

O-282-18

TRADE MARKS ACT 1994

IN THE MATTER OF:
TRADE MARK REGISTRATION NO. 3088233
IN THE NAME OF CHRISTO CAPITAL REAL ESTATE LIMITED
FOR THE FOLLOWING SERIES OF TRADE MARKS:

ChristoCRE

Christo CRE

AND

APPLICATIONS FOR A DECLARATION OF INVALIDITY
UNDER NOS. 501002 & 501003
BY CHRISTAKIS CHRISTOFOROU AND C. CHRISTO & CO LTD

Background and pleadings

1. This decision replaces a previous decision in these proceedings, issued on 20 March 2017, which was withdrawn due to a procedural irregularity.

2. On 6 January 2015, Christo Capital Real Estate Limited (“the proprietor”) applied to register **ChristoCRE** and **Christo CRE** as a series of two trade marks. The marks were registered under number 3088233 on 3 April 2015. The specification listed various goods and services in classes 35 and 36. Following a partial surrender during proceedings, the specification now reads as follows:¹

Class 35 Auctioneering services related to real estate; Real estate auctioneering.

Class 36 Estate trust management; Provision of financial guarantees for bonding real estate; Real estate appraisal services; Real estate escrow services; Real estate syndication; Real estate trustee services; Arranging of loan agreements secured on real estate; Arranging the provision of finance for real estate purchase; Consultation services relating to real estate; Estate duty planning; Estate management services relating to agriculture; Estate management services relating to horticulture; Financing services relating to real estate development; Provision of finance for real estate development; Provision of real estate loans.

3. On 7 October 2015, separate applications for invalidity were filed by Christakis Christoforou (“CC”) and C. Christo & Co Ltd (“the company”), collectively “the applicants”. The proceedings were consolidated. The applications are based upon sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 (“the Act”), under the provisions of ss. 47(1) and 47(2). The invalidations are, under both grounds, directed against all of the services in the registration.

¹The original specification is set out in the appendix to this decision.

4. Although the above trade mark registration was surrendered on 13 February 2018, the applicants have chosen not to withdraw their applications, which must now be decided.

5. Under s. 5(4)(a), CC claims to have used throughout the UK, since 1 January 1973, the signs “CHRISTO” or “Christo” in relation to “services related to commercial property; residential property agency; property acquisition; property development and project management services”.

6. The company also relies, under s. 5(4)(a), upon the signs “CHRISTO” or “Christo”, as well as the signs “CHRISTO & CO”, “Christo & Co” or “christo & co”, which it claims to have used throughout the UK since 1 January 1985 in relation to the following services:

“Agency and Professional Services such as commercial property agency services, residential property agency services and property acquisition and retainer services, building surveys, architectural services, lease renewals and rent reviews, project management services, property development, rating services, property management and valuation services.

Commercial Services such as agent’s fees, asset valuations, assignment, auction, break options, building options, building insurance, building surveys, compulsory purchase, contaminated land, contents insurance, fit out costs, fixtures and fittings, freehold, ground lease, incentives, incentive fee, landlord and tenant act, lease expiry/renewal, leasehold, legal costs, length of lease, licences, loan valuations, local authority searches, private treaty, purchase costs, qualified surveys, rating liability, references, rent, rent reviews, repair covenants, schedule of dilapidations, service charges, stamp duty, sub-letting, tenants improvements, user clauses, VAT issues”.

7. The applications vary only to the extent required to reflect the different parties, signs and claimed dates of first use. I note in particular the claims that:

- CC is “universally known in business in the UK by the anglicised version of his name, Christopher/Christofer (aka Chris) Christo. Mr Christo is founder, sole Director and shareholder of a highly successful and longstanding property services business in the United Kingdom trading as “Christo & Co” (registered company name C. Christo & Co Ltd) [i.e. the company]”;
- CC “first used the name Christo in relation to himself in 1973, and in relation to his business when he set up Christo & Co in 1985”;
- The director of the proprietor is CC’s son, Nicholas Christoforou (“NC”), and has “at all relevant times had first-hand exposure to and knowledge of the Applicant’s use of the Applicant’s Earlier Rights”;

8. Of particular relevance to the ground based on s. 5(4)(a), the applicants claim that:

- The signs relied upon by CC are identical to the dominant element of the contested mark, whilst “the dominant part of [the company’s] Earlier Rights and [the proprietor’s] mark are identical”;
- The marks “viewed in their totality are substantially identical or highly similar, particularly given that CRE is recognised as a descriptive acronym meaning Capital Real Estate and/or Commercial Real Estate”;
- The proprietor is “in effect in exactly the same business as [the applicants] and offering the same services”;
- Both public and business clients are likely to be misled into thinking that the parties are economically linked; this is compounded by the fact that both applicants played a part in training NC.

9. In relation to the ground under s. 3(6), I note in particular the following claims:

- The background to the instant proceedings is an acrimonious divorce between CC and his ex-wife. There are also other unrelated High Court proceedings;
- Prior to setting up the proprietor, NC worked at the company for 6 years, from 2008;

- Until his resignation on 19 December 2014, NC was a director of the company; upon his departure, he took with him, without authorisation, company documents and a hard drive, which have not been returned;
- The proprietor was incorporated on 6 January 2015;
- Whilst still a director and employee of the company and thereafter, in breach of various obligations, NC “sought to procure the transfer of clients away from [the company]”;
- NC attempted to evict the company from its office premises and to sever “substantial property-holding companies (Docklock and Ridlington) from [the company]”;
- Whilst still a director and employee of the company, NC installed spyware both to track CC’s actions and to find out “private and confidential information about [the company] and its clients (past, present and future)”;
- From 19 December 2014, the website for NC’s new business claimed to have acquired properties which had been [the company’s] projects and which NC had taken without permission from either applicant;
- NC “made misleading approaches to at least one longstanding established client of [the company], by pretending that he still worked at [the company] alongside his new business”.

10. The proprietor filed counterstatements in which it denies all of the claims made by the applicants and puts them to strict proof. As with the applications, the two counterstatements differ only as required to reflect the different parties/dates. I note in particular that:

- The applicants are put to proof of their goodwill in the signs relied upon, and the proprietor denies that there will be either misrepresentation or damage;
- The proprietor claims that neither applicant has goodwill in the signs relied upon and, in particular, that CC does not personally own any goodwill in the name “CHRISTO”;
- The proprietor claims that “[consumers] are used to seeing multiple professional practices (e.g. lawyers, accountants, architects, estate agents) with similar

names and it is also commonplace for members of such practices, when they depart, to use their own name or the name by which they have become known” and that the marks are sufficiently different to avoid passing off;

- NC started working for the company in 2006, not 2008;
- NC “has been known as Nicholas Christo by all his friends and work colleagues since 1998”;
- The proprietor “genuinely believed that it was entitled to apply for the mark as the sole shareholder and business trades [sic] as CHRISTOCRE and Christo Capital Real Estate”;
- The proprietor relies upon the facts that the contested mark reflects the business’s name, and that it is not the same as the earlier signs, as evidence of the proprietor’s good faith;
- The claims that NC sought to procure the transfer of clients from the applicants, that he took material from the company and that spyware was placed on computers and mobile phones are denied;
- The proprietor denies that NC attempted to evict the company from its business premises;
- The properties said to have been taken from the company by the proprietor were in fact acquired by Docklock Limited or Ridlington Limited, not the company and were on the proprietor’s website only between 6 January and mid-January 2015;
- It is denied that NC made misleading approaches to clients of the company;
- It is denied that the services are identical.

11. I note that the proprietor claims that several of the applicants’ claims under s. 3(6) should be struck out and that it invited the proprietor to withdraw them voluntarily. As no amendment was made, however, and as no formal application was made to have the grounds struck out, I proceed on the basis of the pleadings as filed.

12. The proprietor has been represented throughout by Boyes Turner LLP. Both applicants have had the same representatives throughout, although the representatives have changed during the course of proceedings. The applicants are now represented by

Pinsent Masons LLP. Both parties filed evidence, along with submissions during the evidence rounds. Neither party asked to be heard and neither filed written submissions in lieu. This decision is taken following a careful reading of all of the papers.

Evidence

13. Before summarising the evidence, I note that a good deal of the material filed by both parties is concerned with the alleged poaching of clients by the proprietor from the applicant. There is also a significant amount of evidence connected to other allegations of wrongdoing, some of which are the subject of Court proceedings in which CC and NC are, or have been, involved. For example, there are claims of harassment and assault, eviction of the applicant company from its office premises, misappropriation of funds and various allegations concerning the divorce proceedings between CC and his ex-wife. Whilst the relationship between the parties is relevant to the matters before me, the rectitude of the parties in unconnected proceedings or events is not. Consequently, I do not intend to summarise all of the evidence and will focus on what I consider to be the relevant evidence.

Applicants' evidence

14. The applicant's evidence in chief was before the original hearing officer. I have reviewed the evidence and the evidence summary provided by the hearing officer in the previous decision. In the interests of procedural economy, I do not propose to rewrite the evidence summary in different words but adopt as my own the following paragraphs of the previous decision, with one or two minor amendments which are shown in square brackets:

“15. This consists of a witness statement from Christakis Christoforou (hereafter “CC”); it is accompanied by 59 exhibits. CC states that he is the director of C Christo & Co Limited i.e. applicant 2 who trade as Christo & Co; he has been the company's director since its incorporation nearly 26 years

ago. CC confirms that where facts and matters in his statement are within his own knowledge, he believes them to be true. He further states that information that has been provided by others is “true to the best of my knowledge and belief.”

16. Very helpfully, his witness statement is split into a number of sub-headings; I shall adopt these headings. Although what follows is only a summary of the evidence filed, I have, of course, read all of the evidence provided.

Before Christo & Co (1974 to 1985)

- CC states that he started his career with Salter Rex, a firm of estate agents, surveyors and valuers. He explains that as he is of Cypriot origin he decided to anglicise his name to make it easier for his English colleagues and clients to pronounce. His first name became “Christofer” or “Chris” and his surname became “Christo”; he has, he states, been known professionally as “Christo” since 1974;
- in 1982, CC entered into a partnership with a surveyor, Victor Vegoda; they began trading as CHRISTO VEGODA as estate agents, surveyors and valuers. The partnership employed 16 people and were involved in services relating to residential and commercial agency services and undertook a range of professional work such as rent reviews, lease renewals, arbitration, structural surveys and schedules of dilapidations. Exhibits 1-[5] consist of a number of letters/property details which can be positively dated between December 1982 and October 1983 and which contain references to “CHRISTO VEGODA” and/or “C. CHRISTO”. [Exhibit 6 also contains property details. It is not dated but is said to pre-date May 1990.] Exhibit 1 (dated 4 December 1982) consists of a letter which contains the following: “As you are aware I have now commenced trading under the style of Christo Vegoda...”

Christo & Co (1985 to present)

- in November 1985, the partnership was dissolved and Christo & Co was formed. Initially it was not a limited company but consisted of CC trading as Christo & Co. This business provided the same services as Christo Vegoda and in January 1986 it moved to new premises at 148 Kentish Town Road, London, where it remained until September 2013; 14 people including surveyors and valuers were employed. Exhibits 7-11 consist of property details, invoices and correspondence which can be positively dated between January 1986 and February 1986 but which also contains documents bearing the "01" London telephone dialling code which, CC states, "indicates that the particulars pre-date May 1990". All of the documents provided contain references to "CHRISTO & Co" or "CHRISTOFER CHRISTO" (or both);
- in 1986, CC formed Docklock Limited, whose purpose was to act as a vehicle for Christo & Co to acquire properties. That portfolio is now worth £60m and was built with the on-going assistance (both financial and professional) of Christo & Co which provides all professional services to Docklock. CC's ex-wife Betty and NC were appointed as directors, although CC states that he remains the ultimate beneficial owner. Docklock Limited was used to acquire the company's current business premises at 66-70 Park Way, London. CC bought the building in 2009 and it was occupied in September 2013. Exhibit 12 consists of an undated photograph of the front of the building which bears the name "Christo & Co";
- CC refers to the attempt by his ex-wife and NC to evict the company from the above premises in January 2015. I have noted this but do not need to record these details here;
- in January 1990, CC was admitted as a Fellow of the National Association of Estate Agents (exhibit 13). He is also a member of other professional organisations i.e. The Institution of Commercial & Business

Agents (exhibit 14) and the Association of Residential Letting Agents (exhibit 15). CC notes that all of these certifications refer to him as “CHRISTO”;

- C Christo & Co. Limited (“the company”) was incorporated on 27 April 1993 (exhibit 16);
- exhibits 17 to 22 consist of a range of correspondence dated between April 1986 and February 1993 and show the type of professional services provided. The examples refer to rent reviews and dilapidations. The documents contain references to “Christo & Co” which describes itself as “Estate Agents Surveyors Valuers”;
- CC states that: “the company has become well respected and known throughout the UK. We are now regarded as specialists in the commercial property sector and, over the years, have acted on behalf of governments, local authorities, financial institutions, banks, wealthy individuals and corporate entities both from the UK and abroad”;
- CC states that the company was credited with the re-generation of both Camden Lock (in the early 1980s) and Kings Cross. CC states that exhibit 23 consists of a “selection of cuttings from various publications in the early 1990s about the company and its work...” Insofar as they can be dated, the extracts provided taken from *The Evening Standard*, *Estate Times*, *Ham & High Property Express* and *Drapers Record*, date from October 1989 to June 1996. References to, for example, “Christo & Co” and “Chris/Christopher Cristo” appear in these articles;
- exhibits 24, 25 and 26 consist of extracts from the *Estates Gazette* from April 1997 and November 1999. They indicate that in 1997, of the top 100 surveying firms in the UK, Christo & Co were ranked as equal 72nd (exhibit 24) and that by 1999 its position had improved to 70th (exhibit 25). Also in 1999, Christo was ranked 3rd in relation to staff profitability (exhibit 26);
- exhibit 27 consists of a WHOIS search which indicates that on 23 June 1999 Christo & Co registered the domain name christo.co.uk;

- exhibit 28 consists of screenshots obtained using the Internet archive waybackmachine showing how the website christo.co.uk looked in 2003. The words “Christo & Co” appear on all these pages. CC points to the services being provided stating that “the services provided have been consistent over the many years we have been trading”;
- exhibit 29 consists of website traffic statistics for christo.co.uk for the periods 2006-2012 and 2014-2016. While I do not intend to summarise all these figures here, I note that for the years 2006, 2009 and 2014 the figures were as follows:

Year	Unique visitors	No. of visits	Pages	Hits
2006	21,740	33,343	90,188	1,902,287
2009	25,029	34,757	67,831	1,452,697
2014	31,150	41,646	78,659	2,437,310

Investment in the Christo & Co brand over the last three decades

- CC states that over the last 31 years “we have spent hundreds of thousands of pounds promoting the CHRISTO & CO brand”. He explains that this promotion ranges from advertising in various media such as professional magazines to approximately 200 sale and letting boards erected in any given year. Exhibit 30 [consists] of extracts from the company accounts which shows that in the years 2012, 2013 and 2014, £26,146, £31,163 and £37,724 respectively was spent on advertising;
- exhibit 31 consists of samples of brochures of properties that the company has marketed, a number of which contain references to the “0171” London dialling code which, CC states, dates them back to the early 1990s. All of these brochures contain references to Christo & Co. CC states that “it costs approximately £2000 to £3000 to produce each 1,000 brochures”;

- exhibit 32 consists of a brochure which CC states the company commissioned in 1990; he explains it cost £26k to produce. In excess of 3000 of these brochures were, he explains, distributed to potential clients. The brochure contains various references to Christo & Co;
- exhibit 33 consists of extracts from Monthly Property Listings dated February 2007. There are lists for offices, restaurants, catering and pubs and retail and shops. CC states that “every month these lists are prepared and they are sent out to applicants who are looking to buy or rent. At any time we probably have approximately 800 to 1,000 applicants”. The name Christo & Co can be seen in this exhibit.

Nicholas Christoforou (“NC”)

- CC explains that NC is his youngest son. He was born in May 1983, the year after CC set up Christo Vegoda;
- CC puts NC to strict proof that he has been known as Nicholas Cristo since 1998;
- NC started working at the company in [2008]. He started his professional training under the guidance of CC and Messrs. [Comerford] and Forrester. Exhibit 34 consist of a memo from Eamon [Comerford] to CC dated 3 March 2016. It is entitled “RE; Nicholas Christoforou – Professional Training”. I have noted but do not need to record here the contents of this memo;
- CC explains that the cost of NC’s education and training was paid for by him i.e. CC and the company. Exhibit 35 consists of a spreadsheet listing the costs incurred between January 2008 and August 2014 and which amount to £3,505.47;
- CC states that in contrast to his “own certifications”, NC’s educational and professional qualifications record his surname as being Christoforou and not Christo. Exhibits 36-41 consist of a range of certificates/documents (including those issued by the Royal Institution of

Chartered Surveyors - exhibits 38-40), all of which refer to Nicholas Christoforou;

- CC explains that NC was also a director of a number of related companies i.e. Counterclaim Limited, 44 St Pauls Crescent Limited, Docklock Limited and Ridlington Limited. Exhibits 42 and 43 consist of records obtained from Companies House in which NC is referred to as Nicholas CHRISTOFOROU (which is also the case in relation to the recordal of NC as the director of the proprietor);
- CC recounts the events surrounding his divorce and the various legal proceedings (mentioned above) which flowed from that event;
- on 15 December 2014, NC was formally suspended pending disciplinary investigation. Exhibit 44 consists of a letter from “Christofer Christoforou” to “Nicholas Christoforou” dated 15 December 2014 in this regard;
- on 16 December 2014, NC resigned as a director of the company (exhibit 45 consists of an extract obtained from Companies House confirming this to be the case). On the same day, CC states, NC terminated his employment.

The proprietor (6 January 2015 to present)

- on 6 January 2015, NC incorporated the proprietor (exhibit 46 consists of details obtained from Companies House confirming this to be the case);
- exhibit 47 consists of screenshots of the proprietor’s website (www.christocre.com) taken on 6 January 2015. There are references to both “Christo Capital Real Estate” and “CCRE”. The website refers to the “Acquisition of nhs Portfolio” and a “Portfolio of pubs”. CC states that he “believes that [NC] must have had those deals in [hand] whilst working at the company”. CC further states: “it is clear that the [proprietor] also took over a number of transactions from [NC] which he had started whilst working at the company”;

- exhibit 48 consists of an e-mail dated 24 October 2014 sent by “Nicholas Christo” to “Christofer Christo” in which he i.e. NC, explains that, inter alia, he “on [his] own has been able to secure the acquisition for a retained client of a property worth £3.9m, as well secure the management of a 17,000 Sq Ft (end value £18 million) house on the Wentworth Golf Estate, with an expected end value of close to £500,000 + vat for Christo & Co...”;
- exhibit 49 consists of a memo dated 10 November 2014 from “C Christo” to “Nicholas” in which CC raises, inter alia, the issue of the property mentioned above. CC states that NC did not provide the details he sought;
- CC states that in September 2014, NC prepared proposals for the redevelopment of a property in Rutland Mews, London. Exhibits 50 and 51 consist of a range of documents in relation to this matter. The first is an e-mail dated 8 September 2014 from “Nicholas Christo” at Christo & Co. There are, inter alia, further e-mails dated 11 November 2014 from “Nicholas Christo” (at Nicholas@Christo.co.uk) and [17] January 2015 from “Nicholas Christo” at Nicholas@ChristoCRE.com). CC states: “The company has not received any commission from these transactions [i.e. those mentioned in exhibits 48, 49, 50 and 51] and has had no further involvement in them...Nicholas has misappropriated these deals/transactions for the benefit of the [proprietor]. Given the timing of these transactions, I believe that these opportunities only came to Nicholas’ attention as a result of his position at the company, and that his exploitation of those opportunities for the benefit of the [proprietor] is a breach of Nicholas’ express contractual duties and fiduciary duties to the company...”;
- exhibit 52 consists of an e-mail dated 5 March 2015 from Saleh Abdulhamid Assubihi of Riding House Estate Ltd.Inc. to “Nicholas Christo”. It reads: “Dear Nicholas, You have told me that you are running new business for yourself beside your job at Christo & Co...” The sender

of the e-mail has, states CC, been a client of the company for over 25 years;

- exhibit 53 consists of, inter alia, an e-mail dated 12 June 2015 sent from Property@ChristoCre.com to adam@burlingtonpartners.com headed “London Retail Investment Opportunity For Sale.” This e-mail was, states CC, sent to “a number of company clients.” Also provided and dated 12 June 2015, is an e-mail from the Adam mentioned above sent to NC at his old e-mail address at the company which reads: “Hi Nicholas, is this one of yours? Best, Adam”;
- exhibit 54 consists of a further e-mail dated 12 June 2015 from Andrew Fisch of Rann Investments Limited to an employee of the company (Paul Stone) in relation to the retail investment opportunity mentioned above. It reads: “Paul, How much is this? Is it VAT registered? Ps long life to your wife. Andy”;
- exhibit 55 consists of pages taken from NC’s LinkedIn account which were downloaded on 23 March 2016. It refers to “Nicholas Christo Director at Christo Capital Real Estate” and “Previous Christo & Co.” CC points to the following wording “Christo Capital Real Estate has a rich heritage” (which, in CC’s view, is clearly a reference to the company’s reputation) and to the following individuals Paul Stone (of the company), Mert Seyhan of IDIKA and Sean Corrigan of Purple Residential under the “People Also Viewed” section. Exhibits 56 and 57 respectively are LinkedIn profiles (also downloaded on 23 March 2016) for Mr Seyhan (which indicates that he provides “consultancy services to Christo & Co regarding commercial property & investment enquiries”) and Mr Corrigan which indicates that he was an employee of the company from December 2013 to September 2014;
- exhibit 58 consists of NC’s “Member Profile page” taken from the RICS website which, CC notes, refers to him as “Nicholas Christoforou”; the page appears to be undated”.

15. Exhibit 59 is an undated screenshot from the proprietor's website (www.christocre.com) which describes the firm's services as twofold, consisting of a "Property Agency Department: Focusing on acquiring and disposing of real estate" and "Property Management Department, which aims to maximise Clients value through active and professional management of the asset".

Proprietor's evidence

16. This consists of the witness statement of Nicholas Christoforou ("NC") with one exhibit (NC1).² Much of the evidence consists of submission, which I will bear in mind but do not summarise here.

17. NC states that he is the sole shareholder and director of the proprietor. He states that his family has been referred to as "the Christo family" since 1983 and that, for as long as he can remember, he has been referred to as "Nicholas Christo" by friends, family, colleagues and clients. He states that he has had an email address of "NikoChristo@msn.comm" since 2003.³ He exhibits an undated Christo & Co business card, along with four emails dated between 2 November 2006 and 11 November 2014 from his Christo & Co email account which show his name as "Nicholas Christo".⁴

18. NC states that he began working for the company in 2006 and continued to do so until his resignation on 19 December 2014.⁵ He claims that from 2009 he "gradually took over running the business and became managing director of [the company]. My father took an increasingly back seat role in the business",⁶ though there is no accompanying documentary evidence. NC claims that by 2010 he was a director of the

² I note that, on 19 April 2018, the tribunal wrote to the applicant to query the inclusion with its exhibit of four pages which were neither paginated nor mentioned in the statement. No response to that letter was received and the evidence thus forms no part of this decision. For completeness, however, I have reviewed those additional pages and am unable to see that they have any relevance to the instant proceedings.

³ §5.

⁴ NC1, pp. 1-5.

⁵ §6.

⁶ §9.

company, with autonomous control over its bank accounts and that he was “positioned legally as the ultimate decision maker”.⁷

19. Three letters regarding a property in Ealing are exhibited.⁸ The first two are an exchange between Salaft Properties Ltd and CC (at the company), dated 7 and 21 October 2015, respectively. CC explains that NC “had asked me whether I minded if the property was given to Salaft Properties Limited as it was Nicholas’ intent to convert you into an established client”. He also asks for copies of any correspondence relating to transactions while NC was employed by the company. Finally, there is an email from a Jonathan Morgan, who is said to be the vendor of the property, in which he claims he only dealt with NC at the applicant company.⁹ It is dated 6 October 2015; it is not explained why this letter pre-dates the others.

20. NC claims that he set up the proprietor company:

“with the aim of providing property investment advisory services to proactive high net worth individuals in the market to buy, sell and develop high value commercial properties. The contacts that I used to set up my new business were primarily friends that I had known for years and who trust me personally to provide property advice. I wanted to move away from the services provided by [the company]. Furthermore my firm is RICS regulated while [the company] is not. This I believe makes a very large differences [sic] in how the outside property community sees each entity”.¹⁰

21. NC goes on to explain that he chose his trade mark “because of my shortened surname Christo which has been known to all my friends since 1998 and that it correctly explains my brand (being centred round me) and business ethos (capital investment in

⁷ Ibid.

⁸ NC1, pp. 6-8.

⁹ NC1, p. 8.

¹⁰ §18.

real estate)".¹¹ NC states that he is not aware of any instances of confusion that have occurred since he set up the proprietor, that he has "made it very clear to all my contacts that I no longer work for [the company]", and that he would not want to be connected to the company because its reputation has been tarnished because of litigation.¹² NC attests that he is reasonable and honest and that he applied for the contested mark in good faith, with a genuine intention to use it.¹³

22. NC explicitly denies having contacted Mr Assubihi (C Christoforou 1, exhibit 52). He explains that he would not have done so because Mr Assubihi is loyal to CC, has not bought a property in some time and "does not fit with my business model".¹⁴ He also claims that Adam Velleman and Andrew Fisch (C Christoforou 1, exhibits 53 and 54) have told him their email software automatically populated the address field with his old email address. Such evidence is hearsay and does not assist.

23. NC exhibits his LinkedIn account page, which shows "500+ connections", which he contrasts with CC's LinkedIn page, which shows 1 "connection".¹⁵ NC relies upon these as evidence of his own reputation. However, the documents are undated, save for printing dates of June 2016 and, there being no information whatsoever about the nature of the "connections", do not assist.

24. In relation to the NHS and pub projects which were claimed on the proprietor's website, NC states that the deals were historical (completed in 2009-2010) and that he was, in any event "using example deals to test my new website".¹⁶ He states that these examples were on his site for less than 72 hours.¹⁷ He exhibits a letter dated 7 September 2015 from his representatives to Charles Russell Speechlys LLP (CC's

¹¹ §19.

¹² *Ibid.* and NC1, p. 12a; §§28-29.

¹³ §22.

¹⁴ §20.

¹⁵ NC1, pp. 13-23.

¹⁶ §30.

¹⁷ *Ibid.*

representatives in the matter) in which the issue is discussed.¹⁸ It is of limited assistance, though I note the position taken.

Applicants' evidence in reply

25. This consists of the second witness statement of Christakis Christoforou, with accompanying exhibits 60-77. As with the proprietor's evidence, I do not intend to summarise submissions here, though I will, of course, bear them in mind.

26. CC states that NC was a director of the company between 2009 and 2014 but denies that NC was ever managing director.¹⁹ CC provides screenshots of his own email inbox between November 2011 and June 2013 to demonstrate that "I was in constant communication with the Company's office".²⁰ Some of the subject headings appear to be addresses (e.g. p. 10 "Re: Flat 3, 120 kenti...") but the content of the emails is not provided so the evidence is of limited assistance.

27. At exhibit 66 is a letter from Russell Baum of Salaft Properties Ltd dated 21 July 2016. It terminates an agreement with the applicant company for managing a property on The Mall. It states that the company had managed the property "for the last few years".

28. CC exhibits at 67 a string of instant messages between NC and Alex Christoforou (NC's brother) as evidence that "Nicholas was intercepting my emails".²¹ The document includes statements such as "Just discovered something he did (wrong) with that new scanner" and "That's why he claimed to have not received his scan". However, neither the individual nor the email account are identified and this document in isolation therefore proves nothing.

¹⁸ NC1, pp. 24-26.

¹⁹ §11.

²⁰ Exhibit 64.

²¹ §17.

29. In response to NC's comments about the RICS regulation of the firms, CC confirms that the company employs RICS-regulated surveyors and provides RICS-regulated services on that basis.²²

30. At exhibit 70 is a print of NC's LinkedIn page. CC draws my attention to the claim that the proprietor "is able to offer advice on all property matters". The document bears a printing date of 2017 but is otherwise undated.

31. There are, at exhibit 71, the cover and opening pages of an auction catalogue dated May 1994. "Christo & Co" are listed on the front cover as joint auctioneers. The terms and conditions clearly refer to properties.

32. CC provides the letter in response to the letter of 7 September 2015 exhibited at NC1, pp. 24-26.²³ As with the earlier letter, I note the parties' positions as set out.

33. Exhibit 74 is an email from Nicholas Christo (said to be his company email account) to nikochristo@msn.com dated 29 September 2014. It is said to be a list of applicant and company clients, including contact details.²⁴

34. That concludes my summary of the evidence, insofar as I consider it necessary.

Decision

35. I intend to focus on the company's application in the first instance. I will consider CC's application if it becomes necessary.

²² §21.

²³ Exhibit 73.

²⁴ §35.

Section 5(4)(a)

36. Section 5 of the Act has application in invalidation proceedings because of the provisions set out in s. 47. The relevant legislation is set out below:

“47. - [...]

(2) The registration of a trade mark may be declared invalid on the ground-

(a) [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made. Provided that this shall not affect transactions past and closed”.

37. Section 5(4)(a) states:

“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

(b) [.....]

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”.

38. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether “*a substantial number*” of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)”.

39. Halsbury’s Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant’s use of a name, mark or other feature which is the same or sufficiently similar that the defendant’s goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action”.

The relevant date

40. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11, Mr Daniel Alexander QC, sitting as the Appointed Person, considered the matter of the relevant date in a passing off case. He said:

“43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”.

41. The contested mark was filed on 6 January 2015. NC has not provided any evidence of the contested mark in use prior to the date of application and I note the proprietor’s submission that NC “did not set up his new business until nearly one month

after he had left [the company], in January 2015”.²⁵ The date of incorporation of the proprietor is 6 January 2015. Although the applicants’ exhibit 47 shows prints from the proprietor’s website which include the phrase “Christo Capital Real Estate Limited 2014” (pp. 305 and 308), the prints themselves were taken on 6 January 2015 and neither party has suggested that the web pages were available prior to January 2015.²⁶ I can see no other evidence which would suggest the mark was in use prior to its filing date. That being the case, the relevant date is 6 January 2015.

Goodwill

42. I bear in mind the following guidance from the House of Lords in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL):

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start”.

43. It is true, as the proprietor points out, that the company has not filed invoice evidence to support its claim of a protectable goodwill. However, invoices are not the only evidence which may establish that a business is trading. There is evidence in the form of newspaper and magazine articles that the company has operated as an estate agent since April 1993, under the sign “Christo & Co”.²⁷ The company is, in October 1993, described as “the largest commercial estate agency in North London”.²⁸ There is evidence that the company was ranked in the top 100 surveying firms between 1997 and 1999, with an annual turnover in excess of £1m.²⁹ Archive web prints from 2003 show “Christo & Co” prominently on the website. The company describes itself as

²⁵ Written submissions, §26(e).

²⁶ See, in particular, C Christoforou 1 at §34.

²⁷ C. Christoforou 1, exhibit 23.

²⁸ *Idem*, p. 97.

²⁹ C. Christoforou 1, exhibits 24 and 25.

“Estate Agents”, “Valuers”, “Surveyors” and I note that a range of services are offered, including surveys, lease renewals and rent reviews, as well as property management and development, insurance of various types, asset valuation and schedules of dilapidations.³⁰ The unique visitor numbers for the website, whilst relatively modest, comfortably exceed 20,000 per annum in the calendar years 2010 to 2015; hits exceed 1 million each year, rising to 2.4m at the end of December 2014.³¹ Advertising figures for the financial years 2012-2014 are £26,146, £31,163 and £37,724, respectively.³² Although turnover or sales figures would have been helpful, I am satisfied that the company had a protectable goodwill at the date of application and that the sign “Christo & Co” was distinctive of the company’s business. The business itself is fairly characterised as an estate agency, primarily concerned with commercial property, providing services such as valuation, surveying and property management services in the Greater London area.

Misrepresentation

44. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“493. There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants’ [product] in the belief that it is the respondents’ [product]”.

³⁰ C. Christoforou 1, exhibit 28.

³¹ C. Christoforou 1, exhibit 29.

³² C. Christoforou 1, exhibit 30.

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175 ; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101".

45. And later in the same judgment:

"494 [...] for my part, I think that references, in this context, to "more than *de minimis*" and "above a trivial level" are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion".

46. The applicants submit that the marks are almost identical "viewed side by side", that the word "CHRISTO" is dominant visually and that, aurally, it is the "most memorable" element. ³³ A side-by-side comparison is not, of course, the appropriate test. The applicants also submit that "CHRISTO" has no meaning in English and that "CRE" is "an accepted acronym for CAPITAL REAL ESTATE".³⁴

47. The proprietor submits that NC "applied to register a trade mark for the abbreviation of his company name, Christo Capital Real Estate Limited", and claims that the marks are different.³⁵

48. The contested registration consists of a series of two trade marks, namely "ChristoCRE" and "Christo CRE". Whilst I note the applicants' submission that "CRE" means "Capital Real Estate", there is no evidence to that effect. In *Chartered Forex Inc*

³³ Submissions, §10.

³⁴ *Idem*, §12.

³⁵ Submissions, §15.

v Forex Bank AB (BL O/100/09), Geoffrey Hobbs QC, sitting as the Appointed Person, said (with footnotes omitted):

“15. [...] it was open to the Hearing Officer to look at appropriate works of reference for the purpose of supplementing his understanding of the meaning(s) that the word **FOREX** could properly be taken to possess in accordance with ordinary English usage in this country. In The Coca-Cola Co. of Canada Ltd v Pepsi-Cola Co. of Canada Ltd Lord Russell of Killowen stated:

While questions may sometimes arise as to the extent to which a court may inform itself by reference to dictionaries, there can, their Lordships think, be no doubt that dictionaries may properly be referred to in order to ascertain not only the meaning of a word, but also the use to which the thing (if it be a thing) denoted by the word is commonly put”.

49. Accordingly, in the absence of evidence from the parties, I have consulted both *Collins* and the *Oxford Dictionary of English* to establish whether “CRE” is indeed an accepted acronym for “Capital Real Estate”. Neither returned a result which would confirm the applicants’ assertion. I do not discount that, among real estate professionals, “CRE” may have the meaning suggested, or that the proprietor’s evidence shows that NC intended to reflect such a meaning when using the abbreviation “CRE”. However, in the absence of any clear evidence on the point, I am not satisfied that the term is widely accepted as such among the consumers of the parties’ services, particularly those who are not professionals. The contested registration is readily divided into the elements “Christo” and “CRE” because of the capitalisation and, in the second mark of the series, the spacing between the elements. “CRE” will either be seen as an abbreviation for “Capital Real Estate” and therefore non-distinctive, or will be attributed no particular meaning. As for the earlier sign, the element “Christo” is a distinctive element which in my view dominates the sign, whilst “&

Co” indicates other involved in the company but adds little distinctiveness. I agree with the submission that the word “Christo” is unlikely to be given any particular meaning. There is, therefore, a high degree of similarity between the sign and the registered mark.

50. In terms of the services at issue, “auctioneering services related to real estate”, “real estate auctioneering”, “real estate appraisal services”, “real estate syndication”, “consultation services relating to real estate” “estate management services relating to agriculture”, “estate management services relating to horticulture” are all services in the identical field to the company’s real estate and property management services. The remaining services, namely “estate trust management”, “provision of financial guarantees for bonding real estate”, “real estate escrow services”, “real estate trustee services”, “arranging of loan agreements secured on real estate”, “arranging the provision of finance for real estate purchase”, “estate duty planning”, “financing services relating to real estate development”, “provision of finance for real estate development” and “provision of real estate loans” strike me as financial rather than real estate services. However, given that (i) all of the services relate to estates or real estate and (ii) that the proprietor is described in its own evidence as “a leading real estate firm, focusing on Greater London and Central London”, offering “advice on all property matters”,³⁶ the fields of activity are, if not identical, highly similar. I note the proprietor’s claim that he is not aware of any instances of confusion. It does not assist the proprietor, however, given that the businesses had not been trading concurrently at the date of application. It is, in my view, likely that a substantial number of the company’s customers will be misled into purchasing the proprietor’s services in the mistaken belief that the services are provided by the same undertaking.

Damage

51. In *Harrods Limited v Harrodian School Limited* [1996] RPC 697, Millett L.J. described the requirements for damage in passing off cases like this:

³⁶ NC1, p. 14.

“In the classic case of passing off, where the defendant represents his goods or business as the goods or business of the plaintiff, there is an obvious risk of damage to the plaintiff's business by substitution. Customers and potential customers will be lost to the plaintiff if they transfer their custom to the defendant in the belief that they are dealing with the plaintiff. But this is not the only kind of damage which may be caused to the plaintiff's goodwill by the deception of the public. Where the parties are not in competition with each other, the plaintiff's reputation and goodwill may be damaged without any corresponding gain to the defendant. In the *Lego* case, for example, a customer who was dissatisfied with the defendant's plastic irrigation equipment might be dissuaded from buying one of the plaintiff's plastic toy construction kits for his children if he believed that it was made by the defendant. The danger in such a case is that the plaintiff loses control over his own reputation”.

52. In *Ewing v Buttercup Margarine Company, Limited*, [1917] 2 Ch. 1 (COA), Warrington L.J. stated that:

“To induce the belief that my business is a branch of another man's business may do that other man damage in various ways. The quality of goods I sell, the kind of business I do, the credit or otherwise which I enjoy are all things which may injure the other man who is assumed wrongly to be associated with me”.

53. In a case such as this, both the most obvious type of damage, namely a loss of sales, and damage to the reputation of the business are applicable. The evidence shows that the proprietor intends to trade in the same, or a closely related, field of commercial activity, under a highly similar mark. It also intends to trade in the same geographical area. Bearing in mind the nature and extent of the company's goodwill, I find that damage is made out.

54. It follows that the company's application for invalidity under s. 5(4)(a) succeeds in relation to all of the services in the contested registration.

Section 3(6)

55. Section 3(6) of the Act states:

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

56. Section 47 also applies:

47. - (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

57. The law in relation to s. 3(6) of the Act (“bad faith”) was summarised by Arnold J. in *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch):

“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 C- 529/07 *Chocoladenfabriken Lindt & Sprüngli 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* [2008] EWHC 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)".

58. The relevant date under s. 3(6) is the date of the application, i.e. 6 January 2015.

59. The proprietor is Christo Capital Real Estate Limited, not NC himself. However, Professor Ruth Annand, sitting as the Appointed Person, held in *Joseph Yu v Liaoning Light Industrial Products Import and Export Corporation* (BL O/013/15) that:

"22. [A] claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application".

60. NC has given evidence that he is the sole shareholder and director of the proprietor. Accordingly, his motives can be attributed to the proprietor.

61. There is no dispute that NC worked at the applicant company for several years, though the parties disagree as to his start date. NC provides an email dated November 2006 which is from his company email account (NC1, p. 2). I accept his evidence that he started working for the company in 2006. It is clear from the evidence that the relationship between the parties had been under strain for some months before it finally broke down in December 2014. There is considerable disagreement between the parties as to the details. I do not consider it necessary for me to make a finding regarding many of the disputed events in order to come to a decision on this ground. The proprietor, through NC, plainly knew of the longstanding use by the company of the sign “Christo & Co”.

62. Making the best I can of the relevant evidence, it seems probable that NC’s application for the trade mark was motivated by a desire to protect his nascent company. I note the claim that the proprietor intended to carry out business in a wholly distinct field from the company. However, that is not entirely consistent with the original specification (see appendix), which runs the gamut of real estate services. There is also evidence that the proprietor’s own website clearly positioned the proprietor as a property agency/property management company.³⁷ Whilst I bear in mind that this evidence is not dated, it is likely, given that neither party has claimed that the proprietor began using the mark before the date of application, that the evidence post-dates the application date (and therefore the relevant date for the purposes of s. 3(6)). *Red Bull*, cited above, indicates at [132] that it is permissible for me to consider later evidence if it helps shed light on the position at the date of application. Taking the evidence in the round, I come to the clear view that NC intended the proprietor to be a real estate business. That is also congruent with his own professional background and with the apparent RICS-regulated status (as opposed to, for example, FCA regulation) of the proprietor.³⁸

³⁷ C. Christoforou 1, exhibit 59.

³⁸ N. Christoforou, §18.

63. I accept NC's evidence that he has been known as "Nicholas Christo" at least for the duration of his employment with the company, which is supported by email evidence from 2006. I also accept that his longstanding use of the surname "Christo" may have perpetuated his belief that the application was acceptable. However, the case law is clear that the behaviour of the individual must not be judged by their own, subjective standard but according to the standard of acceptable commercial behaviour observed by reasonable and experienced men in the area being examined. NC's belief that he is an honest person and that he was acting in good faith, no matter how sincerely held, is irrelevant. As the previous hearing officer indicated, if NC had applied for a mark more closely signalling his own name, the position might have been different. He did not, however, and my view is that, in applying for a mark so closely resembling the earlier sign, he ought to have been aware of the potential for previous clients of the company to assume that the parties were related and for the company's business to be adversely affected. It was, in my view, an act that fell below the standards of acceptable commercial behaviour. The invalidation succeeds in full under s. 3(6).

Conclusion

64. The invalidation has succeeded in full. The application will be deemed never to have been made.

Final remarks

65. Given my findings, above, I do not consider it necessary to determine the application made in the name of CC.

Costs

66. As the company has been successful it is entitled to a contribution towards its costs. The filing of two separate applications was unnecessary and the matter could have been dealt with under one application with the parties named as joint applicants. There

was also a good deal of irrelevant and unnecessary evidence filed on both sides. Those considerations are reflected in the award below. Given the date on which proceedings were commenced, the award of costs is governed by Tribunal Practice Notice (“TPN”) 4/2007. Using that TPN as a guide but bearing in mind my comments, above, I award costs to C. Christo & Co Ltd on the following basis:

Official fees:	£200
Preparing a statement and considering the other side’s statement:	£200
Filing evidence and considering the other party’s evidence:	£700
Written submissions:	£300
Total:	£1,400

67. I order Christo Capital Real Estate Limited to pay C. Christo & Co Ltd the sum of **£1,400**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 10th day of May 2018

**Heather Harrison
For the Registrar**

Appendix

Class 35: Advisory services (accountancy-) relating to taxation on real estate; Auctioneering services related to real estate; Business management of real estate [for others]; Real estate auctioneering; Advertising of commercial or residential real estate.

Class 36: Appraisal of real estate; Assessment and management of real estate; Real estate consultancy; Real estate valuation services; Real estate valuations; Appraisals for insurance claims of real estate; Arranging of leases and rental agreements for real estate; Consultancy in the purchasing of real estate; Estate trust management; Financial valuation of personal property and real estate; Management services for real estate investment; Providing information in the field of real estate by means of linking the web site to other web sites featuring real estate information; Provision of financial guarantees for bonding real estate; Real estate acquisition services; Real estate and property management services; Real estate appraisal services; Real estate brokerage services; Real estate equity sharing; Real estate escrow services; Real estate investment; Real estate investment services; Real estate procurement for others; Real estate syndication; Real estate time-sharing; Real estate trustee services; Real estate settlement services [financial services]; Estate agency services; Real estate affairs services; Real estate agency; Real estate agency services; Real estate appraisals; Real estate investment management; Real estate management services; Real estate services; Real estate investment planning; Real estate affairs; Leasing of real estate property; Accommodation bureaux (real estate property); Administration of financial affairs relating to real estate; Advisory services relating to real estate ownership; Advisory services relating to real estate valuations; Agency (estate -); Agency services for the leasing of real estate property; Arranging letting of real estate; Arranging of leases of real estate; Arranging of loan agreements secured on real estate; Arranging of shared ownership of real estate; Arranging the provision of finance for real estate purchase; Assisting in the acquisition of and interests in real estate; Assisting in the acquisition of real estate; Brokerage of real estate; Capital investment in real estate; Collection of debt on real estate rental; Commercial real estate agency services;

Computerised information services relating to real estate; Consultation services relating to real estate; Corporate real estate advisory services; Estate agencies; Estate agencies (real-); Estate agency; Estate agency services for sale and rental of buildings; Estate agency services for sale and rental of businesses; Estate agent services; Estate brokerage; Estate duty planning; Estate management; Estate management (real-);Estate management services relating to agriculture; Estate management services relating to horticulture; Estate management services relating to transactions in real property; Estate planning services [arranging financial affairs];Evaluation of real estate; Financial brokerage services for real estate; Financial evaluations [real estate];Financial services for the purchase of real estate; Financial services related to real estate; Financial services relating to real estate property; Financial services relating to real estate property and buildings; Financing services relating to real estate development; Insurance services relating to real estate; Investment advisory services relating to real estate; Investment in real estate (services for-);Leases (arranging of -) [real estate property only];Management of real estate; Property leasing [real estate property only];Provision of finance for real estate development; Provision of information relating to property [real estate];Provision of information relating to real estate; Provision of information relating to the property market [real estate];Provision of real estate loans; Real estate (leasing of-);Real estate acquisition [for others];Real estate acquisition [on behalf of others];Real estate agents services; Real estate appraisals [valuations].