registered trade mark and (c) do the differences identified in (b) alter the distinctive character identified in (a)? An affirmative answer to the second question does not depend upon the average consumer not registering the differences at all."

17) Although this case was decided before the judgment of the Court of Justice of the European Union ("CJEU") in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, it remains sound law so far as the question is whether the use of a mark in a different form constitutes genuine use of the mark as registered. The later judgment of the CJEU must also be taken into account where the mark is used as registered, but as part of a composite mark. To my mind, logos A & B are merely stylised versions of the registered marks, being a "signature" version which is easily read and is simply the same wording albeit the word "and" in 1077699 becomes an ampersand. Clearly, logo C is completely different from the registered marks and so any use of this cannot be accepted as use of the registered marks.

18) Having determined that use of logos A & B equate to use of the registered marks I now turn to consider the evidence of use filed for the last period 2 January 2012- 1 January 2017 as if use has been shown in this period then the earlier periods are redundant. Whilst I accept that the evidence filed is not as good as it could be and much of it pre-dates the most recent period, I have to consider the evidence in the round against the balance of probabilities. To my mind, the witness statement, which is unchallenged, sets out the narrative of a company which has been making and selling a variety of men's wear for both the ready-made and bespoke markets for a considerable period. The goods they manufacture are sold, for the most part, under the registered marks in a variety of forms. The goods are sold via HH's own retail outlets or via at least one concession shop (The Emporium) so that all the goods are sold direct to the customer by HH who do not sell to other traders. There is, in my opinion, clear evidence that HH has used its registered marks on tailoring services for men, as well as shirts, trousers, jackets, suits, pyjamas, dressing gowns and ties for men during the period in question. Although the sales figures were not broken down into individual items it is clear that the majority of transactions were from

within the UK, indeed from within the Greater London area. Taking the evidence as a whole I believe that HH has shown sufficient use of its marks to keep the registrations for the following specifications:

- 1402041: In class 40: Tailoring services included in Class 40.
- 1077699: In class 25: Shirts, trousers, jackets, suits, pyjamas, dressing gowns and ties; all for wear; all for men.

19) However, the evidence is not sufficient to show that HH has used its mark 1077699 on the following goods since its registration on 16 April 1980. This means that mark 1077699 is revoked with respect of “Scarves, cravats, cardigans, jumpers, suspenders (braces) waistcoats, coats, raincoats and belts” with effect **from 17 April 1985**.

CONCLUSION

20) Mark 1402041 will remain upon the register unchanged whilst mark 1077699 will have a reduced specification as set out above.

COSTS

21) As both sides have achieved a measure of success I do not propose to favour either side with an award of costs.

Dated this 8th day of March 2018

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