

BEFORE:

**MR GEOFFREY HOBBS QC
IN THE MATTER OF THE TRADE MARKS ACT 1994**

AND

**IN THE MATTER OF TRADE MARK REGISTRATION
2057163 IN THE NAME OF ALAN WILLIAM CROSS**

AND

**IN THE MATTER OF AN APPLICATION FOR RECTIFICATION
AND AN APPLICATION FOR A DECLARATION OF
INVALIDITY NO 10334 BY
NATIONWIDE ACCESS LIMITED**

**An appeal to the Appointed Person from the decision
of Mr C J Bowen dated 19th July 2000**

**DR HEATHER LAWRENCE (Instructed by Messrs Cobbetts)
appeared as Counsel on behalf of the Applicant**

**MISS CHARLOTTE MAY (Instructed by Messrs Ashurst Morris Crisp)
appeared as Counsel on behalf of the Opponent**

D E C I S I O N

MR HOBBS: As will have become apparent to you during the course of the discussions which have taken place this morning, I am conscious of the fact that I am not the Registrar and that I have no original jurisdiction to entertain applications de novo for an order under Section 64 of the Act or for the recordal of an assignment under Section 25.

5 It does appear to me that what I am being asked to do in the context of this appeal is to exercise a jurisdiction which I do not possess. I am prima facie of that view because there was only one application for rectification under Section 64 in the Registry proceedings. That was the application for rectification brought by the respondent to the present appeal, Nationwide Access Limited. That application succeeded. There was no counter-suggestion
10 on behalf of the then registered proprietor (who is the appellant before me) that anyone other than himself should be recorded as the proprietor of the relevant trade mark.

It is now accepted by the appellant that he was not entitled to be recorded as proprietor of the trade mark. He nevertheless wishes to contend, for the first time on appeal, that the trade
15 mark should be registered in the name of the Sharma Group Plc and the Sharma Groups Plc seeks leave to intervene in the appeal in support of that connection. The appeal and the intervention thus appear to be directed to the making of an entry in the Register of Trade Marks which no one has previously requested the Registrar to make.

20 The appellant and the would-be intervener seek leave to adduce evidence for the purpose of substantiating the new claim to proprietorship. The respondents would wish to have the opportunity to file evidence in answer. The appellant and the would-be intervener would probably wish to file evidence in reply. Applications for disclosure of documents and other information and for the cross-examination of witnesses on their written evidence might also
25 be made.

I view with alarm the prospect that by entertaining this appeal and allowing the intervention would be opening the door to what I have already described several times in the course of the debate this morning as a conflagration of evidence. It would be a conflagration of evidence
30 occurring for the first time on appeal before a tribunal from who there is no right of appeal

under the statute. I am unattracted by that prospect and I consider that it represents an inappropriate way of conducting proceedings before an appellate tribunal.

I would indicate, having looked at the papers and considered the submissions that have been made on either side, that I am not inclined to refer the matter to the court, although I am not actually expressing a final view on that. I decline at the present point in time to make a ruling on the question of intervention, although I can see that if there was to be an appeal before me on the broader basis envisaged by the appellant, it would be appropriate (to put it no higher than that) to have necessary and proper parties present and participating in that appeal.

Although I have misgivings as to whether this is a competent appeal or not, it seems to me that the appropriate course at this stage is to stay the appeal with liberty to the appellant and the respondent to apply for the removal of that stay if and when so advised. I think it is appropriate to impose a stay in order to allow for the possibility that there is something which may need to be done hereafter for the purpose of putting right things which may have gone wrong and the further possibility that the only person who can put things right in the events which have happened might turn out to be the Appointed Person on appeal from the Registrar's decision in the proceedings below.

That is the main reason why I think it is desirable to impose a stay on these proceedings. The stay will allow time for those who believe that they have a proprietary interest in the mark at the centre of the proceedings before me, to make such applications as they consider to be appropriate to the Registrar by means of original applications either under Section 25 of the Act or Section 64 of the Act, or both. I envisage that those applications, if any, will be made promptly and if no such applications are made I will regard that as a good reason for restoring the matter before me with a view to a substantive determination of the fate of this appeal.

In the meantime, my decision is that these proceedings will be stayed with liberty to either party,. That is to say, the appellant or the respondent, to apply in that connection. Costs will therefore be reserved.