

O-079-11

**TRADE MARKS ACT 1994**

**IN THE MATTER OF:**

**1) OPPOSITION 94782 BY VINEYARD CHURCHES UK & IRELAND  
AGAINST APPLICATION 2421520 BY THE INCORPORATED TRUSTEES  
OF GOD'S VINEYARD MINISTRIES TO REGISTER THE SERIES OF  
TRADE MARKS:**



**AND**

**2) REVOCATION APPLICATION 83452 BY THE INCORPORATED  
TRUSTEES OF GOD'S VINEYARD MINISTRIES IN RESPECT OF  
COLLECTIVE TRADE MARK REGISTRATION 2030852 IN THE NAME OF  
VINEYARD CHURCHES UK & IRELAND IN RESPECT OF THE MARK:**

**VINEYARD**

## THE BACKGROUND AND THE PLEADINGS

1) Although not formally consolidated, these two sets of proceedings involve The Incorporated Trustees of God's Vineyard Ministries ("GVM") on the one hand and Vineyard Churches UK & Ireland<sup>1</sup> ("VCUK") on the other. GVM applied for application 2421520 on 10 May 2006. The three trade marks (it is a series application) and the goods GVM seeks to register are set out below:



**Class 09:** Pre-recorded media; pre-recorded compact discs, audio tapes and cassettes, video tapes and cassettes and DVDs; sound recordings; video recordings.

**Class 16:** Printed publications; books; magazines; journals; newsletters; periodicals; tracts, leaflets.

**Class 35:** Charitable services, namely organising and conducting volunteer programmes and community service projects.

**Class 36:** Fundraising for charitable purposes.

**Class 41:** Education services; education services relating to religion; provision of education and training; arranging and conducting conferences, seminars, and vocational courses; entertainment services; organisation of concerts, events and performances.

**Class 43:** Provision of food and drink; provision of temporary accommodation.

**Class 44:** Medical information, advice and counselling services.

**Class 45:** Organisation of religious meetings and services; ministerial services; ministerial counselling; pastoral counselling; counselling relating to spiritual direction; personal or spiritual mentoring services.

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<sup>1</sup> When both sets of proceedings commenced its name was Vineyard Churches UK, the name it now has resulted from a change of company name.

2) The above application is opposed by VCUK under sections 5(2)(b) & 5(4)(a) of the Trade Marks Act 1994 ("the Act"). Under section 5(2)(b) of the Act VCUK relies on three earlier trade marks of which it is the proprietor, namely:

- i) Collective trade mark registration 2030852 in classes 9, 16, 25, 41 & 42 for the word VINEYARD
- ii) Trade mark registration 2246969 in classes 9, 16, 25, 41 & 42 for the series of two marks:



- iii) Trade mark registration 2247004 in classes 9, 16, 25, 41 & 42 for the mark:



3) All three of the earlier marks are registered in relation to the following goods and services:

**Class 09:** Apparatus for recording, transmission, amplification or reproduction of sounds and images; audio apparatus; radio apparatus; video and audio tape recorders and players; video and audio tape decks; radio cassette players; record players; compact disc players; parts and fittings for all the aforesaid goods; records, compact discs, audio tapes and cassettes, video tapes and cassettes; all relating to religion, philosophy and theology.

**Class 16:** Printed matter; books; magazines; all relating to religion, philosophy and theology; greeting cards; albums; calendars; gift tags; wrapping paper.

**Class 25:** Articles of outerclothing including footwear and headgear.

**Class 41:** Provision of education and training, all relating to religion, philosophy and theology; provision of education and training all relating to Christian theology, church practices, church planning, administration, counselling, leadership and management; arranging and conducting conferences, seminars and vocational courses; all relating to religion, philosophy and theology.

**Class 42:** Religious services; counselling services.

4) Under section 5(4)(a) of the Act VCUK relies on the use that has been made of the sign VINEYARD since the early 1990s, such use being made by itself or by other Vineyard churches which it regulates.

5) GVM filed a counterstatement denying the above grounds and putting VCUK to proof of use in respect of its earlier trade marks<sup>2</sup> and its reputation/goodwill associated with the sign VINEYARD.

6) GVM also made an application for the revocation of VCUK's collective trade mark 2030852 for the word VINEYARD. Its application was made on 7 April 2009. The grounds of revocation are under paragraphs 13(a), (b) & (c)(i) of schedule 1 of the Act. I will return to the grounds for revocation in more detail later but they relate, in summary to: i) the failure to use the mark with an indication that it is a collective mark (paragraphs 13(a) & (b)), ii) that the mark has been used by non-authorized users (paragraph 13(c)(i)), and iii) that following an assignment the proprietor is (or more correctly "was") not the proprietor as set out in the regulations governing the use of the mark (paragraph 13(b)).

7) VCUK filed a counterstatement to the revocation in which it admitted some of the factual content of the application concerning the history of the registered proprietor and the content of the regulations governing the use of the collective mark, but denying the grounds on which the application was made.

8) Both sides filed evidence in both sets of proceedings. The matters then came to be heard before me on 15 October 2010. At the hearing VCUK were represented by Ms Anna Edwards-Stuart, of Counsel, instructed by Forrester Ketley & Co. GVM were represented by Mr Andrew Norris, of Counsel, instructed by Swindell & Pearson.

## **THE EVIDENCE**

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<sup>2</sup> It is uncontested that all three of VCUK's earlier marks are subject to the proof of use provisions set in section 6A of the Act (section 6A was added to the Act by virtue of the Trade Marks (Proof of Use, etc.) Regulations 2004 (SI 2004/946) which came into force on 5th May 2004).

### **Evidence in the opposition proceedings**

9) Rather than provide a piece-by-piece evidence summary, I will summarise the evidence by reference to the primary aspects to which it relates. Certain parts of the evidence will be returned to, and drawn from, when commenting on the substantive issues. I will begin by identifying the persons who have given evidence.

#### **On behalf of VCUK evidence comes from:**

i) Mr Peter Sturrock. Mr Sturrock describes himself as General Counsel for VCUK. He is also a member of Council and a Trustee. He primarily sets out the historical background of VCUK, the use that has been made of VCUK's various marks/signs, including detailed statements as to the goods and services in respect of such use. He also gives evidence relating to the protection of the VINEYARD name against third parties and evidence relating to GVM and why VCUK is concerned about GVM's trade mark application.

#### **On behalf of GVM evidence comes from:**

ii) Mr Ezelkiel Olusegun Alawale, the Senior Pastor of GVM. He provides evidence relating to the word VINEYARD and that it is a longstanding word used both in the bible and by Christians throughout the world. He provides evidence from the official file in respect of VCUK's collective trade mark and refers to its potential for revocation. He gives some (albeit limited) evidence about GVM and its church in Nottingham. The rest of his evidence is, in the main, a critique of Mr Sturrock's evidence or is more akin to argument/submission.

iii) Mr Paul Epton, the Pastor of Wirral Christian Centre, an Elim Pentecostal Church. He gives evidence relating to the use of the word VINEYARD as a biblical reference, evidence relating to the average consumers of religious services and evidence about the types of names commonly used by churches.

iv) Mr Olusegun Olumayokun Emmanuel, who is part of GVM's congregation. He gives evidence relating to his first attendance at GVM and that he has never heard of any other ministry called Vineyard.

v) Mr Olufemi Obudore, who is also part of GVM's congregation. He gives evidence relating to his first attendance at GVM and that prior to this he had not known of, or had encountered, VCUK's or GVM's churches.

#### **On behalf of VCUK, reply evidence comes from:**

vi) Mr Sturrock, who responds to GVM's evidence and gives his own views on the biblical significance of the word vineyard. He provides further information regarding the uses made by VCUK and provides archive prints for some of the information he gave in his first witness statement.

vii) Mr Stephen Barber, Mr Richard Williams, Mr Jamie Watters, Mr Jeremy Cook, Mr Neil Woodward and Mr David Flowers, all of whom are Pastors of particular Vineyard churches. Their evidence is of a similar nature (I will come back to the relevance of such similarity later) setting out the dates from when they (and their churches) first used the Vineyard name, the method by which such use was permitted, and the type of use undertaken.

10) In terms of the main issues<sup>3</sup> that the above covers, I break the evidence down thus:

### **The history of VCUK and its use of the Vineyard name**

11) Mr Sturrock's evidence is that the origins of VCUK trace to the US, dating back to 1974 when the first Vineyard church was established in Los Angeles. He says that VCUK (or more accurately its predecessors in title) was established in 1987 when various UK Vineyard churches founded the association. There have been a number of assignments (of the trade marks) and changes of name over the years reflecting what are, essentially, differing forms of the association. There are over 90 Vineyard churches in the UK. This, though, seems to be in the present tense - Mr Sturrock's evidence was given in July 2008. The churches are spread throughout the UK, although there appears to be a higher proliferation in central/southern England. Around 10 new churches are "planted" each year. A list of churches and the dates of their affiliations are provided – many of these date back to around 1999 with others coming in the subsequent years. I note that Messrs Barber, Williams, Watters, Cook, Woodward and Flowers, all of whom are Pastors of various Vineyard churches, have led a Vineyard church since at least 1999 (Mr Watters since 1998).

12) The way that VCUK operates is that individual Pastors of a church are authorised to use the VINEYARD name (specifically the collective trade mark) by way of membership of VCUK. The Pastor then leads a particular church which becomes known as "the xxxx Vineyard" or "xxxx Vineyard church" with "xxxx" normally representing a name of geographical significance. For example, Messrs Barber, Williams, Watters, Cook, Woodward and Flowers are the leaders of Leicester City Vineyard, Riverside Vineyard Church, Glasgow Westend Vineyard, Hull Vineyard, SW London Vineyard and Wharfedale Vineyard respectively. The by-laws of VCUK (Mr Sturrock provides a copy dated 14 September 2006) refer to this – it is membership of VCUK that enables the Pastor to describe their

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<sup>3</sup> The evidence covers more than just these issues, but a lot is just submission (which I bear in mind but will not summarise here) or evidence which pads out the main issues without adding to the primary facts. All the evidence has been considered and borne in mind.

church as a Vineyard church. The by-laws also stipulate that membership can be withdrawn and the right to use the Vineyard name as part of the church's name revoked. Reference is also made in the by-laws to the VINEYARD name being a collective trade mark of VCUK. Mr Sturrock also provides copies of letters between VCUK and some of its Pastors from which it is clear that Pastors are advised that their right to the use the VINEYARD name stems from membership of VCUK – reference is also made in these letters to VCUK's collective trade mark.

13) Mr Sturrock says that the marks are used by VCUK and by its numerous individual churches. He provides prints from the websites of individual churches showing such use. He notes that the prints are current but that the goods and services identified would have been provided in the relevant proof of use period. The prints are from the web-pages of: Vineyard Network Church (a network of Vineyard churches based in and around Birmingham), Vale of Aylesbury Vineyard, SW London Vineyard, Trent Vineyard, Causeway Coast Vineyard, Belfast City Vineyard, Milton Keynes Vineyard & Aberdeen Vineyard. The pages give various pieces of information about the particular churches, the church services it runs, and various events that they offer. They include details of charitable activities, community work, social events, training (e.g. an Alpha course for newcomers), some make reference to food based events such as newcomers lunches, a big breakfast, refreshments, a cafe bar and the Vineyard cafe (run by one of the churches on the first Sunday of each month offering a free continental breakfast and live music). Web-pages from VCUK's own website are also provided setting out its background, aims etc. The web-page has a facility to search for an affiliated church. It includes information about its function namely that it leads and governs its churches and provides pastoral care and counsel. The web-pages indicate that those who are not under its authority (for example if a pastor does not take pastoral counsel from VCUK) will be asked to change the name of their church by removing the word VINEYARD.

14) To meet the concern expressed by Mr Alawale in his evidence (to the effect that that the prints are from after the material date), Mr Sturrock, in reply, provided some archive prints. There are less than originally provided and they have less by way of detail. The archive web-pages are: A 2003 web-page for Trent Vineyard (the web-page also includes VCUK's 2247004 trade mark); a 2001 & 2003 web-page for Vale of Aylesbury Vineyard; a web-page from 2004 for VCUK itself.

### **The identifying signs used by VCUK and the various Vineyard Churches**

15) VCUK owns two different trade mark registrations (Vineyard & device and Vineyard Churches UK & device) and a collective mark for the word VINEYARD. Messrs Barber, Williams, Watters, Cook, Woodward and Flowers identify these marks and say that as well as using the VINEYARD collective marks they also use the two trade marks. The primary use of the VINEYARD name is in the

context of the name of a particular church (as per paragraph 12 above), however, from the accompanying material supplied with their evidence, and also with Mr Sturrock's evidence, it is clear that other forms of use are/have been made e.g. use of the "vineyard churches uk" mark (sometimes with a reference to "affiliation"), use of the "vineyard" & device trade mark (often with the local geographical name preceding it or constructed into it). I also note that some of the churches also use their own individual form of accompanying stylisation e.g. the Vineyard Network Church uses a three-lined swoosh as part of its logo, the Vale of Aylesbury Vineyard has its own logo alongside the words, and Southend Vineyard uses a stylised SV device mark.

16) Mr Sturrock provides a copy of a CD (and some printed pages taken from it) that is sent to its Pastors explaining how to use VCUK's registered marks. It seems from this that the Pastors have some flexibility and may choose from various options in terms of how and what signs to use. The pages are copyright dated in the year 2000.

### **The goods and services in connection with which the Vineyard name is used**

17) VCUK is a religious body and its primary activities are those associated with such bodies. However, Mr Sturrock provides evidence relating to the use of its various marks on the goods and services covered by its specifications. I will break this down, as Mr Sturrock does, class by class:

#### Class 9

18) Use of the Vineyard marks in class 9 is said to have been made in relation to recordings of church services, conferences and other events and, also, in relation to training material. Prints are provided of what are said to be the front pages of CDs and audio tapes produced by either individual Vineyard churches or by VCUK itself as a result of national conferences etc. Some of these have been produced by "Vineyard Direct". They date, in the main, from 2001-2007. No information as to the number of copies supplied is provided. The signs used include the church name (SW London Vineyard with a logo as per 2246969 and, also, Trent Vineyard), the words Vineyard Churches UK and the device as per 2247004. Following a comment from Mr Alawale, Mr Sturrock advises that Vineyard Direct is simply a title for part of VCUK's operation and is not a separate body.

19) Also referred to are recordings produced by Vineyard Records UK who, Mr Sturrock says, use the word VINEYARD with VCUK's permission. This evidence consists of:

- i) A CD from 2007 entitled "welcome to the vineyard", underneath which is the text "affiliated to vineyard churches uk (as per registration 2247004);

ii) A 2001 CD entitled “surrender” which (in handwritten form) is said to be a “worldwide distribution – a best seller 2001” – the trade mark used here is “vineyard v music” (stylised). I note that in small print it is stated that “vineyard is a registered collective mark of Vineyard Churches (UK)”.

iii) A CD from 2001 entitled “doing the stuff”, again with the “vineyard v music” sign;

iv) A CD said to be a worldwide best seller (1998-2001) entitled “come now is the time”, again with the “vineyard v music” sign;

v) A CD from 2002 entitled “holy”, again with the “vineyard v music” sign;

vi) A CD from 2004 entitled “winds of worship”; the words “live vineyard worship” are shown here.

20) In Exhibit PFMS7, information from the website of Vineyard Records UK is provided, explaining that it exists to provide worship resources for the Vineyard movement.

21) Mr Alawale provides evidence showing that Vineyard Music Ltd and Vineyard Music Group Inc own their own trade marks and that such bodies are different legal entities to VCUK. He does not believe that VCUK can rely on such use.

#### Class 16

22) Use of the Vineyard marks is said to have been made on a wide variety of printed matter. Most of that listed relates to printed communications issued by it and its churches as well as use on business stationery etc. A reference is made to gift wrap used in shopping malls such as Centre Court at Wimbledon and reference is made to printed teaching material akin to that referred to in class 9. Supporting material is provided in Exhibit PFMS8, most of which consists of flyers, newsletters, stationery etc. There is also “The vineyard magazine” entitled “EQUIPPED” which is dated October 2001.

#### Class 25

23) Mr Sturrock says that the VINEYARD marks have been used on t-shirts, sweaters, caps and shirts. Such use is said to have been made by individual churches and by Vineyard Records/Music. Some photographic examples are provided. He acknowledges that they are not dated but he says that they would have been available between 2001 and 2006. He says that they are the sorts of promotional items which are produced from time to time even if not on a regular basis. One photo is of a bomber jacket with the words “vineyard v music”

(stylised), a t-shirt with a similar logo, and a t-shirt with the words “hull vineyard church” on the front.

#### Classes 41, 42 & 45

24) Mr Sturrock says that these are all inter-related as its churches provide religious services and counselling as well as education and training in religion, philosophy and theology. VCUK itself will also run conferences etc. for its pastors. Reference is made to its leaders’ conferences, regional summer camps and events run by local and regional groups of its churches. Mr Sturrock also refers to events that include an element of worship and instruction/tuition run jointly with Vineyard Records. He says that VCUK runs around 30 events per year. Exhibit PFMS10 includes:

i) A flyer for “revive” (June 2008) a weekend event for biblical teaching run by Vineyard churches “in the North”. The event will also have a cafe bar, a burger van and other activities. The 2247004 mark is used.

ii) A flyer from Trent Vineyard Nottingham for “a cause to live”, an evening conference relating to religion (no date is given).

iii) A flyer for “Doing the Stuff 2005”, an event organised “In association with: “vineyard v music” [stylised] and “vineyard churches uk” [as per 2247004]”. This is a three day event for religious teaching and worship.

iv) A flyer for an “Area Women’s Day” called “Living the Life” hosted by West Suffolk Vineyard church on 5th May 2007 for worship and ministry including a number of seminars.

v) A flyer for an area (East Anglia & Kent) leaders’ day (no year given), a Prayer co-ordinators day (Feb 2008), and a leaders’ day (no year given).

vi) A flyer for “a day for women” run by SW London Vineyard (with a device as per 2246969) in October 2005. It is described as a day of worship, ministry and teaching.

vii) A flyer for a conference called “The Father Loves You” hosted by Wharfedale Vineyard and North Leeds Vineyard. No date details are given.

viii) A flyer and documentation for a conference called “Getting Free & Staying Free” run by SW London Vineyard (May 2004) relating to the handling of addiction, developing a relationship with Jesus and adopting spiritual disciplines in life. The 2246969 mark is used.

ix) A flyer and documentation for an event called “FREE INDEED a day for women” that took place on 28 October 2006. It was organised by SW London Vineyard. The event has an element of worship, religious teaching and speakers.

x) Two flyers from SW London Vineyard (the 2246969 registration is used), the first has a “what’s happening” section showing some events in 2001 such as worship, church services and an Easter egg hunt, the second has a list of dates (but without the year) of upcoming events and services.

xi) An extract from Equipped magazine, the purpose of which is to communicate the Vineyard’s core values. Small print at the bottom of the page contains the trade mark as per 2247004, underneath which are the words “Vineyard is a registered Collective [the word “mark” is missing] of Vineyard Churches (UK)”. The copyright notice is dated 2001.

### **VCUK’s income & promotion**

25) The income of VCUK grew from £218,563 in 2000 to £609,270 in 2006 (it fell back to £469,667 in 2007). This derives primarily from the 5% donations that the Vineyard churches give to VCUK. The overall sums of all churches will, therefore, be higher. Promotion comes in the form of the various promotional material already discussed, by way of entries in local directories as well as in information centres and libraries. Promotion also takes place through the Internet as each church will have its own website.

26) Reference is also made to funds covenanted to VCUK by Vineyard Records which over the last 7-8 years have been in the order of £300,000.

27) In relation to Vineyard Music/Records, Mr Alawale provides evidence showing that Vineyard Music UK Ltd owns its own trade mark registration (for a mark containing the letters “vruk” and the words “vineyard records uk”) and that a company called Vineyard Music Group Inc owns a community trade mark for VINEYARD WORSHIP. Mr Sturrock responded to this by highlighting that the registration owned by Vineyard Music UK Ltd proceeded on the basis of consent by VCUK and he repeats his view that there is a strong link between the two of them and that VCUK consents to its use. In relation to Vineyard Music Group Inc, he says that this is part of the wider international Vineyard movement and that such use should also be taken as use with permission.

### **The evidence from VCUK’s pastors**

28) The pastors and the churches they lead are identified in paragraph 9. Their witness statements contain exhibits showing the uses they have made through their Vineyard churches. The material includes:

- i) For Leicester City Vineyard: a flyer for an introduction event for this church that took place in June 2007 (the 2247004 is also used); a compliments slip showing the church name and the 2247004 logo; information on how to donate to the church; information on the church's baptism arrangements (headed "Vineyard Baptism) which also shows the 2247004 logo; a further compliments slip for the church also showing the words "affiliated to [2247004 logo]"; a "church planters internal training pack" showing the 2247004 logo.
- ii) For Southend Vineyard: a compliments slip showing the church name and the 2247004 logo; a "statement of faith" said to be issued by the church which is produced by VCUK showing the 2247004 logo; information sheets for the church (dated 25 January 2009) listing its services and upcoming events (the 2247004 logo is shown next to the words "affiliated to"); a further compliments slip for the church also showing the words "affiliated to [2247004 logo]".
- iii) For Riverside Vineyard Church: a conference flyer for "exploring worship lifestyle" that took place in May 2006 showing the church name, the 2247004 logo, the church name built into the 2246969 logo, and a Vineyard Records UK logo; a flyer for "Mission Impossible" a Vineyard day for Pastors, Leaders and those involved in missions, showing the church name, the 2247004 logo and the church name built into the 2246969 logo; a sheet headed "resource tapes" showing the church name built into the 2246969 logo; a compliments slip showing the church name built into the 2246969 logo; a flyer for a day conference (but no year is given) showing the church name built into the 2246969 logo; a leaflet issued for Christmas 2002 (the 2002 is handwritten) showing the church name and the church name built into the 2246969 logo.
- iv) For Glasgow Westend Vineyard: Various documentation, leaflets and flyers, the most used sign being Glasgow Westend built into the 2246969 logo. Some use is also made of the 2247004 logo shown next to the words "affiliated to". Of the material that can be dated there is a general letter to its congregation dated February 2009, a flyer containing various pieces of information and events from October 2007.
- v) For Hull Vineyard Church: a flyer for an event called Revive organised by the church on behalf of Vineyard Churches in the North (these words are built into a device as per 2247004 but replacing UK with IN THE NORTH); a banker's order and charitable giving form for donating money to the church showing the church name built in to the 2246969 logo; a compliments slip showing the words hull vineyard church (with some stylisation reminiscent of the two trade marks) and the 2247004

logo shown next to the words “affiliated to”; further compliments slips/business cards similar to the previous example.

- vi) For SW London Vineyard: various materials showing the name SW London Vineyard built in to the 2246969 logo. There is some (limited) use of the 2247004 logo shown next to the words “affiliated to”. Of the material that can be dated there is very little, but it includes an extract from a magazine showing events taking place in April 2001, there are various rotas (presumably for people to organise and run certain activities from various dates in 2006, information from VCUK’s leaders conference from 2005, its preaching conference of 2005 and a VCUK conference recording from 2007. There is also a statement of faith document produced by VCUK showing the 2247004 logo.
- vii) For Wharfedale Vineyard: various materials, the most common sign being Wharfedale Vineyard built into the 2246969 logo. Some materials promote a Saturday night church with a handwritten date of 2001, a letter dated 21 March 2002 from the church (the context of its content is not clear) showing the logo mentioned above, a photocopy of what could be a sticker or leaflet showing the logo with the church’s contact details, further what could be stickers with a handwritten date of 2006, a general promotional flyer with a handwritten date of 2006/2007, a flyer for a breakfast event that took place in April 2007 (handwritten), leaflets for various other events with a handwritten date of 2008.

### **The biblical significance of the word VINEYARD**

29) Mr Alawale provides a lot of evidence in relation to this. His evidence shows that there are 85 references to the word VINEYARD in the Old Testament and 25 in the New Testament. These mostly relate to a physical vineyard but some relate, in a metaphorical way, to the land or people of god. He provides further extracts from religious and biblical study reference works which appear to support the contention that the word VINEYARD does have this metaphorical meaning when used in certain contexts in both the Old and the New Testament. The view expressed is that there should be no bar on the use of the word in connection with a Christian church or other organisation. A Google search is provided for both worldwide and UK websites. The UK search brings up 439 hits for “God’s Vineyard”, a number relate to GVM but others clearly relate to this metaphorical meaning.

30) Mr Epton says that the word vineyard is a biblical metaphor which has been used by Christians from bible times to the present day in phrases such as “workers in the vineyard”, “workers in god’s vineyard” and “labourers in the vineyard”.

31) Mr Sturrock believes that the biblical metaphor will only be known to regular church goers who are also familiar with church organisations and activities. He says that biblical metaphors are less used in services nowadays, with more everyday language being used. He feels that most people will know only of the dictionary meaning and highlights that such meaning is in fact more prevalent in the bible. He says that only those fully conversant with the bible will know of the metaphorical meaning and not the average, informed parishioner or consumer.

### **The history of GVM and its use of the trade mark opposed**

32) Mr Alawale says that GVM first used its name in 2001 in Nottingham and that this has been alongside Trent Vineyard and Hope Vineyard. He says that there has never been any confusion. He stresses later that the mark sought by GVM is a composite mark not just words.

33) Mr Sturrock says that VCUK has been aware of GVM for some time and has previously objected to its name. He says that whilst the mark has other elements, it operates under the name God's Vineyard Ministries or God's Vineyard Church. He says that he understands from colleagues in Nottingham (where GVM is based) that they are often known as God's Vineyard. He says that the distinctive part of the mark is VINEYARD. He exhibits letters sent to (and received from) GVM about its use of the VINEYARD name. The first is from 29 July 2003 (although from the content of this letter it is clear that an earlier letter was sent in June 2003). The letter of response is from "God's Vineyard Ministries" with no use of the trade mark in the form applied – I also note that although God's Vineyard Ministries is used in GVM's letterhead, the content of the letter refers to the church name being God's Vineyard Church. The first appearance of the trade mark itself comes in GVM's further response dated 14 October 2005. Mr Sturrock says that VCUK has used the name VINEYARD in connection with the goods and services which GVM seek to register.

### **The average consumer**

34) Mr Alawale says that average consumers who are of a Christian or non-Christian denomination will view church names not as a brand in the same way as Tesco etc. He says that they choose to attend initially on a tentative basis to find out if the church is friendly, caring, welcoming and whether its teachings are correct. He says that initial attendance (with a view to becoming a regular attendee) will be done carefully and with a degree of circumspection. He says that the name of the church is practically irrelevant because it is the people within a church that make a difference.

35) Mr Epton says that new church attendees do not visit because of the name but because they are invited to the church and are normally brought to it by someone else.

36) Mr Sturrock says that whilst people may choose to visit a church upon the invitation of another person, they will decide which church to attend on the basis of personal experience. He says that the name VINEYARD guarantees to consumers certain values and practices and, thus, the name is highly important to VCUK. He also says that people without a Christian background may also go to church, for example, after experiencing trauma or difficulties in life.

### **Church derivative names**

37) Mr Alawale highlights another factor he considers to be important, namely, the derivative names that exist in relation to church denominations. He describes this as the relatively sorry history of the church in terms of splits and divisions. He gives by way of example the names Methodist, Primitive Methodist, Wesleyan Methodist and he explains that the average consumer is used to differentiating between names which are relatively similar. Other examples are given.

38) Mr Epton says that when considering attending a church a person will be familiar with the fact that many churches have similar names but may be completely different in terms of doctrine etc. He gives an example of the many “oasis” churches that have that word in their name. He also refers to denominational splits such as Brethren, Plymouth Brethren, Open Brethren and Exclusive Brethren.

39) Irrespective of the above, Mr Sturrock says that the similarities between GVM’s mark and the use that has been made by VCUK of VINEYARD means that the name is synonymous with VCUK.

### **The evidence in the revocation proceedings**

#### **GVM’s evidence**

40) GVM’s evidence comes from Mr Kieron Taylor who is a trade mark attorney at Swindell and Pearson. His evidence is filed to introduce into the proceedings a number of documents relating to the collective mark. A large amount of these documents constitute evidence that was filed in the opposition proceedings. A summary of the exhibits filed are:

41) Exhibit KPMT1 – KPMT6: These exhibits consist of copies of the regulations governing the use of the collective mark accepted by the registrar on various dates and, also, documents showing various assignments and changes of name of VCUK and its predecessors in title. The regulations are all of a similar nature. Relevant entries in the regulations include a definition of “authorised user”, which means an individual affiliated to the Association and entered in the Register (kept by the Association). The regulations state that the mark is the absolute property of the association and may not be used by any person otherwise than in accordance with these regulations. The regulations state that a register of the

name and address of each authorised user shall be kept at the association's national office and shall be updated from time to time. A list of authorised users is annexed to the regulations. In 1997 the list had 41 authorised users, in 2000 it had 45 authorised users and in 2008 it had 78 authorised users.

42) The regulations contain a condition of use which reads:

“The Trade Mark shall not be used in any printed advertisements or printed publicity matter directed primarily to the market in the United Kingdom and in the Isle of Man or in retail point of sale display cards distributed by the Association for use within the United Kingdom and in the Isle of Man without indicating that it is a collective mark.”

43) Exhibit KPM7: A letter sent from GVM to VCUK (via legal representatives) concerning the prospect of revocation. It states that the grounds relate to the regulations not having been updated to reflect the assignment from The Incorporated Trustees of AVC (UK) Trust to the Association of Vineyard Churches UK 2003 and that the list of authorised users has not been updated since 2000.

44) Exhibit KMP8: This is Mr Sturrock's first witness statement from the opposition proceedings. Part of the highlighted (by GVM) text reads:

“VCUK is a registered charity No. 1099748 and a charitable company limited by guarantee, No. 4839046. It was founded to bring together churches in the UK which share common values and practices and to exercise leadership, governance and pastoral care, to provide training, make resources available and provide administrative support for those churches. Its operations are governed by a set of bye-Laws and it is run by a Council and Board of Trustees. The VINEYARD name is vital to the function of VCUK and is a unifying identity for the churches and their Pastors. Individual churches whose Pastors are members of VCUK are granted permission to use the VINEYARD trade marks. I attach as Exhibit PFMS1 a copy of the latest version of the bye-laws of VCUK and would draw particular attention to clauses 10.1.1 and 11.1.3.2 under which permission to use the VINEYARD trade mark is granted. The right to use the VINEYARD trade mark can also be removed and attention is drawn to clause 11.1.6. Clause 18 specifically identifies VCUK's trade mark registration No. 2030852.”

45) Exhibits KPM9 - 10: These are Mr Sturrock's exhibits PFMS1 and PFMS2 – the by-laws of VCUK and the letters regarding church affiliation (see paragraph 12) respectively.

46) Exhibits KPM11, 13-17: These are the witness statements of some of VCUK's senior Pastors that were filed in the opposition proceedings.

47) Exhibit KPM12: This is Mr Sturrock's second witness statement filed in the opposition proceedings.

48) Exhibit KMPT18: This is an exhibit to Mr Sturrock's evidence that I summarised mainly in paragraph 13 above.

49) Exhibit KMPT19: This is Exhibit PFMS11 of Mr Sturrock. It provides a list of Vineyard churches and their dates of affiliation.

### **VCUK's evidence**

50) This, again, comes from Mr Sturrock. Some of this evidence is similar in nature to that already set out so I will not repeat it here. Mr Sturrock states that the granting of the right to use the VINEYARD mark is undertaken by Council and formalised in correspondence. He provides a number of copies similar to those he filed in the opposition proceedings. The letters now exhibited are from 1999, 2001 and 2008. Mr Sturrock notes that in these letters the right to use is granted with the consent of VCUK and is governed by the regulations. The letters highlight the collective mark as the mark that is being used. He says that the right to use the name is central to the affiliation.

51) In term of updating the regulations, he repeats some of the history of VCUK and its predecessors in title. He concedes that there have been some instances where administration of certain matters has lagged. He says that the persons involved in the early days were volunteers. From 1996-2001 there was a part time administrator. In 2001 a full time national co-ordinator was appointed and, also a strategic review of the organisation took place in 2006. He says that when VCUK was incorporated in August 2003 the Intellectual Property Office was informed but, possibly due to the handover, the regulations were not simultaneously updated (although he says this was later attended to). Mr Sturrock took over trade mark management in July 2006 through 2007. Due to the increasing amount of work required, trade mark management was put into the hands of an attorney in 2008. This was when it was realised that the change of name to Vineyard Churches UK had not been reflected in the regulations. This was attended to in December 2008 and accepted in January 2009. Further amended regulations were filed with the Intellectual Property Office in July 2009 following a further change to its current name.

52) In terms of the collective mark being used by persons not appearing in the regulations, Mr Sturrock says that after the collective mark was registered "file records of authorised users" were periodically updated more or less on an annual basis. It was not updated in 2001 due to the staff handover mentioned above as the requirement to update was not communicated to the relevant person. He says that the internal records were, in general, well kept. Mr Sturrock highlights that the persons entitled to use the collective mark frequently change. He says that the 12 month period referred to by GVM is not set out in the statute.

53) In terms of internal records, Mr Sturrock says that all the letters granting the right to use the collective mark are always accurate and up-to-date. This is formalised by way of letters from the perspective member to VCUK all of which are kept on file. Numerous examples are shown in his Exhibit PFMS4. They are similar to that shown in Mr Taylor's KPMT10.

54) References are made to the by-laws in that a church can continue to use the collective mark in the event of the senior pastor leaving the church. He says that this is a transition procedure until a new senior pastor (who is a member of VCUK) takes over the church. He says that in this circumstance the church is in the stewardship of the association, usually through an area leader.

55) Mr Sturrock highlights that the association also owns two other trade marks and one community trade mark and that the right to use these are granted to various persons including, but not limited to, authorised members. He refers to the association's strict policing of other trade marks. He says that the mark is of great importance and any lag in the regulations has, to the best of his knowledge, been rectified.

56) In terms of the use of the mark being undertaken without an indication that it is a collective mark, he highlights the letters in PFMS4 which make reference to the mark being a collective mark. He says that, in any event, the association has other trade marks on which it relies.

## **THE REVOCATION PROCEEDINGS**

57) I will deal firstly with the application for revocation. This is because the earlier mark's revocation, or otherwise, may have a bearing on VCUK's opposition to GVM's application for registration. The application for revocation is against VCUK's collective trade mark registration. GVM relies on the grounds set out in schedule 1 ("the schedule") of the Act which relates solely to collective marks. The grounds for revocation set out in the schedule are as follows:

"13. Apart from the grounds of revocation provided for in section 46, the registration of a collective mark may be revoked on the ground-

(a) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in paragraph 4(1), or

(b) that the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark, or

(c) that an amendment of the regulations has been made so that the regulations-

(i) no longer comply with paragraph 5(2) and any further conditions imposed by rules, or

(ii) are contrary to public policy or to accepted principles of morality."

58) At the hearing GVM pursued three<sup>4</sup> separate grounds, namely:

- i) Under paragraph 13(b) of the schedule, that the proprietor has failed to observe or secure the observance of the regulations governing its use – this relates to the condition in the regulations which reads:

"The Trade Mark shall not be used in any printed advertisements or printed publicity matter directed primarily to the market in the United Kingdom and in the Isle of Man or in retail point of sale display cards distributed by the Association for use within the United Kingdom and in the Isle of Man without indicating that it is a collective mark."

It was argued at the hearing that there has been a wholesale disregard of this condition illustrated by the fact that despite a large amount of evidence being filed to show the use of the VINEYARD name, virtually none contains the required indication and, furthermore, that the guidance material distributed by VCUK to its members makes no

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<sup>4</sup> The ground mentioned in paragraph 6, point iii) was not pursued by GVM at the hearing.

mention of the requirement despite it including legal information and instructions as to the forms of appropriate use.

- ii) Under paragraph 13(a), that the manner in which the mark has been used (as described in the preceding paragraph) has caused the mark to become liable to mislead the public in the manner referred to in paragraph 4(1) of the schedule. Paragraph 4(1) reads:

“4. - (1) A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.”

- iii) Under paragraph 13(c)(1), that the regulations have been amended in a way so that they no longer comply with the provisions of paragraph 5(2), specifically that the regulations no longer specify the persons authorised to use the collective mark. This stems from the fact that the persons actually listed in the regulations at various times have not been an accurate reflection of the authorised users.

59) I will deal firstly with the ground under paragraph 13(c)(1) of the schedule. The claim is that the persons identified in the regulations, which have been amended from time to time, do not match those who are actually authorised to use the mark. More are authorised than listed. It was further argued that whilst it may be too onerous a task to make an amendment to the regulations each and every time the make-up of authorised users changes, the regulations should be amended on a regular basis, for example, on an annual basis.

60) VCUK stated in its evidence that whilst there have been lags between the list of persons being updated in the regulations, its internal records were generally well-kept. VCUK also states that there is nothing in the statute in support of the 12 month period referred to by GVM. At the hearing, Ms Edwards-Stuart highlighted part of the work manual issued by the Intellectual Property Office in relation to collective marks and, in particular, an extract from 3.3.2 which reads:

“Previous practice has required that the regulations identify the exact persons who at any given time are authorised users. This will no longer be required. However, if the applicant wishes to make reference to the existence of a register of authorised users (and its location) then this may still be done under this heading.”

61) The above is, of course just guidance. What matters is what the regulations themselves say. I identified earlier that the regulations provide that a register of the names and addresses of each authorised user shall be kept at the association’s national office and shall be updated from time to time. A list of authorised users is then annexed.

62) It is a requirement that the regulations specify the persons authorised to use the collective mark. The regulations specified, at the various points in time, that the persons authorised to use the mark were those persons who appear on the register held by VCUK. The annexed list is no more than a snapshot of the register at the relevant point in time. There is, in my view, nothing inherently wrong in identifying the persons authorised to use the mark with reference to a register of persons. This is, effectively, what VCUK has done in its regulations, regulations which have been accepted by the registrar. It is not appropriate to consider that VCUK was under any greater obligation than to keep its register up to date. There is no evidence that it has not done so. The provision of a snapshot of authorised users is merely that and does not place an obligation on VCUK to regularly update that snap-shot in the regulations themselves. **The ground of revocation under paragraph 13(c)(1) of the schedule fails.**

63) Although the grounds under paragraphs 13(a) and 13(b) require separate analysis, there is a link in terms of the background to such claims. The claim that VCUK has failed to observe or to secure the observance of the regulations (the 13(b) claim) stems from the following condition set out in the regulations:

“The Trade Mark shall not be used in any printed advertisements or printed publicity matter directed primarily to the market in the United Kingdom and in the Isle of Man or in retail point of sale display cards distributed by the Association for use within the United Kingdom and in the Isle of Man without indicating that it is a collective mark.”

64) That condition is intended, although it is not expressly described as such, to deal with the concern as to the character or significance of the mark as per paragraph 4 of the schedule which reads:

“4. - (1) A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.”

65) Therefore, if the inherent nature of the collective mark is such that it has the capacity, when used, to mislead the consumer as to its true character or significance, so that it may be taken as something other than a collective mark, the above condition is entered and required to be fulfilled by the proprietor. It is therefore a ground for revocation if either the condition is simply ignored and/or if the mark is used in a way that will have misled the public. Looking firstly at the condition set out in the regulations, it relates to the use of the collective mark in 3 scenarios: i) printed advertisements, ii) printed publicity material and iii) point of sale display cards. There is no real dispute from VCUK that in the material it does produce, there is no real use of any form of wording to expressly and positively indicate to the public that VINEYARD is a collective mark. Having looked at the evidence in detail I have found only two references to the fact that the mark is a

collective mark - against the weight of all the other evidence this was really a needle in a haystack situation. However, the questions that arise are whether VCUK and/or its members have used the mark in the 3 scenarios referred to earlier in this paragraph and whether, as argued by Ms Edwards-Stuart, that the condition has in any event been met by the nature of the use with such nature indicating to the public that VINEYARD is a collective mark.

66) In relation to the 3 scenarios, Ms Edwards-Stuart argued that the actual use made does not even fall within the 3 scenarios of the condition because it does not consist of point of sale display cards, and neither is it advertisements or publicity material in the traditional sense such as billboard advertising or advertising on the side of trucks. I also highlighted at the hearing that the condition relates to printed advertisements or publicity material. Mr Norris argued that the evidence presented by VCUK was clearly publicity material and that it was printed material and that it was publicising the mark.

67) The intention of the condition is to ensure that the collective mark does not mislead. It is strange, to say the least, why the condition was limited purely to printed media and then to only material in the three specific scenarios described above. Nevertheless, whilst I note the failure of VCUK to use a specific indication that VINEYARD is a collective mark in its various Internet materials, I would have been slow to find this as successful ground of revocation as it is, strictly speaking, a form of use outside of the condition. It is not printed if it is on the Internet. The ground can only apply as per the condition and not something that may be in the spirit of it.

68) However, although the majority of the evidence from VCUK is taken from the Internet and is not, therefore, printed, Mr Sturruck gave evidence as to the types of use VCUK and its members have made in relation to printed materials. He specifically refers to newsletters, communications, flyers and other promotional materials. He provides examples of such use to support this, none of which carry any specific indication that VINEYARD is a collective mark. The Pastors have also given evidence of their use of the mark in relation to flyers etc. The dates of some (but not all) of this material may be from after the date of application for revocation, but these are said to illustrate the nature of the use that has taken place before. Therefore, taking all of this into account then, on face value, the condition has not been complied with.

69) I say "on face value" because Ms Edwards-Stuart's second argument relates to the nature of the use made and that even though no specific reference to the mark being a collective mark is generally made, the nature of the use is indicative of it being a collective mark. I note this, but the condition is that the mark shall not be used "without indicating that it is a collective mark". The language here is quite clear and I take the view that without a clear positive indication that the mark is a collective mark then the condition has not been met. If VCUK wished to overcome the paragraph 4(1) concern in some other manner then it would have

been able to construct the condition in some other, less explicit way, subject, of course, to the registrar being satisfied with it.

70) The ground itself relates to VCUK failing to observe the condition, or that it has failed to secure the observance of the condition. Certainly, in terms of much of the printed material, it is VCUK's members that have omitted the indication which, therefore, must stem from the failure of VCUK to secure the observance of the condition. As a further illustration of this, Mr Norris highlighted the information provided by VCUK to its Pastors concerning the ways in which its various marks should be used. Despite having a section headed "legal stuff" there is nothing in this to inform the Pastors, its authorised users, that VINEYARD should be accompanied by the relevant indication. This further supports the proposition that VCUK has failed to secure the observance of the condition. The fact that VCUK refers to the mark being a collective mark in its letters to its Pastor when granting use, and that it is referred to in the by-laws, does not alter this finding – the required indication when the mark is in use has not been observed. **I therefore find that VCUK has failed to observe, or to secure the observance of, the regulations governing the use of the mark. The ground under paragraph 13(b) of the schedule succeeds.**

71) The paragraph 13(a) ground relates to whether the mark has been used in a manner liable to mislead the public as regards its character or significance. Unlike the ground relating to the construction of VCUK's regulations, the use relates not just to printed matter but to any and all forms of use that VCUK and its authorised users have made. It is the resulting impression on the public that matters, namely, would, on account of such use, the public be likely to understand the mark as something other than a collective mark. I have already described the way in which the word VINEYARD is used. It is most often used as part of a church name and it has been used in various different forms. As observed in the previous ground of revocation, the use is not generally accompanied by an indication that the mark is a collective mark. There is no alternative indication which has the capacity to inform the public that the mark is a collective mark. There is nothing inherent in the nature of the word VINEYARD or, indeed, the primary form of use of the mark that would inform the public that it is a collective mark.

72) Ms Edwards-Stuart argued that the whole picture of the evidence was that the mark would be taken as a collective mark. I asked how such use could be distinguished by the public when the collective mark is used alongside trade marks (VCUK's other registrations). Her view was that the VINEYARD name itself was being used as a collective mark indicating to the public that those who use it belong to the Vineyard movement and association and that, at the same time, the trade marks were being used on license for various goods and services. As I have said earlier, matters must be judged from the point of view of members of the public who are likely to have encountered the use of the collective mark. Such a person is likely to have encountered it in various different forms and they

are likely to know that other Vineyard churches exist and that a body governs and regulates all this. To my mind, a member of the public will equate this to merely a particular church having branches in particular areas. They will know nothing about the background to the use of the mark or any of the conditions of use.

73) The public may not understand the distinction between a collective trade mark and an ordinary trade mark. The natural inclination would be to take the form of use as a normal trade mark, with the mark being used in slightly different forms to reflect the various branch names. Without indicating to the public that the mark is a collective mark, the nature of such use means that it is likely to be taken as something other than its true designation. **I therefore find that the ground under paragraph 13(a) of the schedule succeeds.**

74) There is, of course, a discretion in relation to the above grounds in that revocation “may” (as opposed to “shall”) take place. In my view, the fact that there has been a wholesale disregard for the condition and the fact that this has resulted in the nature of the use misleading the public, revocation of the mark should follow. The purpose of the relevant parts of the regulations is to ensure that the registration of a collective mark is used as a collective mark and that it will, therefore, perform its particular distinguishing function. It does not. In terms of the effective date of revocation, GVM sought a date of 6 November 2003. Other than the two small print indications I have found in the mass of evidence provided, VCUK have never used an indication that it is a collective mark and the nature of its use appears to have been consistent. I accept that revocation should take effect from this date. Collective mark registration 2030852 is hereby revoked with effect from 6 November 2003.

## THE OPPOSITION PROCEEDINGS

75) VCUK relies on two sections of the Act for its opposition against GVM's trade mark application, namely sections 5(2)(b) and 5(4)(a). For reasons that will become apparent, I will deal firstly with the ground of opposition under section 5(4)(a).

### SECTION 5(4)(a)

#### **The law**

76) Section 5(4)(a) of the Act reads:

“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.”

77) There are three elements (often referred to as “the classic trinity”) to consider in a claim for passing-off, namely: 1) goodwill, 2) misrepresentation and 3) damage. In *Reckitt & Colman Products Ltd v Borden Inc* [1990] R.P.C.341, Lord Oliver summarised the position quite succinctly when he stated:

“The law of passing off can be summarised in one short general proposition--no man may pass off his goods as those of another. More specifically, it may be expressed in terms of the elements which the plaintiff in such an action has to prove in order to succeed. These are three in number. First he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying 'get-up' (whether it consists simply of a brand name or trade description, or the individual features of labeling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff...Thirdly he must demonstrate that he suffers, or in a quia timet action that he is likely to suffer, damage by reason of the erroneous belief

engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff.”

78) In relation to goodwill, this was explained in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at 223 as:

“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.”

79) It is also noteworthy from the relevant case-law that to qualify for protection under the law of passing-off, any goodwill must be of more than a trivial nature<sup>5</sup>. However, being a small player does not prevent the law of passing-off from being relied upon - it can be used to protect a limited goodwill<sup>6</sup>.

### **The material date**

80) On behalf of GVM, Mr Norris submitted that there were two dates at which the position needed to be considered. He identified these as:

1) Early 2003 – this was claimed given that the evidence demonstrates that GVM was using the word VINEYARD at this point (or at least June 2003 – see paragraph 33 above). Whilst there is no evidence to suggest that the word and device mark sought to be registered by GVM was in use at this time, it was argued that this did not matter as it is the use of the word VINEYARD which is, effectively, the conduct being complained of by VCUK.

or

2) October 2005 – this is an alternative claim if I found that the position as of early (June) 2003 was not relevant because the mark as filed had not been used. It was argued that this later date was relevant because by this time the mark as filed was in use (again, see paragraph 33).

and

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<sup>5</sup> *Hart v Relentless Records* [2002] E.W.H.C. 1984

<sup>6</sup> See, for instance, *Stannard v Reay* [1967] F.S.R. 140, *Teleworks v Telework Group* [2002] R.P.C. and *Stacey v 2020 Communications* [1991] F.S.R. 49).

- 3) That in addition to one or other of the above, the matter must also be judged at the date of the hearing before me. Mr Norris highlighted the decision of Mr Landau (one of the Registrar's Hearing Officers) in *European Gemological Laboratory* (BL O/051/10) (in which Mr Landau took support from the decision of Professor Annand (sitting as the Appointed Person in *Omega* BL/227/05). Mr Landau stated in his decision:

"45) In my decision BL O/214/06 I dealt with the issue of material dates in invalidation cases. In that decision I decided that in an invalidation action on relative grounds there were two material dates: the date of application for registration and the date of the hearing; the grounds for invalidation had to exist at both material dates for an applicant for invalidation to be successful. I am not aware of any judgments since I wrote that decision which lead me to question my findings re the material dates. The judgment of the GC in MIP METRO Group Intellectual Property GmbH & Co KG v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-191/04 strengthens my view that there are two material dates."

Professor Annand stated in her decision:

"36. My own view is that the starting point for assessing relative invalidity under section 47(2) is the date of the application for registration of the attacked mark. This is because Article 4 of the Directive: (i) defines "earlier trade marks" for the purposes of relative invalidity as trade marks with a date of application for registration which is earlier than the date of application for registration of the attacked mark; and (ii) requires other earlier rights to have been acquired before the date of the application for registration of the attacked mark. However, I believe the wording of Article 4 (section 47(2)) may allow the tribunal to take into account at the date when invalidation is sought, matters subsequently affecting the earlier trade mark or other earlier right, such as, revocation for some or all of the goods or services, or loss of distinctiveness or reputation I do not find the fact that the Directive specifically provides for defenses to invalidation of non-use, consent and acquiescence indicative either way. A further question concerns the cut-off date for taking into account subsequent events. Is this the date of the application for a declaration of invalidity or the date when the invalidity action or any appeal is heard? The Opinion of Advocate General Colomer in Joined Cases C-456/01 P and C-457/01P Procter & Gamble v. OHIM, 6 November 2003, paragraphs 43 – 44, and the Court of First Instance decision in Case T-308/01 Henkel KGaA v. OHIM (KLEENCARE), 23 September 2003, paragraph 26, although concerned with registrability and opposition respectively, indicate the latter. There are indications that timing issues under the harmonised European trade marks law are beginning to be brought to the attention of

the ECJ (see, for example, the questions referred in Case C-145/05 *Levi Strauss & Co. v. Casucci SPA*).”

81) On behalf of VCUK Ms Edwards-Stuart submitted that there was only one material date, namely the date on which GVM applied for its mark (10 May 2006).

82) Dates are clearly important in passing-off cases. They can have a significant impact on any claim. In terms of the material date, in the judgment of the General Court in *Last Minute Network Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Joined Cases T-114/07 and T-115/07 it was stated:

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

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

83) The material date is, therefore, the date of filing of the trade mark in question, namely 10 May 2006. VCUK must have been able to succeed in a passing-off claim and possessed protectable goodwill at such a date. However, I accept Mr Norris’ point that the position at an earlier date may also be relevant. It could establish a senior user status, or that there has been common law acquiescence or that the status quo should not be disturbed as the parties have a concurrent goodwill<sup>7</sup>. All of this could mean that the use of the mark could not have been prevented under the law of passing-off at the material date.

84) In terms of GVM’s pre-application use, there is no evidence of any actual use which has been made of any sign (be it a sign containing the word VINEYARD or the actual mark that is sought to be registered) in relation to the goods and services sought to be registered. All one has to go on are the letters between the parties which (although they suggest that GVM has operated a church and has used the word VINEYARD as part of its name) gives the tribunal little information on which to ascertain the relevance of such use. The relevance of such use is important because the question is more nuanced than simply ascertaining when some form of use has occurred. Questions arise as to the breadth of that use in relation to the goods and services, the nature of the sign

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<sup>7</sup> See, for instance: *Croom’s Trade Mark Application* [2005] R.P.C. 2 and *Daimlerchrysler AG v Javid Alavi (T/A Merc)* [2001] R.P.C. 42.

presented to the public and the geographical significance of any use. The latter point is important because the act complained of in the context of a trade mark opposition is the prospective use of a national trade mark whereas the pre-application use made by GVM appears to be of a local nature – the degree to which this could have assisted GVM would therefore be limited. For these reasons, my finding is that the position at a date earlier than the date of application need not be probed any further.

85) Mr Norris put forward a further date, namely the date of the hearing before me. The cases he relies on are, though, cancellation proceedings rather than oppositions which have different legislative contexts and rationale. Mr Norris argued that there was no practical difference given his submission that the material date was 2003 so 10 years had elapsed between then and the date of the hearing and, therefore, that even if VCUK were found to be successful at the earlier date then the matter must be looked at afresh at the later date. Ms Edwards-Stuart argued the contrary, highlighting the different context of the cases relied upon and, in fact, that there was not such a difference between her submitted material date and the date of the hearing. She argued that it would be perverse for an opposition to be assessed differently merely depending on how quickly a hearing could be arranged, particularly as in this case the opposition proceedings had been suspended to await the evidence in the later filed revocation proceedings.

86) In my view, Ms Edwards-Stuart must be correct. I know of no authority to support the view that a date later than the filing date is relevant in an opposition. There appears to be nothing to support that the proposed course of action is *intra vires* (as opposed to cancellation action where section 47 gives some support). In terms of rationale, I consider an opposition and a cancellation to be very different beasts in relation to this issue. The fact that a cancellation action may take place many years after registration means that the capacity to consider the matter at a later date may be necessary. I do not consider that the same rationale applies to oppositions given that they are the mechanisms to allow third parties to oppose the prospective registration of a mark and by their very nature the filing of the trade mark and the opposition claim are reasonably contemporaneous. The opponent should not be penalized by the time it may have taken to get through the proceedings and for a hearing date to be appointed. **My finding is that there is only one date at which matters must be assessed, namely the filing date of the contested mark being 10 May 2006.**

#### **Did VCUK have a protectable goodwill as of 10 May 2006?**

87) In terms of goodwill, Vineyard churches have been in existence in the UK since 1987. Little information is, though, provided as to the number of churches at this date. However, the evidence does show that there were a reasonable number of Vineyard churches in existence in various parts of the UK by the late 1990s, well before the material date. Mr Sturrock's evidence on this is

corroborated by the evidence provided by the various senior Pastors. The evidence of the Pastors was criticized by Mr Norris given the clear similarities between their various witness statements. Whilst noted, I agree with Ms Edwards-Stuart that it is not appropriate to reduce the weight of their evidence on the basis of this point as whilst there is a danger in such evidence not accurately reflecting the witnesses actual opinions (they may have simply signed up to the witness statement), it is clear that each witness adapted the similar structure of the witness statements to their own circumstances, experiences and uses of the VINEYARD name.

88) It is fair to say that any goodwill is primarily associated with the “business” of providing religious services. In his evidence Mr Alawale argued that the number of churches of VCUK must represent a very small proportion of the church going population of the UK. However, a business which may be small and modest can have a protectable goodwill, so long as it is not merely trivial. The business of VCUK is certainly more than that. I acknowledge that a good number of the accompanying exhibits provided in VCUK’s evidence are from after the material date, however, some are from before the material date and the factual commentary provided by the witnesses is helpful. The accompanying exhibits which are from after the material date are said to be representative of the use made before and they, at the least, support the establishment of goodwill in relation to the primary religious type services.

89) Whilst GVM did not necessarily concede at the hearing that VCUK had a goodwill, Mr Norris did say that any goodwill it did have was limited to religious services. Ms Edwards-Stuart was keen to stress the other types of goods and services of VCUK. Whilst I accept that VCUK may have provided CDs of services etc. and run some events which could be described as training, I do not consider that the evidence supports the proposition that VCUK had at the material date a recognizable and separate business in this area. It is more a case that as part of its religious service offerings, some additional materials may have been made available (although the extent of this is not clear) and training offered – a religious service will, inevitably, include an aspect of religious teaching. This is starker when it comes to goods such as clothing given that virtually no information is provided as to extent or timing of any use. Some of the examples of use are, furthermore, in relation to the vineyard v music sign. In relation to the provision of food and drink, extent is also a problem. Furthermore, many of the exhibits where the provision of food and drink is mentioned come from after the material date - whilst post-material date documentation may assist in terms of the primary business activity, any claim that such use is representative of pre-material date use carries less weight. In addition, in relation to the provision of food and drink, this seems to be in the nature of refreshments and meals at its religious events. This may support its religious offerings but would not create a goodwill in relation to a food and drink business. In terms of CDs etc, there are two distinct uses. The first relates to items supplied by VCUK and its churches and I am far from satisfied that its activities can truly be said to have generated a specific and

recognizable goodwill in relation to the provision of such goods. The second relates to the CDs produced by Vineyard Records. Although the CDs that are issued, bearing in mind some of the claims that they are bestsellers, appears to represent a more recognizable form of business and goodwill, there is still paucity in terms of the actual details of such use. In any event, I agree with Mr Norris that such use is not by VCUK or its churches but it appears to be by a separate legal entity with any goodwill flowing to it and not to VCUK. In relation to training and conferences, it is clear that many of these were internal to VCUK, for its leaders etc. and that such use would not have engendered any relevant goodwill with the public. Other training, as I have said above, strikes me as no more than being part and parcel of the types of offerings commonly provided by religious groups as part of its religious teaching. All of this runs through the totality of the evidence and the theme of what I say here represents my views on the evidence relating to goodwill. My finding is that VCUK did have a protectable goodwill at the material date focusing on the provision of religious services. I note from the commentary in Christopher Wadlow's *The Law of Passing-off* (paragraph 3-49) that there is no bar on a church or religious body possessing goodwill – GVM did not suggest otherwise. I should also add that if I am found to be wrong on my assessment of the material date(s) in paragraphs 84 & 86, the use presented would have persuaded me that such goodwill was also in existence as of Mr Norris' claimed material dates.

90) In terms of the sign(s) associated with the goodwill, the pleading relates to the use of the word VINEYARD. It is clear from the evidence that VCUK and its churches have used a variety of signs. The common theme, though, is of the word VINEYARD. In this decision I have described VCUK's churches as Vineyard churches because this is the sense that one takes from the evidence filed. It is a fair assumption that those who have encountered such use will do likewise. Some of the evidence also highlights the word VINEYARD outside the church or organization name such as "Welcome to the Vineyard". The goodwill is, therefore, associated with the word VINEYARD although it is important when considering misrepresentation to bear in mind the differing forms of use that have been made.

91) Although not expressly discussed at the hearing, I am content in the above finding that VCUK is the owner of the goodwill on account of both its use and the use made by its churches. It is clear that VCUK controls and regulates such use. Without such control and regulation the churches would be unable to call themselves Vineyard churches. The public who encounter such use will regard the churches as, effectively, branches of one overarching body.

### **Misrepresentation**

92) The question is whether a substantial number of VCUK's customers or potential customers (whom I will refer to as the relevant public) will be deceived into believing that the goods and services of the applied for mark are, in fact, the

goods and services of VCUK. There are a number of factors to bear in mind including the differences/similarities between the mark and the sign, the nature of the word VINEYARD and its claimed biblical significance, the nature in which people will avail themselves of a religious service, the nature of church names in general, the extent of VCUK's goodwill and any differences between this and GVM's goods and services. In relation to the latter point it must be remembered that there is no requirement in passing-off for a common field of activity, although such a factor is, nevertheless, a highly relevant factor to bear in mind. This can be seen in *Harrods Ltd v Harrodian School* [1996] RPC 697 where Millett LJ stated:

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

and

"The name "Harrods" may be universally recognised, but the business with which it is associated in the minds of the public is not all embracing. To be known to everyone is not to be known for everything."

and

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

93) The goods and services applied for by GVM are:

**Class 09:** Pre-recorded media; pre-recorded compact discs, audio tapes and cassettes, video tapes and cassettes and DVDs; sound recordings; video recordings.

**Class 16:** Printed publications; books; magazines; journals; newsletters; periodicals; tracts, leaflets.

**Class 35:** Charitable services, namely organising and conducting volunteer programmes and community service projects.

**Class 36:** Fundraising for charitable purposes.

**Class 41:** Education services; education services relating to religion; provision of education and training; arranging and conducting

conferences, seminars, and vocational courses; entertainment services; organisation of concerts, events and performances.

**Class 43:** Provision of food and drink; provision of temporary accommodation.

**Class 44:** Medical information, advice and counselling services.

**Class 45:** Organisation of religious meetings and services; ministerial services; ministerial counselling; pastoral counselling; counselling relating to spiritual direction; personal or spiritual mentoring services.

94) I will consider the matter class by class. I will begin with the class 45 specification because if VCUK cannot succeed here then I struggle to see how it can be in any better position elsewhere.

95) In terms of the biblical meaning of the word VINEYARD, I accept, as a matter of fact, that the word has a biblical, metaphorical meaning as set out by Mr Alawale and referred to by Mr Epton. However, the question is whether this will be known by the relevant public as defined earlier, because a substantial number need to be deceived for VCUK to be able to succeed. Mr Sturrock believes that the biblical metaphor will only be known to regular church goers who are also familiar with church organisations and activities. He says that biblical metaphors are less used in services with, nowadays, more everyday language being used. It seems to me that the significance of the words will vary between different members of the relevant public. Some will not have heard of the word other than in its traditional sense, others may have inkling that it is a biblical word but without knowing its significance and others may be fully aware of the meaning. I note, though, that in terms of the relevant public there is nothing in the various materials provided by VCUK which seeks to educate as to the biblical significance of the word. Mr Alawale re-filed parts of VCUK's evidence where he felt the use of the word VINEYARD could be interpreted as descriptive use of the metaphorical meaning of vineyard rather than as a reference to VCUK. I disagree that this is the case. Whilst one can be read either way (it is though difficult to see where this extract comes from) the others will, in my view, be seen as a reference to VCUK, its churches or the Vineyard movement in general.

96) Also relevant is the uniqueness or distinctiveness of the word Vineyard in terms of whether it is used in the names of other church organisations. Mr Alawale stated in his evidence that others have used the word Vineyard. The only evidence of this other use is when Mr Alawale provided a page from VCUK's website which lists some non-affiliated churches. There are 9 which have Vineyard in their names (one of which is GVM) and two further churches that although they do not have Vineyard in their names, they have the word as part of their charitable name. Mr Sturrock responded to this by stating that the list was included to prevent confusion with VCUK's affiliated churches, that the page is

now out of date and that a number of them have now ceased using the name as a result of approaches by VCUK. I do not place any significant weight on Mr Alawale evidence because there is no evidence as to the position as of the material date; there is no evidence as to the actual use made by these other churches and its impact on the relevant public. In any event, these other churches may themselves have been guilty of passing-off – Mr Sturrock explains that some have now changed their name.

97) In terms of the nature of the decision leading to someone availing themselves of religious services, I agree with Mr Norris that this is not a completely casual purchase. That being said, the evidence of both sides is that the initial taking of the service, the initial attendance so to speak, will not necessarily focus on the name itself as the person may be invited by a friend or may be attending speculatively with a view to seeing how the services are provided. These two arguments counteract each other to some degree. My view is that the name will play some role when a person decides to use a religious service and that a reasonable degree of attention will be used. Of course, the assumption must be that some of the relevant public will have already experienced VCUK's services and may be looking for another branch or a closely related ancillary religious service beyond the physical church itself (religious counselling for example).

98) In terms of the sign/mark, VINEYARD is the key aspect of VCUK's goodwill and it is a word that is distinctive of it in relation to religious services. The mark applied for consists of:



99) Whilst there is a key visual difference overall given the stylisation of the above marks and the additional wording, it seems to me that one of the most important aspect of the above marks is the word VINEYARD. The other verbal elements are the words GOD'S, MINISTRIES and JESUS IS LORD which have some obvious non-distinctive qualities. The device element obviously plays a role in the visual impact of the mark but I also take into account that there is a degree of symmetry with the verbal elements of the mark given that the device contains a bunch of grapes and what would be perceived as a wine glass.

100) In terms of misrepresentation, there is greater capacity for those who do not know of the metaphorical meaning to be deceived into believing that a religious service provided under the above marks is merely some other form, branch or body of VCUK's Vineyard church. To such people, the word VINEYARD, as part of the name of a church, would be unusual and the commonality will be put down to there being a link between the two. For those who have an inkling of the meaning, I still regard that such person will put the commonality down to linkage rather than co-incidence on account that no other churches use the word in their names. In terms of those who know of the meaning then I consider that they will be split between those who will believe that the use of GVM is merely making a co-incidental use of the biblical word VINEYARD in their names and that such use is not indicative of any form of linkage, and those who even though they understand the biblical meaning, the fact that Vineyard Churches exists will still cause them to believe that there is linkage on account of the non-traditional use of this word in church names etc.

101) There was some evidence relating to church names generally and the splits and divisions that have taken place over the years. Whilst I accept this, and that whilst the use of denominational names may split between different groups and that the public may believe the different names are indicating different groups (albeit with the same core denominational beliefs), this is less likely to be the case with more unusual names. It is something that happens over time and also, to a large extent, this relates to knowledge. There is nothing in the case before me to have led the relevant public into the belief that the Vineyard movement has ever split in any way. Taking this and all the other relevant factors into account it is my view that whilst not all of the relevant public will be misled, a very substantial proportion of them will. They will view GVM's mark, when used in relation to religious services, to simply be indicating another branch of VCUK's Vineyard churches. Although GVM's mark is not in the geographical name format (a point Mr Alawale made in his evidence), the flexibility with which Vineyard churches have sold themselves over the year means that deception will still result. The use could be taken as another branch, or perhaps as a regional branch or even the sign of the overarching body, either way, a misrepresentation will occur. Before moving on to the other goods and services, I should stress that there is nothing in the evidence to suggest a purposeful misrepresentation – intention is not, though, a pre-requisite. I should also stress that I have given no real weight to the claim that there is an absence of confusion given that such limited evidence has been provided in relation to GVM's actual operation.

102) I will now consider the remainder of the goods and services, but bearing in mind my observations above. To that extent, I consider that there will be misrepresentation in relation to all of the services in class 45 as they are all, effectively, religious services of one kind or another or can be religion orientated even if the specific terms are not so limited.

103) The above finding applies to the various educational services in class 41 as there is such a clear and obvious link between religious services on the one hand and services for religious education on the other. This includes misrepresentation in respect of vocational courses. Whilst the word vocation has certain religious connotations, I am also aware that this word in more modern language refers to any workplace scenario and not just to a religious calling. However, the term as it stands would include within its ambit religious vocational courses. I also extend this finding to the goods in classes 9 and class 16. Such goods could well relate to religion and someone who has encountered VCUK's religious services will, if they subsequently encounter such goods under GVM's mark, regard them as relating to Vineyard churches, perhaps in the form of material containing supplementary teaching or even recordings/printed matter relating to its services and events.

104) I consider that a similar assessment and finding applies also to charitable services in class 35 and fundraising for charitable purposes in class 36. Religious organisations play key and important roles in charitable services such as community and national projects etc so that a clear link will be made here. Fundraising needs little by way of explanation as church fundraising is one of the key ways in which a religious body is able to keep its services going which are, to a large extent, offered free of charge to its congregation.

105) I next consider entertainment services and the organisation of concerts, events and performances. Concerts, events and performances may have a religious theme. It is clear from VCUK's evidence that such events do take place so this is not purely hypothetical. Whilst certain entertainment events may not have the capacity to the religious in any way, the fact that certain events do means that the term as a whole is not acceptable, no fallback specification having been provided. There is a misrepresentation here.

106) All of the above have clear and obvious links to a religious service provider, but the remainder of the services require a greater stretch to imagine that a member of the relevant public will be deceived. In relation to "medical information, advice and counselling services", I see no strong link. Religious bodies are unlikely to be medical experts. I take the view here that whilst it is possible that the goodwill of VCUK and the signs with which it is associated may be brought to mind by some of the relevant public, the degree to which deception will arise will be significantly less. I do not consider it likely that a substantial proportion of the relevant public will be deceived.

107) In relation to the provision of food and drink and the provision of temporary accommodation then, again, the link is not strong. Whilst a religious body may provide food and drink on occasion, for example, the evidence of VCUK shows that it has provided certain activities where food and drink is provided, it is a different matter altogether when considering what must be taken to be a specific

service as applied for by GVM, effectively a catering, restaurant or café service. Taking this into account I find no misrepresentation here.

108) In relation to misrepresentation, I have found it in relation to all of the goods and services with the exception of:

**Class 43:** Provision of food and drink; provision of temporary accommodation.

**Class 44:** Medical information, advice and counselling services

109) For the above services the ground of opposition under section 5(4)(a) must fail as without misrepresentation there can be no passing-off. In relation to the remainder of the goods and services I will go on to consider the question of damage.

### **Will the misrepresentations damage VCUK's business?**

110) In relation to damage Ms Edwards-Stuart relied principally on the capacity that the various misrepresentations may result in lost income. As with any church a lot of its income is provided by way of donation. VCUK's income comes from a percentage of its churches' individual income. I think it is clear that in terms of any of the religious services attended, donations may be given to GVM rather than to VCUK. The same can be said in relation to fundraising also. In relation to the goods in classes 9 and 16 then such goods could be purchased or donations given in respect of them, the same could apply when conducting projects and work in the community. Someone who have given such donations may be less likely to give again or may decide to give less when they then encounter VCUK (they will believe that they have already given). The same can be said of the education and entertainment services in class 41. In any event, I am also conscious that damage is not limited purely to a direct loss of sales (or in this case donations). This can clearly be seen in *Ewing v Buttercup Margarine Co Ltd*, 34 RPC 232 where it was stated:

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

111) This is particularly relevant here. If goods in classes 9 & 16 or the education and religious based entertainment contained content that was inappropriate or incompatible with the teachings of the Vineyard churches then this could have a serious impact on its goodwill.

### **Conclusions under section 5(4)(a)**

112) The opposition fails in respect of:

**Class 43:** Provision of food and drink; provision of temporary accommodation.

**Class 44:** Medical information, advice and counselling services.

113) The opposition succeeds in relation to everything else.

### **SECTION 5(2)(b)**

114) I said earlier that I would deal with the opposition under section 5(4)(a) in the first instance for reasons that will become apparent. The primary reason for this is that I do not consider VCUK to be in any better position under section 5(2)(b) than it is under section 5(4)(a), indeed, I consider it to be in a worse position. I say this for the following reasons:

- a) That VCUK's closest mark in terms of a mark to mark comparison is the VINEYARD collective mark, but, as I decided earlier, this stands as revoked with an effective date from before GVM's application. It cannot, therefore, be relied upon.
- b) Where it has failed under section 5(4)(a), such services have no direct counterpart in its remaining earlier marks and any claim to there being similarity of goods/services is a weak one. For example, I can see no similarity between the food and accommodation services of the applied for mark with the services covered by the earlier marks.
- c) That even if some of the services survived the proof of use assessment then it is in no better position to argue the case given that the remaining earlier trade marks are the stylised versions whereas under passing-off I was able to consider the matter from the perspective of the goodwill associated, principally, with the word VINEYARD (although I, of course, bore in mind the various signs with which the goodwill was associated).
- d) That the goods in classes 9 & 16 would unlikely have survived the proof of use assessment as there is a strong doubt as to whether such use is genuine. This stems from some of such use (particularly in class 16) merely being promotional. Furthermore, the class 9 goods (issued by VCUK or its churches) do not strike me as the type to have created or maintained a share in the market. The goods issued by Vineyard Records do not use the remaining earlier marks and I agree that there are unanswered questions regarding the relationships between the parties.

115) For all of the above reasons I consider that there is no need to consider the matter any further under section 5(2)(b).

### **COSTS**

116) GVM has succeeded in its revocation action. VCUK has succeeded, albeit partially, in its opposition. In the opposition VCUK has succeeded in a greater proportion of the goods and services that it has failed. Where VCUK has succeeded it strikes me that this is in relation to the most important aspects of the case. Balancing all this, I do not consider that either side should be favoured with an award of costs. Each side shall, therefore, bear its own costs in these proceedings.

**Dated this 25 day of February 2011**

**Oliver Morris  
For the Registrar  
The Comptroller-General**