

O-005-19

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3239584
BY SOLARTECH INTERNATIONAL LTD TO REGISTER:**



AS A TRADE MARK IN CLASSES 17 & 19

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 410549 BY CORROTECH CONSTRUCTION CHEMICALS**

BACKGROUND & PLEADINGS

1. On 26 June 2017, Solartech International Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision. The application was published for opposition purposes on 14 July 2017 for the following goods:

Class 17 - Covers for insulation materials; synthetic materials (semi-finished products); pre pegs (reinforcing fabrics pre-impregnated with a resin system); pre pegs (reinforcing fabrics pre-impregnated with a resin system) for use in mouldings; pre pegs (reinforcing fabrics pre-impregnated with a resin system) for use in manufacture; pre-impregnated fibres; fibrous materials pre-impregnated with resinous materials; pre-impregnated fibres for insulation purposes; insulation materials.

Class 19 - Building materials (non metallic); composites as building materials (not made from metal); pre pegs (reinforcing fabrics pre-impregnated with a resin system) for building purposes; pre-impregnated fibres for building purposes.

2. The application has been opposed in full by Corrotech Construction Chemicals (“the opponent”). The opposition is based upon sections 3(6) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The opponent states that it:

“2.1... conceived and developed the SOLARTECH mark in 2007 and the same year started to use the SOLARTECH mark to market and sell UV Cured Glass reinforced plastic (GRP) and UV cured resins.

2.2 In around 2008 the applicant was appointed by the opponent to help develop sales [of the above goods] under the SOLARTECH mark.

2.3 The opponent filed an application to register its trade mark SOLARTECH in the UK on 18 December 2011, with registration being granted under registration no. 2604903 on 30 March 2012 for [the goods mentioned above].”

Trade mark no. 2604903 was as follows:



“2.4 on 26 August 2016 the opponent terminated its agreement with the applicant with immediate effect. All the applicant’s rights to use the SOLARTECH mark terminated.”

3. The opponent goes on to explain that following the termination of the agreement, the applicant applied to invalidate the above registration. As the opponent had not updated its contact information with the UKIPO, the application was undefended and cancelled on 8 August 2017.

4. In relation to its objection based upon section 3(6) of the Act, the opponent states:

“3.2 The applicant has no legitimate claim to any rights in the trade mark SOLARTECH in respect of [the goods mentioned above] in the UK. The applicant is aware from its trading relationship with the opponent between 2008-2016, that the rights in the trade mark SOLARTECH in respect of the [above goods] in the UK and all associated goodwill belongs exclusively to the opponent.

3.5 Within 12 months of the applicant losing the right to use the SOLARTECH mark for [the above goods] in the UK when its agreement with the opponent was terminated in August 2016, the applicant embarked on a course of action designed to try and usurp control over the SOLARTECH mark in the UK and appropriate the opponent’s goodwill associated with the SOLARTECH mark in

the UK. The applicant did this firstly by filing the application for revocation (sic) of the [opponent's trade mark mentioned above] and, secondly, by filing its own application to register the trade mark SOLARTECH in respect of the [goods mentioned above]".

5. The opponent's objection under section 5(4)(a) is based upon the use of two



unregistered trade marks i.e. SOLARTECH and throughout the United Kingdom "from at least 2010" in relation to [the goods mentioned above]. The opponent states:

"4.2 Since at least 2008 the opponent's trade mark SOLARTECH has been used by the applicant under licence in relation to, inter alia, marketing and sales of [the goods mentioned above]. Under that arrangement all goodwill from the use of the SOLARTECH mark anywhere in the world, including the UK in relation to the marketing and sales of [the above goods] accrued to the benefit of the opponent.

4.3 Investment has been made in the marketing and selling goods under the SOLARTECH brand in the UK. As a result of this, the opponent has acquired goodwill and reputation in the United Kingdom for the quality and reputation of [the above goods] provided under the trade mark SOLARTECH.

4.7 The use of the contested mark in the UK will constitute a misrepresentation to the relevant public that the goods for which registration of the contested mark is sought originate from the opponent or are in some way authorised, endorsed, licensed or otherwise connected with the opponent. This mistaken assumption or belief on the part of the relevant public will cause damage to the valuable reputation and goodwill that the opponent has established in its unregistered rights in the United Kingdom in relation to [the above goods]."

6. The applicant filed a counterstatement which consists, in essence, of a denial of the grounds upon which the opposition is based. Inter alia, the applicant explains that it wrote to the opponent prior to seeking cancellation of its above mentioned trade mark registration and a copy of a letter dated 12 October 2016 in that regard is provided. In relation to the opponent's reference to "the applicant embarked on a course of action", the applicant states that the two steps mentioned i.e. the filing by it of the applications for cancellation and registration were "needed...for the applicant to reclaim their legitimate rights in the mark SOLARTECH logo...". In the absence of an explanation from the opponent as to how the goods upon which it relies would be considered "goods of a similar description" to all the goods for which the application was published, it queries why that would lead to a total refusal of the application in any event. Finally, the applicant states that the opposition is "frivolous and vexatious" and ought to lead to an off-scale award of costs in its favour.

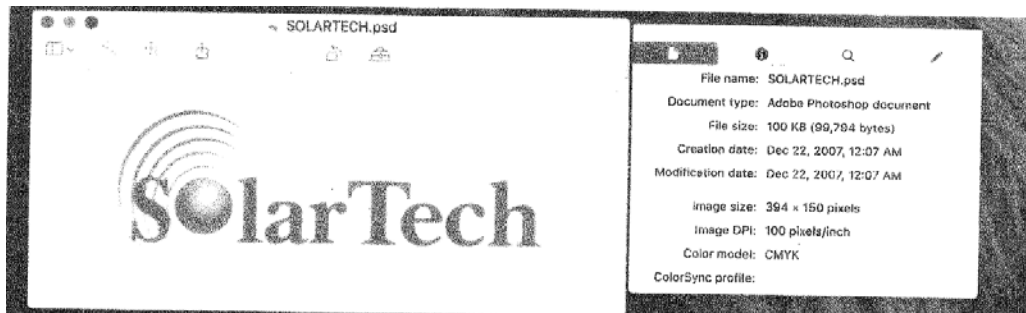
7. In these proceedings, the opponent is represented by TLT LLP and the applicant by Icen Law Limited. Both parties filed evidence; the opponent's evidence-in-chief and reply was accompanied by written submissions, as was the applicant's evidence. The matter come before me at a hearing held on 6 November 2018. At the hearing, the opponent was represented by Ms Georgina Messenger of counsel and the applicant by Mr Duncan Welch of Icen.

The opponent's evidence-in-chief

8. This consists of a witness statement from Peter Brian Gaskin, the opponent's Chief Executive Officer. He explains that the opponent is part of the Molecular Corrosion Technologies Group of companies ("MCT"). He states that:

"5.3... since at least September 2006, [the opponent] has used the trade mark SOLARTECH to market and sell UV cured Glass Reinforced Plastic (GRP) and UV cured resins."

9. Exhibit PBG1, consists of what Mr Gaskin describes as “screengrabs taken from [the opponent’s] computer system” which, he states, “show the files for the design of the stylised trade mark SOLARTECH.” Although the copies provided are in black and white, there is, I note, inter alia, references to “SOLAR TECH orange”. The .jpg file has a creation date of 24 September 2007 and the .psd file (shown below) a creation date of 22 December 2007.



10. Mr Gaskin states that the goods sold under the SOLARTECH trade mark were initially sourced for another MCT company i.e. Anti-Corrosion Control Services (“ACS”) by Garrard Europe (“Garrard”), adding that in around 2007, the opponent took over the arrangements with Garrard from ACS and it started promoting sales of goods under the SOLARTECH trade mark more aggressively. He states that while there was no written agreement with Garrard in relation to the SOLARTECH trade mark, it was, he further states: “always understood that [the opponent] owned and controlled the trade mark SOLARTECH”, adding that the opponent designed all the sales and support literature relating to the SOLARTECH brand.

11. Mr Gaskin states that ACS continued to be involved in the sales of products under the SOLARTECH trade mark in the Middle East. During this period, Mr Charlie Grant was, he explains, the general manager of ACS. Exhibit PBG2, consists of (i) three emails dated 13 December 2006 and 26 March 2007 (from Mr Grant to individuals at Cape East Ltd (“CEL”)) and 27 March 2007 (to Mr Grant from an individual at CEL), together with (ii) three Local Purchase Orders. Two of the Local Purchase Orders are dated 16 January 2007 (in the amount of 25,932.00 and 20,027.[obscured] respectively)

and one is dated 2 September 2006 (in the amount of 120). All mention Mr Grant/ACS, are from CEL based in Abu Dhabi and all contain references to Solartech; the currency in which the transactions took place is identified as “GBP”.

12. Mr Gaskin states that in 2007 Garrard requested that Mr Grant leave ACS and join them, adding that at that time the opponent considered such a move would help grow its SOLARTECH brand and strengthen its relationship with Garrard. He further states that on 7 February 2008, two of Garrard’s directors, John Garrard and Desmond Dunne along with Mr Grant formed a new company in the British Virgin Islands (“BVI”) i.e. the applicant in these proceedings. Exhibit PBG3, consists of a search report confirming that Solartech International Limited was incorporated on 7 February 2008. The applicant was, he states, established to “service operational requirements in accordance with the existing agreement between [the opponent] and [Garrard]”. Mr Gaskin explains that:

“7.3...Based on our previous relationship [with the individuals concerned] we had no reason to believe that the applicant would attempt to change the status quo and seek to acquire rights in our trade mark SOLARTECH. For several years business was conducted as before, with [the opponent’s] trade mark SOLARTECH being used exclusively for [the opponent’s] products...”

13. Exhibit PBG4, consists of what he describes as “a screengrab of the applicant’s website taken in 2018”, which, he notes, lists Mr Grant as the Managing Director. In relation to the filing of the opponent’s now cancelled trade mark registration, Mr Gaskin states:

“7.4...Messrs. Garrard, Dunne and Grant would have been aware of this due to their trading relationship with [the opponent] and did not raise any objections at the time. This is because they knew all rights in the trade mark SOLARTECH belonged exclusively to [the opponent].”

14. In relation to the termination of the licence, Mr Gaskin explains that between 2008 and 2016 the relationship with the applicant had been deteriorating and by the summer of 2016 the opponent had “had enough”. On 28 August 2016, the opponent “terminated its agreement with the applicant with immediate effect due to outstanding debts.” Exhibit PBG5, consists of a letter dated 28 August 2016 (on the opponent’s letterheaded paper) sent by Mr Gaskin to the applicant in the BVI entitled “Manufacturing, Licensing, and Marketing Agreement”. The letter reads as follows:

“Dear Sirs,

We are terminating the above agreement because of outstanding debts, and the insolvency of Solartech International. This termination is immediate and we reserve the right to institute and take legal action for the recovery of outstanding monies of (sic) necessary.”

15. Mr Gaskin adds:

“8.1...As the applicant would no longer be acting as a distributor for [the opponent], it followed that it had no right to continue to use our trade mark SOLARTECH to market and distribute goods.”

16. Mr Gaskin explains that during 2017, the opponent prepared and issued legal proceedings against the applicant in the BVI and United Arab Emirates (“UAE”) for unpaid debts and, in the UAE, against Mr Grant personally, “for issuing bad cheques to [the opponent] in the knowledge that the applicant did not have sufficient funds in its account to pay the cheques.” Such cheques were, states Mr Gaskin, worth “in excess of £110,000.” Exhibit PBG6, consists of a Judgment of the Court of First Instance of Dubai issued on 28 August 2017, in which Mr Grant is described as the “Accused” and the opponent as the “Victim”, and in which the court found in the opponent’s favour.

The applicant's evidence-in-chief

17. This consists of a witness from Charles Joseph Grant; Mr Grant is the applicant's sole director and General Manager. Mr Grant states that the trade mark "was first used in 2006 by an associate company of the Applicant, [Garrard]..." adding:

"5.5. Following the incorporation of the applicant [in 2008] Garrard then transferred ownership of all Garrard's range of products, bearing the mark, as well as the intellectual property rights in or in relation to the same, from Garrard to the applicant."

18. Exhibit CJG2, consists of a "To whom it may concern letter" on the letterheaded paper of Solartech International Limited dated 7 February 2008. The letter, which is signed by Mr Grant (as Director), reads:

"This document serves to advise that the ownership of the Solartech range of products including all formulae and intellectual property has been transferred from Garrard Europe UK Ltd to Solartech International Ltd BVI with immediate effect."

19. Mr Grant states that Garrard first started using the trade mark in 2006. Exhibit CJG3, consists of a "To whom it may concern letter" dated 2 May 2018 from Desmond Dunne, which Mr Grant states sets out "the history of the Garrard products and the adoption of the mark...". I note Mr Dunne's email address is des@solartechuv.com. Inter alia, Mr Dunne states:

"In 1998 I appointed an agent Fibretec BV to market my product throughout mainland Europe..."

It is indisputable that I have pioneered the UV curing products into the oil and gas industry at considerable expense for my company Garrard Europe Ltd.

The relationship with our agent FiberTec BV broke down in 2005 and all contracts with them were terminated in early 2006.

I travelled to Dubai as we had existing end users within the region with a view to appointing a new distributor. After extensive meetings I was introduced to Peter Gaskin of MCT Group who proposed they would market and distribute my material in the Middle East territory through ACS a division of the MCT Group. These meetings led to a formal agreement being drafted in February 2007 between [Garrard] and ACS which included manufacturing under licence with the proviso that they would protect and secure our formulations at all times. Neither this nor the earlier draft agreement in 2006 suggested that ownership in the formulations would be transferred to or owned by MCT or any of its subsidiaries.

In essence the agreement was for them to manufacture under licence and market our products in the Middle East and pay [Garrard] royalties for all products sold.

On termination of our relationship with Fibertec BV in 2006 [Garrard] rebranded our material as SolarTech in June 2006. We notified our customers in 2007 that ownership of the formulations had been transferred to [the applicant].

On the 1st January 2008 Charlie Grant...joined [Garrard] to promote the SolarTech product range worldwide on behalf of [Garrard]. In February 2008 the owners of [Garrard]...together with Charlie Grant formed [the applicant]. All ownership rights of the SolarTech products were transferred on that date from [Garrard] to [the applicant]. An updated agreement with regards to manufacturing and marketing SolarTech products was then put in place in February 2008 between [the applicant] and [the opponent].”

20. At the hearing, the parties agreed that as this document was not in the correct evidential format, it should be treated as hearsay in line with the guidance provided in,

inter alia, Tribunal Practice Notice (“TPN”) 5 of 2009; I shall return to this evidence below.

21. Exhibit CJG4, consists of a copy of a “To whom it may concern letter” dated 22 June 2006 on the letterhead paper of Garrard sent to ACS (for the attention of Alan Pow/Charles Grant) by Mr Dunne, which Mr Grant states was also sent to its other customers. It reads as follows:

“Garrard Europe have been manufacturing UV curing materials within the UK for the last eighteen years. During this time the material has been marketed as FiberTec and FiberTech, these names have been used throughout the Middle East, Far East, Central Europe and America.

As part of our re-organisation the material will now be known as SolarTech throughout the Middle East. SolarTech is a registered trade mark that will ultimately be used in Central Europe and America.

Garrard Europe wishes to reassure all our existing customers that the above product name change will in no way affect the quality and standards we have achieved to date. Our aim is to customise materials for clients specific requirements in the future and to avoid confusion over any other product in the market place...”

(No indication is provided in which jurisdiction “SolarTech is a registered trade mark”).

22. Mr Grant states that in 2006 Garrard created the Solartechuv.com website to promote the Solartech product range, adding that this website is now owned by the applicant. Exhibit CJG5, consists of an invoice dated 16 August 2006, from Easyspace Ltd in Glasgow to Mr Grant at Solartech Intl Ltd in Dubai, in relation to the purchase of the domain names solartechuv.co.uk and .com. Mr Grant adds that the applicant has

used the mark consistently in relation to its products including on their company letterhead, invoices, labels, advertising material, website and correspondence.

23. Mr Grant states that Garrard “granted the opponent a licence to manufacture and sell the applicant’s SOLARTECH products, in certain territories”, with the initial agreement being that “ACS would be the sales and marketing division, to look after the sale, in certain territories, of the applicant’s products bearing the mark.” Exhibits CJG6 and CJG7, consist of (i) a letter from Mr Gaskin at ACS dated 15 April 2006 to Mr Dunne at Garrard reflecting suggested amendments to the “Heads of Agreement” (“HOA”) between Garrard, ACC and the opponent, and (ii) a copy of a modified draft “Manufacturing, Licensing and Marketing Agreement” dated 22 February 2007 between the same parties. Both exhibits refer to the Middle East and Gulf region. Mr Grant states:

“6.4. The arrangements were that SOLARTECH materials would be supplied by Garrard, to ACS, until such time as the opponent’s manufacturing facilities would be established, further to which the opponent would manufacture SOLARTECH products under licence from Garrard. The opponent’s manufacturing facility was commissioned in May 2008.”

24. Initially orders for SOLARTECH materials were, he states, placed with Garrard, by ACS and delivered to ACS for sale to ACS customers. Exhibit CJG8, consists of three invoices dated 3 December 2007 (for £30,731.77), 11 December 2006 (for £3075.75) and one of which appears to be undated and contains no reference to monetary value, issued by Garrard to ACS in Dubai and all of which contain references to SolarTech. Mr Grant states:

“6.6 Garrard formed the Applicant company and formalized the manufacture and licence arrangements with the Opponent, in a Manufacturing, licensing and Marketing Agreement signed with the Opponent on 7 February 2008 (...the “MLMA”) whereby the Applicant granted the Opponent a licence to manufacture

and sell the SOLARTECH products in certain territories, namely; UAE, Saudi Arabia, Turkey, Qatar, Syria, Egypt, Bahrain, Iran, Lebanon, India, South Africa, Kuwait, Jordan, Pakistan, Yemen, Thailand, Oman, Iraq, Azerbaijan, Turkmenistan and Kazakhstan. Appendix B to the MLMA clearly specifies the SOLARTECH products licensed by the Applicant to the Opponent...”

25. Exhibit CJG9, consists of the MLMA to which Mr Grant refers, to which I will return later in this decision. He states that Garrard and then the applicant carried out regular testing of the SOLARTECH products and the costs for such testing were paid for by Garrard and then the applicant. Exhibit CJG10, consists of a range of what Mr Grant describes as “testing reports and approval certificates” provided in support. He adds that labels, designs and advertising materials in relation to the SOLARTECH products were “created and provided by Garrard and/or the applicant to the opponent.” Exhibit CJG11, consists of a range of documents and emails filed in support of this claim.

26. Mr Grant explains that:

“7.1 The relationship between the applicant and the opponent deteriorated over time, due to various breaches committed by the opponent including non-payment of the royalties due to the applicant... as well as the opponent seeking to appoint an agent to represent the SOLARTECH products in South Korea, a territory not covered by the MLMA and attempting to deal directly with the applicant’s client, Samsung Heavy Industries, in Korea.”

27. Exhibits CJG12 and CJG13, consist of email exchanges from August 2016 between Mr Grant and Mr Peter Gaskin of MCT and between Mr Gaskin and climber.lee@samsung.com in September 2016 in this regard. Following the termination of the MLMA by the opponent on 28 August 2016, Mr Grant states that: “...any right the opponent may have had to use the mark, under licence, came to an end.” He explains that following the termination of the MLMA, the opponent owed, and still owes, the applicant £1.06m in unpaid royalties.

28. On 12 January 2017, the applicant filed, in Dubai, a request for arbitration, a copy of which is provided as exhibit CJG14. In relation to the legal action taken by the opponent against him personally (exhibit PBG6 refers), Mr Grant provides as exhibit CJG15, a copy of a decision of the Court of Appeal of Dubai in relation to a hearing held on 15 March 2018, in relation to which he states the first instance decision was “successfully appealed.” Exhibit CJG16 and CJG17, consist of (i) email exchanges from 2013 to 2016 between the parties reflecting their respective views on their financial dealings, and (ii) correspondence initiated by the opponent in December 2017, respectively. The latter is in relation to monies allegedly owed to the opponent by the applicant, in which the opponent reserved its right to apply to the Court for the appointment of a liquidator for the applicant if its demands are not met. Exhibit CJG18, consists of a claim filed by the opponent on 25 February 2018 in Dubai to “invalidate the arbitration clause and the termination of the [MLMA]...”

29. Exhibits CJG19-CJG20, consists of letters sent by or on the applicant’s behalf to the opponent dated 12 October 2016 and 3 November 2016 in relation to, inter alia, the opponent’s then registered trade mark, with exhibit CJG21, consisting of documents relating to this Tribunal’s decision to cancel the trade mark mentioned. Exhibit CJG22, consists of a letter from Mr Grant, dated 2 February 2017, sent to the Ministry of Economy in the UAE in relation to a “recently applied” for application by the opponent for the trade mark Solartech in that jurisdiction. Mr Grant states that the application was “put on hold” and the attempt to register the trade mark failed.

The opponent’s evidence-in-reply

30. This consists of a further statement from Peter Brian Gaskin. I have read this statement, will keep it in mind and, if necessary, refer to it below.

The applicant's request to file further evidence

31. Although the above concludes my summary of the evidence filed during the normal evidence rounds, on the morning of the hearing, the applicant sought leave to file further evidence. The further evidence consisted of a witness statement from Mr Welch, attached to which was a copy of a "Final Award" in an arbitration between the parties to these proceedings under the Dubai International Arbitration Centre Rules 2007, in which the "respondent" (the opponent in these proceedings), is named as Corrotech Construction Chemicals. The document, which is dated 15 October 2018, runs to 53 pages.

32. I heard submissions on this matter as a preliminary issue and, insofar as it was possible given its lateness, submissions from Ms Messenger on the potential relevance of this further evidence. Her initial view was that it was too late and not relevant. However, given the lateness of the request, before reaching a conclusion, I allowed the opponent 14 days from the date of the hearing to provide any further comments it may have in writing. The opponent provided its comments in a letter dated 20 November 2018.

33. In relation to this further evidence, at the hearing, Mr Welch stated:

"Our first submission is, who is the person who is opposing this application? Similarly, as they are not a person in terms of having a right to oppose the application, I would also suggest that they would not have been a person having a right to file an application back in 2011, but that point was not taken. It was a small point, sir, but I wanted to address it in the sense of the Act talks about any person being able to oppose an application. I would suggest, as is determined by this arbiter in this action in the UAE, this CCC is not a legal person in terms of being able to sue and/or be sued, because this is no different from the Sheikh. That is the first point that I would like to make, sir. As I say, it was not to

go into the details of the agreement; I just wanted to make that point about legal personage, if I can say that.”

34. In its letter of 20 November 2018, the opponent stated:

“It is not entirely clear what the Applicant's new arguments are as they have not been properly articulated or documented. However, it is approximately understood by the Opponent that the Applicant's new argument challenges the Opponent's legal standing to bring the Opposition by reference to the Arbitration Decision filed as part of the Late Evidence...”

35. In its letter, the opponent notes that in his email filed with the further evidence, Mr Welch indicated that the decision “has only recently been received”; it further notes that the decision is dated 15 October 2018 i.e. three weeks prior to the date of the hearing. The opponent further states:

“The New Argument has not been properly articulated in *any* pleading and the Opponent has not had appropriate time to respond properly, both in terms of pleading and evidence (which may involve evidence as to UAE law), to this new and undocumented argument. As a result the Opponent considers that the Late Evidence and the New Argument should not be admitted into these proceedings as their inclusion will cause considerable delay and increased costs.”

And:

“While it is noted that the Applicant is attempting to use the Arbitration Decision to support its position that the Opponent is not a person that can be named in proceedings, it is clear that the Tribunal found otherwise...”

From paragraphs 112-115, the Tribunal notes that the arbitration proceedings were filed against Corrotech Construction Chemicals without naming its owner

also as a Respondent. The Tribunal then asks whether a sole establishment can be named as a party in litigation. It clearly concludes that the status of a sole establishment is such that a sole establishment can be named as a party to a lawsuit without naming its owner.”

36. In reaching a conclusion on this point, I am guided by the following which appears in the Tribunal section of the Trade Marks Registry’s Work Manual:

“4.8.5 Additional evidence

A party may ask to file additional evidence. The Tribunal will consider the reasons for the request, the nature of the evidence and the views of the other party. In considering a request to file additional evidence the Tribunal will primarily consider the following (Property Renaissance Ltd v Stanley Dock Hotel & Ors (2016) EWHC 3103 (CH)):

- the materiality of the evidence in question to the issues that the Registrar has to determine;
- the justice and fairness of subjecting the opposite party to the burden of evidence in question at the stage that the registry proceedings have reached, including the reasons why the evidence was not filed earlier;
- whether the admission of the further evidence would prejudice the opposition party in ways that cannot be compensated for in costs (for example excessive delay); and
- the fairness to the applicant of excluding the evidence in question, including prejudice to the applicant if it is unable to rely on such evidence.”

Decision on the request to file further evidence

37. I have considered Mr Welch’s and Ms Messenger’s oral submissions at the hearing and the opponent’s written submissions following the hearing in light of the factors identified above. Having done so, I have concluded that the applicant’s further evidence

should not be admitted into the proceedings. I reached this conclusion for a number of reasons.

38. Firstly, the further evidence relates to the legal position in Dubai, not in the United Kingdom. However, even if the position in that jurisdiction had been relevant (which in my view it is not), as the opponent points out in its letter mentioned above, the Tribunal in that jurisdiction found in the respondent's (i.e. the opponent's) favour when it stated:

“115. Therefore, the Tribunal concludes that these proceedings were correctly filed against Corrotech Construction Chemicals...without also naming its co-owner as a co-respondent.”

39. Secondly, there is no evidence to suggest that the opponent is not entitled to bring these proceedings in the United Kingdom. Despite Mr Welch's submission above, the acceptance by the Trade Marks Registry of the opponent's now cancelled trade mark in the same name points to the opposite conclusion.

40. Thirdly, these proceedings have been ongoing since October 2017 and the parties have been known to each other from, at least, as early as 2006. In this respect, I note that in its Notice of opposition, the opponent is identified as “Corrotech Construction Chemicals, P.O. Box 8344, Dubai Investments Park 1, Community 598, Street 36, 698-1214, Dubai, AE”, and in his witness statement, Mr Grant refers to the opponent in much the same manner. However, despite the applicant's state of knowledge, neither when filing its counterstatement or at any other point in its evidence or written submissions or even (given that the “Final Award” is dated 15 October 2018), in its skeleton argument filed on 2 November 2018 (i.e. four days prior to the hearing), did the applicant take any point in relation to the legal standing of the opponent to bring these proceedings. Although as I indicated at the hearing if I was minded to allow the further evidence to be admitted I would allow the opponent an opportunity to reply, to do so in the circumstances described is, in my view, unnecessary.

41. Finally, even if on appeal I am found to be wrong in the above conclusions, as per the decision of the Appointed Person in *Asia Five Eight LLC v Hing Kwong Yam* (BL O/004/11), it would, in my view, be open to the opponent to regularise matters by

seeking leave to join, for example, Sheikh Saeed Mohamad Bin Hasher Al Maktoum to the proceedings as a joint opponent.

DECISION

42. The opposition is based upon sections 5(4)(a) and 3(6) of the Act, which read as follows:

“3. - (1) The following shall not be registered-

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

And:

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

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

(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. “

The opposition based upon section 5(4)(a) of the Act

43. 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).”

44. At the hearing, the following exchange took place:

MS MESSENGER: “In respect of the passing off aspect of the case, I think I can address this relatively quickly. As you will have appreciated, my client accepts that it has not made any sales of goods under and by reference to the brand name SOLARTECH in the United Kingdom. Its case in respect of earlier rights and passing off is that any use which has been made of the mark in respect of goods in the United Kingdom and any goodwill that has accrued in that business, so, for example, any trade that was carried on by the applicant using that brand name in the United Kingdom, because it was the original rights holder and because it authorised the applicant to make use of that name, any goodwill that accrued in that business accrued to its benefit. Therefore, if there was an earlier rights holder in the United Kingdom it was the opponent and not the applicant that had those earlier rights. I think that is as much as I can really say on the passing off aspect of the case.”

HEARING OFFICER: “I understand the submission, but as far as I can tell, and no doubt you will correct me, I cannot find any evidence throughout either of the witness statements or the exhibits of any tangible use in the UK. There are no

turnover figures. There are no promotion figures. There is not anything. Am I wrong on that?"

MS MESSENGER: "No. That is correct."

HEARING OFFICER: "Even if I was with you that your client coined the mark and use by the applicant accrued to it, there is no evidence that there has been any trade in the UK. I cannot see how the passing off action gets off the ground."

MS MESSENGER: "I have to accept that there is no evidence of that in the papers before you. That is as much as I can say on that."

45. Ms Messenger accepts that the opponent's business has not conducted a trade in the United Kingdom under the unregistered trade marks relied upon. As there is no evidence that the applicant's business has traded in the United Kingdom under these unregistered trade marks either, there is no evidence that any goodwill has been created in the United Kingdom which might accrue to either party. Without goodwill the claim to passing-off falls at the first hurdle and is dismissed accordingly.

The opposition based upon section 3(6) of the Act

46. The law in relation to section 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), as follows:

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

131. First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see Case 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)."

47. It is, I think, fair to say that at the hearing both parties accepted that the evidence provided was contradictory on key points and that no "killer" piece of evidence had been provided which demonstrates which party coined the SOLARTECH trade mark. In those circumstances, I begin by reminding myself that bad faith is a serious allegation which must be distinctly proved and, if the opponent is to succeed, it is not enough for it to prove facts which are also consistent with good faith. In reaching a conclusion, I must ascertain what the applicant knew and its intention when it filed its application in June 2017.

48. A review of the evidence filed by both parties suggests that the key events leading up to this dispute are as follows:

1998 – Garrard appoints Fibretec BV to market its products throughout mainland Europe (exhibit CJG3);

Early 2006 – all contracts with Fibretec BV are terminated (CJG3);

15 April 2006 – Mr Gaskin of ACS writes to Mr Dunne at Garrard with a revised HOA between it, the opponent and Garrard, indicating at point 8 of the HOA, that by “no later than May 1 2006”, ACS can “start to market” (CJG6). There is no mention of SOLARTECH in the HOA;

22 June 2006 – Garrard advises customers that the material previously known as FiberTec and FiberTech will now be known as SolarTech throughout the Middle East (CJG4);

16 August 2006 – the solartechuv.co.uk and .com domain names are registered by Mr Grant/the applicant (CJG5);

22 February 2007 – a “Manufacturing, Licensing and Marketing Agreement” (“MLMA”) is signed between Garrard, ACC and the opponent (CJG7); there is no mention of SOLARTECH in the MLMA;

1 January 2008 – Mr Grant joins Garrard from ACS (CJG3);

7 February 2008 – the applicant is incorporated with, inter alia, Mr Grant and Mr Dunne as directors (PBG3);

7 February 2008 – applicant sends a “to whom it may concern” letter indicating that the ownership of the Solartech range of products including all formulae and intellectual property has been transferred from Garrard Europe UK Ltd to it with immediate effect (CJG2);

7 February 2008 – a further MLMA between the applicant and opponent is signed (CJG9). The purpose of the Agreement is described as:

“Whereas [the applicant] wishes to appoint [the opponent] as its partner for manufacturing and marketing for the Middle East and associated territories...its range of U.V. and heat curing SMC, as well as its associated resin based products, using formula’s provided by [the applicant]...and [the opponent] have accepted.”

49. A page provided with the MLMA and headed “Appendix B”, includes under the heading “LAMINATES”, references to “SOLARTECH PE 55”, “SOLARTECH VE 55” and “SOLARTECH (sic) PW55” and, under the heading, “COATINGS”, references to “SOLARSEAL”, “SOLARCOAT”, “SOLARCOAT PW” and “SOLARFILL”. At the hearing, Ms Messenger stated:

“There has been some suggestion by the applicant that they rely on Appendix B to this document, which is the last page, at page 54. As I hope you will have appreciated from my skeleton argument and from the evidence, my client simply does not accept that this was part of the original document.

There is no mention of Appendix B anywhere in the body of the document, unlike Appendix A, which is referenced. Appendix A is the territories that it applies to. So, there is no mention of this document anywhere. Apparently there is a random page number 7 at the bottom of that page, which does not correlate either with where it comes in this document or the fact that there are no page numbers on any other pages of this document. That simply has not been explained by the applicant. So, for all the reasons set out by Mr. Gaskin in his statement, who says that this simply was not part of that agreement, in my submission, you simply cannot put any weight on this page. It is not apparent where it comes from. It certainly is not part of the original MLMA and therefore cannot be relied on...”

50. In response to a question from me at the hearing regarding the above, Mr Welch stated:

“All I can say, sir, is it was as provided to me. Obviously, I get instructions out of the UAE. I would be the first to accept that if it is in any way spurious, if you feel as though it is in any way spurious, you should disregard it. I cannot say it is spurious or otherwise. That is simply the material that I am provided with for and on behalf of the applicant in these proceedings...”

51. As the MLMA makes no mention of either Appendix B or SOLARTECH and as Mr Welch was unable to assist as to its provenance, I agree with Ms Messenger that it is far more likely than not that Appendix B was never part of the original agreement and it is on that basis I intend to proceed. Returning to the chronology:

May 2008 - opponent commissions a production facility in Dubai to manufacture the goods;

18 December 2011 – opponent files a trade mark application in the UK, i.e. no. 2604903 for SolarTech and device for goods in class 17;

28 August 2016 – opponent writes to applicant terminating the agreement (PBG5);

12 October 2016 – applicant writes to the opponent regarding trade mark registration no. 2604903 (CJG19) stating, inter alia:

“The “SolarTech” brand and logo is a bespoke design created specifically for, and developed for use by [the applicant] which has operated its business using the “SolarTech” name, brand and logo, and entitled to any associated trademarks, copyright, design image or similar rights.

We demand that [the opponent] immediately cease and desist from misrepresenting itself, in any way whatsoever, as the owner of the SolarTech brand and logo.”

3 November 2016 – inter alia, the applicant accepts the termination of the agreement (CJG20);

23 January 2017 – applicant applies to cancel the opponent’s trade mark no. 2604903;

26 June 2017 – decision to cancel trade mark no. 2604903 is issued – appeal period expires on 24 July 2017 (CJG21);

26 June 2017 – applicant files the trade mark the subject of these proceedings;

8 August 2017 – trade mark no. 2604903 recorded as cancelled.

52. As mentioned earlier, Mr Dunne’s evidence provided as exhibit CJG3 to Mr Grant’s statement is hearsay. The relevant part of the Tribunal Work Manual in this regard reads as follows:

“4.8.10 Hearsay

Hearsay evidence is oral or written statements made by someone who is not a witness in the case but which the Court or Tribunal is asked to accept as evidence for the truth of what is stated.

If a witness statement, affidavit or statutory declaration contains hearsay evidence, it should be filed in sufficient time and it should contain sufficient particulars to enable the other party or parties to deal with the matters arising out of its containing such evidence. If the provision of further particulars of or relating

to the evidence is reasonable and practicable in the circumstances for that purpose, they should be given on request.

It is also to be borne in mind that in estimating the weight (if any) to be given to hearsay evidence in proceedings before the Tribunal, the Tribunal and those acting on its behalf shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence. In estimating the weight, if any, to be given to hearsay evidence attention is drawn to the provisions of section 4 of the Civil Evidence Act 1995, which states:-

4.—(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following:

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Parties to proceedings have on occasions solicited letters from third parties for the purposes of the proceedings, rather than getting the third party to file evidence by witness statement, affidavit or statutory declaration. These are often headed 'to whom it may concern', or, in some cases, are addressed directly to the Tribunal. Such letters will be treated as hearsay evidence. Parties are encouraged to present such evidence in the form of a witness statement rather than in the form of a letter if they wish to rely on it. A signatory to a witness statement, who can be cross-examined, is likely to exercise greater care and precision than a signatory to a letter."

53. Mr Dunne's letter is dated 2 May 2018 and has, it appears, been solicited for the purposes of these proceedings (point (b) above); consequently, I see no reason why he could not have filed his evidence in the correct evidential format accompanied by a statement of truth (point (a)). The statement does not include multiple hearsay (point (c)) and there is nothing to suggest that the statement is an edited account (point (e)). As to points (d) and (f), it is not clear if Mr Dunne is still a director of Garrard and/or the applicant. However, even if he is not, the presence of the reference to solartechuv.com. in his email address in exhibit CJG3, suggests he has an ongoing relationship with the applicant.

54. The part of Mr Dunne's evidence which goes to his background in the industry concerned, Garrard's previous business relationship with Fibretec BV, the incorporation of the applicant in February 2008 and Mr Grant's move from ACC to the applicant in January of that year is uncontentious. However, his comments regarding the creation of the SOLARTECH trade mark in June 2006 and all rights to the trade mark being transferred from Garrard to the applicant are contested; I shall bear this in mind in reaching a conclusion.

55. The evidence shows that following the breakdown of the relationship between Garrard and Fibretec BV and from as early as April 2006, the opponent and Garrard were in discussions with a view to Garrard initially appointing ACS/the opponent as its

distributor in the Middle East and Gulf region and later for the opponent to manufacture the goods under licence. The HOA indicates that Garrard will resolve the position with Fibretec and allow ACS “to start to market no later than May 1st 2006.” There is, I note, no mention of SOLARTECH in the HOA. As far as I can tell, the first customer facing mention of SOLARTECH in the evidence provided, appears in Garrard’s “to whom it may concern letter” of 22 June 2006, signed by Mr Dunne. As to the creation of the domain names solartechuv.co.uk and .com, the invoice dated 16 August 2006 addressed to Mr Grant at “Solartech Intl Ltd” at an address in Dubai appears odd, given that at that time he was working for ACS and the applicant had yet to be incorporated. However, at the hearing, Ms Messenger made it clear that the opponent was “not suggesting that this invoice is fraudulent.”

56. Solartech is mentioned in the Purchase Orders placed by CEL on 2 September 2006 with ACC (whilst Mr Grant was in the employ of ACS). On 22 February 2007, a modified MLMA was entered into between the opponent/ACS and Garrard; again there is no mention in this agreement of SOLARTECH. Insofar as exhibit PGB1 to Mr Gaskin’s evidence is concerned, i.e. the screengrabs showing files for the design of the SolarTech trade mark dated September and December 2007, given, inter alia, that the business relationship between the parties had existed from as early as April of the previous year, the fact that these designs appeared in late 2007 on the opponent’s computer system does not, in my view, assist the opponent.

57. Having left ACS in January of 2008 to join Garrard, on 7 February 2008, Mr Grant along with, inter alia, Mr Dunne incorporated the applicant and on the same date the applicant wrote to its customers indicating that the ownership of the Solartech products “including all intellectual property” had been transferred from Garrard to the applicant (although there is no evidence, such as an assignment document, provided in support). Also on 7 February 2008, the parties entered into the MLMA which, for the reasons, indicated in paragraph 51 above, I am satisfied did not mention SOLARTECH. The testing reports and approval certificates provided as exhibit CJG10, all appear to refer to the applicant or Garrard and the documents provided as exhibit CJG11 appear to me,

for the most part, to suggest that they were created by Garrard or the applicant and provided to the opponent.

58. As I mentioned above, in reaching a conclusion, I must ascertain what the applicant knew when it filed its application on 26 June 2017. In doing so, I remind myself that neither the HOA or the MLMA's included any reference to SOLARTECH and that prior to the coining of this name, Garrard's products were branded FibreTec and FibreTech, i.e. the name of its previous distributor. At the hearing, Ms Messenger placed some reliance on this point, arguing that it strongly suggested that when marketing its products, Garrard relied on trade marks owned by its distributors rather than those it coined itself. While that is an attractive argument, the fact that Garrard relied upon the name of its previous distributor in its dealings with Fibretec BV, does not, of course, mean that will always be the case.

59. The above chronology shows that by the date of the application, the opponent had terminated the MLMA, the applicant had written to the opponent demanding, inter alia, that it stopped using the "SolarTech brand and logo" (allowing it seven days to, inter alia, correct the ownership details of trade mark registration no. 2604903), accepted the opponent's decision to terminate the MLMA, applied to cancel the opponent's trade mark no. 2604903 and, it is possible, (given they are both dated 26 June 2017), been advised by this Tribunal that its application to cancel the opponent's trade mark mentioned above had, subject to any appeal, been successful.

60. The case law makes it clear that bad faith is a serious allegation that needs to be proved by the filing of cogent evidence. As I mentioned earlier, the parties accept, and I agree, the evidence is often contradictory and there is no "killer" piece of evidence which indicates who coined the SOLARTECH trade mark. At the hearing, Ms Messenger argued that even if I was not satisfied the opponent had coined the SOLARTECH trade mark, it had, she stated:

“...a shared right in the brand name and that the applicant understood the opponent had those rights, and believed that those rights extended to the UK.”

61. In the context of the factual matrix described above, what then was the applicant's intention in filing the application for the trade mark the subject of these proceedings?

62. Considered from the perspective of reasonable and experienced people in business, it is likely to be regarded as one of a number of prudent commercial steps taken by the applicant to protect in the UK a trade mark that it considered its predecessors in title, i.e. Garrard (a company based in the UK) had coined as early as June 2006, and which it considered it had allowed the opponent to use as part of the business relationship that had existed between them until the breakdown of that relationship in August 2016. On the basis of the totality of the evidence provided, the applicant's filing of the application is, in my view, equally consistent with good faith on its part and, as a consequence, the opposition based upon section 3(6) cannot succeed and is dismissed accordingly.

Overall conclusion

63. The opposition has failed on both grounds and, subject to any successful appeal, the application will proceed to registration.

Costs

64. As the applicant has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are governed by Annex A of TPN 2 of 2016. At the hearing, the following exchange took place:

MS MESSENGER: “Sir, I think it is costs on the scale. I do not think there is any reason on either party's side that there should be costs off the scale.”

HEARING OFFICER: “So, following the event and on the scale?”

MS MESSENGER: “Yes, sir”.

HEARING OFFICER: “Mr. Welch, I think in various bits of correspondence you mentioned that you thought it was a vexatious opposition. Is your view still the same?”

MR. WELCH: “I am afraid it is, sir, yes. I think the very fact that one pillar of the arch fell away instantaneously gives you an indication of that. So, I think it should be off the scale. I do not think it needs to be overly punitive, but at the end of the day I think there has to be something which is just off the normal scale, sir.”

65. On the basis of the evidence provided, the ground of opposition based upon section 5(4)(a) of the Act had very little prospect of success. However, I am not convinced that its inclusion in these proceedings would have affected (at least to any material extent), the evidence the applicant elected to file. In addition, Ms Messenger’s sensible approach not to pursue this ground with any vigour at the hearing, saved time for all concerned.

66. However, even if I am wrong and the applicant was put to additional time and effort by its inclusion, it ought, in my view, have been to no greater extent than the additional time and effort the opponent was put to in dealing with the applicant’s extremely late and ultimately failed attempt to file further evidence. Taking a “rough and ready” view of the matter, I think the two issues mentioned are likely to cancel each other out.

67. As to the ground based upon section 3(6) of the Act, although the opponent has failed, as I hope my decision makes clear, given the nature of the evidence filed, this has not been as easy matter for me to decide. That being the case, I do not agree with the applicant that the opposition on this ground was “frivolous and vexatious”.

68. Bearing the above conclusions in mind, having applied the guidance in the TPN, I award costs to the applicant, on the scale, on the following basis:

Reviewing the Notice of Opposition and preparing a counterstatement:	£400
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Preparing evidence and considering and commenting on the other side's evidence (including written submissions filed during the evidence rounds):	£900
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Preparing for and attending a hearing	£600
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Total:	£1900
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69. I order Corrotech Construction Chemicals to pay to Solartech International Ltd the sum of **£1900**. 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 3rd day of January 2019

C J BOWEN
For the Registrar