

O-157-10

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2467723

BY

DAVID ATKINSON

TO REGISTER THE TRADE MARK:

BO-JANGLES

IN CLASS 14

AND

THE OPPOSITION THERETO

UNDER NO 96599

BY

MARIE LOUGHLIN- CHAPMAN AND AZTECA TRADING

Trade Marks Act 1994

**In the matter of application no 2467723
by David Atkinson
to register the trade mark:
BO-JANGLES
in class 14
and the opposition thereto
under no 96599
by Marie Loughlin–Chapman and Azteca Trading**

INTRODUCTION

1) On 25 September 2007 David Atkinson applied to register the trade mark **BO-JANGLES**. The application for registration was published for opposition purposes on 14 December 2007 in respect of *jewellery products*.

2) On 11 March 2008 Marie Loughlin–Chapman and Azteca Trading filed a notice of opposition to the registration of the trade mark. The opponents claim that registration of the trade mark would be contrary to section 3(6) of the Trade Marks Act 1994 (the Act) as the application was made in bad faith. The opponents state that Mr Atkinson and Ms Loughlin–Chapman worked in partnership from mid 2005, each as an equal partner of the business. They state that the partnership traded in the sale of jewellery products in the United Kingdom under the name BO-JANGLES from the commencement of the partnership. Mr Atkinson and Ms Loughlin–Chapman incorporated a limited company, Bo Jangles Jewellery Limited, on 23 August 2006, of which they were directors. The company was set up by mutual agreement of the directors for the purpose of trading in jewellery products under the name BO JANGLES. The opponents state that much of the trading was done through “Ms Loughlin–Chapman sole tradership Azteca Trading with Mr Atkinson’s consent”. Profits were shared between Ms Loughlin–Chapman and Mr Atkinson. The opponents state that Mr Atkinson wished to avoid conflict with his existing jewellery business, Jax Jewellery Limited, which sold higher value jewellery products. Towards the end of 2007 the business relationship between Ms Loughlin–Chapman and Mr Atkinson broke down. Subsequent to the filing of the application Mr Atkinson sought to prevent Ms Loughlin–Chapman from continuing to trade in jewellery products under the BO JANGLES name. The opponents state that the application was clearly made in bad faith as it was made to damage the business of “Ms Loughlin–Chapman’s sole tradership Azteca Trading” and to appropriate a trade mark right in which Mr Atkinson does not have exclusive ownership.

3) The opponents state that the registration of the trade mark would also be contrary to section 5(4)(a) of the Act. In relation to this ground it relies upon the sign Bo-Jangles. (For the sake of consistency the trade mark and sign will now

always be referred to in the form of BO-JANGLES, unless anything turns upon it being referred to in another format.) The opponents state that their sign has been used on promotional literature and exhibition stands promoting jewellery products for sale, on letterheads and invoices sent to customers or potential customers, in correspondence with suppliers supplying jewellery products for onward sale to customers, on sales material relating to jewellery products, orally in relation to the supply, marketing, promotion and sale of jewellery products in the United Kingdom since the latter half of 2005. The opponents state that it was Ms Loughlin–Chapman and her assistant, an employee of Azteca Trading, who exhibited the products under the BO-JANGLES name. It was they who generated custom for the products and who oversaw the delivery of products to customers. Ms Loughlin–Chapman was the primary person involved in the selection of jewellery products for sale under the BO-JANGLES brand. The opponents state that any reputation and goodwill generated in the BO-JANGLES trade mark in relation to jewellery products has been as a result of the personal efforts of Ms Loughlin–Chapman and her sole trader business Azteca Trading. The opponents state that Ms Loughlin–Chapman and her sole trader business Azteca Trading has a prior right to the trade mark BO-JANGLES which is protectable under the law of passing-off.

4) From the statement of grounds and the evidence it emerges that Azteca Trading is a trading name for Ms Loughlin–Chapman, as such it is not a legal entity. Consequently, in the rest of the decision, in relation to the opponents, reference will be made solely to Ms Loughlin–Chapman.

5) Mr Atkinson filed a counterstatement. Mr Atkinson states that through his longstanding business relationships, forged over 9 years, with jewellery suppliers in Hong Kong and China, he sourced the suppliers of the jewellery range, now known as BO-JANGLES, in 2003. He states that he was selling the jewellery range before Ms Loughlin–Chapman was involved. Mr Atkinson states that he came up with the name BO-JANGLES for the products in June 2004 and started selling the jewellery range under the BO-JANGLES name with Ms Loughlin–Chapman from 2005. He states that he found it confusing to customers to be selling faux pearl products alongside natural pearls on his Jax Jewellery stand. Mr Atkinson states that he had already found a market for the cheaper and very attractive range of jewellery and wished to market the products in a different way. Mr Atkinson states that he had already been selling the range through Jax Jewellery and had customers for the products before Ms Loughlin–Chapman came onto the scene. Mr Atkinson states that in order to avoid the confusion that he had already experienced with customers it was agreed to initially trade through Azteca Trading, as Bo-Jangles Jewellery Ltd was being set up.

6) Mr Atkinson states that the initial invoice for BO-JANGLES, trading through Azteca Trading, was dated 9 June 2005. Mr Atkinson states that between 2005 and 2007 he and Ms Loughlin–Chapman worked together to develop the product

range and market it. Mr Atkinson states that he and Ms Loughlin–Chapman had different rôles in their venture. He states that he designed, built, transported and set up the shell and the electrics/lighting for all the BO-JANGLES stands whilst he was working with Ms Loughlin–Chapman without any assistance from her. Mr Atkinson states that he was always present with Ms Loughlin–Chapman for their visits to his suppliers in China. He states that he allowed Ms Loughlin–Chapman to advise on colour choices as he is colour blind. Mr Atkinson states that he purchased a laptop computer for the sole use of BO-JANGLES, Sage accounts was loaded upon the computer to assist with the financial management and stock control of the business. Mr Atkinson states that the laptop has never been used as he has been excluded from being able to access information about a company, in the form of partnership at will, in which he has an equal share.

7) Mr Atkinson states that Ms Loughlin–Chapman would not give him the accounts for BO-JANGLES trading through Aztec Trading. He states that he started asking for the accounts in September 2006 and continued to request them over the next year. Mr Atkinson states that at the time he classed Ms Loughlin–Chapman as a good friend, having known her for 12 years. He thought that the failure to furnish the accounts was strange but not something of importance as they were both busy people. Mr Atkinson states that when he was given the accounts for their partnership, in September 2007, he discovered that Ms Loughlin–Chapman had paid herself £39,000, which was the profit that BO-JANGLES had made, no payment was made to him. Mr Atkinson states that Ms Loughlin–Chapman did not pay all of his expenses, around £8,000 is still owing. He states that he is now in the position of having to take Ms Loughlin–Chapman to court to get monies owed to him. Mr Atkinson states that he never agreed to employ Ms Loughlin–Chapman. He states that the relationship with regard to BO-JANGLES was as co-directors “based on equality”, although they both knew that they had very different skills to offer.

8) Mr Atkinson states that as co-director Ms Loughlin–Chapman should not have been paid a wage, unless he was to be paid the same amount at the same time. He states that he had never agreed to the payment of any wages and that it became apparent that Ms Loughlin–Chapman had taken money for wages without his knowledge. Mr Atkinson states that Ms Loughlin–Chapman in relation to BO-JANGLES acted in a manner which did not recognise his equal status and did not consult him about significant financial decisions that would affect him. He states that her behaviour has effectively “constructively dismissed” him and he assumes that she has now come to think that she can have an entitlement to the name BO-JANGLES.

9) Mr Atkinson states that Ms Loughlin–Chapman “does not understand a partnership”. He states that even when the money was going through Azteca Trading it was 50% his, regardless of who does what in the partnership, as it was a partnership at will. Mr Atkinson states that he did not prevent Ms Loughlin–Chapman from trading with the name BO-JANGLES when they were a

partnership and he did not start proceedings in September 2007 but in October 2007, in order to recover monies owed. Mr Atkinson states that he does not wish to damage Ms Loughlin–Chapman but does want rights in the name BO-JANGLES. He states that Ms Loughlin–Chapman has done very well from her association with him as she is now using his suppliers in China, it took him years to “develop” and find the correct people with whom to work. Mr Atkinson states that Azteca trading used Mexican suppliers for silver jewellery, which in the present climate is difficult to sell. Mr Atkinson states that Ms Loughlin–Chapman is relying upon his Chinese contacts to keep her business going in relation not just to the BO-JANGLES range but also in relation to her range of jewellery.

10) Mr Atkinson states that he employed people to work on his Jax Jewellery stand so that he could be available to work on the BO-JANGLES stand. He states that he was the primary person in the selection of jewellery and that he already had the jewellery before Ms Loughlin–Chapman was involved with the products. Mr Atkinson states that without the products there would be no need for the name BO-JANGLES. He states that Ms Loughlin–Chapman has done extremely well in taking advantage of him.

11) Both parties filed evidence. Neither side requested a hearing, which is somewhat unfortunate as owing to the conflicts in the evidence cross-examination of the protagonists may have been of use. Ms Loughlin–Chapman did not furnish written submissions. Mr Atkinson supplied the following submission:

“My summing up is as follows:

1. Marie Loughlin–Chapman stated I can up with the name.

Do think any more has to be said.”

EVIDENCE

First witness statement of Ms Loughlin–Chapman

12) Ms Loughlin–Chapman states that she designs and sells jewellery under the trading name Azteca Trading.

13) The trade mark BO-JANGLES is used in respect of jewellery which uses imitation pearls.

14) Ms Loughlin–Chapman states that the original idea for the BO-JANGLES line of jewellery came from her as the result of a cover picture from *Vogue* in which Keira Knightly was wearing an imitation pearl necklace. Ms Loughlin–Chapman purchased the magazine prior to a business trip to Hong Kong in June 2004. The trip was offered to traders at a cheap rate by the HK Jewellers Association.

Mr Atkinson was also on the trip, he was the person who advised Ms Loughlin–Chapman that there was a place available on the trip. There was no suggestion that she was going with him as part of a business arrangement or in order to be invited into a longstanding business network that he had created. Ms Loughlin–Chapman found some imitation pearls in Hong Kong. She pointed out the imitation pearls to Mr Atkinson who gave the impression that he knew the product, although he gave no indication that he already had an established trade in the product. Ms Loughlin–Chapman considered that “it looked a good idea to investigate further”.

15) The name BO-JANGLES was born of a conversation with Mr Atkinson on the aeroplane returning home from Hong Kong in June 2004. She suggested that they could have products that “jingled jangled” ie made noise with movement, from this came the name BO-JANGLES.

16) The development of the BO-JANGLES logo was carried out in the office of Ms Loughlin–Chapman. Ms Loughlin–Chapman and her assistant chose all the original designs and colours for BO-JANGLES. Ms Loughlin–Chapman states that in essence the whole BO-JANGLES range is about colour, her office did the choosing and combining of colour. Decisions on any changes, adaptations and additions to the range were made by her office, they were all accepted by Mr Atkinson. When ideas were put to him his invariable reaction was “I’m not bothered, do what you want”. All fashion and research development of the BO-JANGLES line was done by Ms Loughlin–Chapman’s office. The ideas and photographs for the BO-JANGLES catalogue and the compilation of it originated from and were effected in her office. All catalogue and advertising copy came from her office. All sales and marketing, customer relations and associated development of the brand were carried out by Ms Loughlin–Chapman’s office. 92 per cent of sales were generated by trade fairs that her office staffed or emanated from her customers. Mr Atkinson said that he could not sell more to his customers, he said that he had tried and that they weren’t interested. All pre-show customer mailings were effected by Ms Loughlin–Chapman’s office. Staffing of trade show stands and the consequent sales they produced were made by her office. The sole exhibition staffed by Mr Atkinson was the only one at which nothing was sold. Mr Atkinson rarely appeared on BO-JANGLES stands to participate in customer relations, he took even less part in prospective sales. The stand’s design was a collaborative effort with ideas bounced between the office of Ms Loughlin–Chapman and that of Mr Atkinson. Decisions on the colour for trade fairs came from her office, Mr Atkinson carried out the carpentry for the construction of the stand. He did not invariably transport and store it. In the majority of cases, but not all, Mr Atkinson set up the lights; he did not set up the jewellery display. Ms Loughlin–Chapman’s office carried out all such “aesthetics” for the BO-JANGLES line. The sole exception to this was the fair for which he took responsibility and at which nothing was sold. All accounts and administration were carried out by the office of Ms Loughlin–Chapman. It was suggested at one stage that Mr Atkinson might carry out the dispatch of goods to

customers, this was found to be inefficient and reverted to the office of Ms Loughlin–Chapman.

17) Ms Loughlin–Chapman states that Mr Atkinson is trying to suggest that he originated the BO-JANGLES imitation pearl idea. She states that this is quite wrong. Many people were selling imitation pearl before the BO-JANGLES enterprise began. Neither he nor they were selling what came to be the BO-JANGLES range. They originally planned a three part line of imitation pearl, sterling silver and freshwater pearl with semi-precious stones. Ms Loughlin–Chapman states that Mr Atkinson's statement that he had an established imitation pearl idea that BO-JANGLES inherited is incorrect. The range was limited to one line of imitation pearls after initial customer reaction seemed to point to a preference for it. Further limiting of the range took place when Ms Loughlin–Chapman suggested that they make BO-JANGLES a classic range, with emphasis on an array of single colours, single strands and five sizes of beads. Ms Loughlin–Chapman also introduced several colour mixtures. All of this was based on current fashion trends as researched by her office. Ms Loughlin–Chapman states that Mr Atkinson's suggestion of there being a well established network of his own into which BO-JANGLES neatly fitted bears little relation to the facts. Development of BO-JANGLES' relationship with suppliers and purchasers from them was carried out by Ms Loughlin–Chapman's office, which did all of the ordering. BO-JANGLES' clasps, a standard OT type, were found by her in March 2005 at a Hong Kong supplier, these were superior in quality to those of Mr Atkinson. The main BO-JANGLES supplier has offices in Taiwan and workshops in Vietnam, it was not a prior supplier to Mr Atkinson. Mr Atkinson found the supplier on the Internet. Ms Loughlin–Chapman's office developed the BO-JANGLES relationship with the supplier. Mr Atkinson has since intervened with this supplier telling him not to supply her and claiming BO-JANGLES to be his.

18) Ms Loughlin–Chapman has had accounts for the BO-JANGLES enterprise prepared and verified by a chartered accountant and auditor, these have been provided to the solicitor of Mr Atkinson. All the corroborative documents have also been made available. These accounts show that there was no BO-JANGLES profit made in the 2005-2007 period, that she did not pay herself a salary and that all the expenses that she incurred were correct. By contrast, the requests of Ms Loughlin–Chapman both in person and through Mr Atkinson's solicitor for him to show documentary evidence for some £16,000 of expenses claims for which he has been recompensed from BO-JANGLES revenue have been ignored. It is from the time of her first asking for this evidence that the dispute dates.

19) Ms Loughlin–Chapman states that from September 2007 Mr Atkinson has either implied or made frequent threats of legal action against her. She states that she has sent reasoned responses to them, none of the threats have materialised into the legal action that his counterstatement suggests that he is

taking. For much of the year she has been trying to arrange mediation with Mr Atkinson through his solicitor, however, she has not received a response from either Mr Atkinson or his solicitor.

20) Ms Loughlin–Chapman disputes that Mr Atkinson, as an individual, holds any goodwill in the brand name. She was the sole designer of the range and built the BO-JANGLES client portfolio.

21) Exhibited at MCL1 is a copy of the cover of *Vogue* which inspired the BO-JANGLES range of jewellery.

22) Exhibited at MCL2 is a witness statement by Katherine Hulf. Ms Hulf was Ms Loughlin–Chapman’s assistant from November 2004 to August 2007. Ms Hulf states that Mr Atkinson’s office had very little input into the design of the BO-JANGLES product range, colour-way and product line designs. These were originated and developed in the Azteca Trading office. Day to day administration was largely carried out in the Azteca Trading office, aside from a small amount of initial logistical administration, which occurred at Mr Atkinson’s office. The main body of the sales, marketing and customers relations was carried out in the Azteca Trading office, with only occasional customer feedback coming from Mr Atkinson’s office. Design of the stand was a collaborative effort between the two offices, with subsequent staffing at trade fairs provided by Azteca Trading staff. On the occasion when Mr Atkinson’s office staffed the BO-JANGLES stand on its own, at Harrogate 2005, there were no customer orders.

23) Exhibited at MCL3 is a witness statement made by Christine Roberts. Ms Roberts is the manager of the Dulwich Trader and the jewellery buyer for Tomlisons Ltd, both based in south east London. Ms Roberts purchased and sold BO-JANGLES jewellery. She states that all correspondence and communication in association with BO-JANGLES merchandise, orders and queries were dealt with through Ms Loughlin–Chapman. On the stand at trade fairs she only dealt with Ms Loughlin–Chapman or a member of her staff. On no occasion did she deal with anyone else.

24) Exhibited at MCL4 is a witness statement made by Gemma Cotterell. Ms Cotterell is the accessories product developer for Hobbs Ltd. Ms Cotterell began dealing with BO-JANGLES in June 2006, all initial contact was made with Ms Loughlin–Chapman. All further dealings were conducted with Ms Loughlin–Chapman and Ms Hulf. All products developed were through Ms Loughlin–Chapman. Ms Loughlin–Chapman was always Ms Cotterell’s point of contact when dealing with BO-JANGLES for Hobbs Ltd. All orders placed with BO-JANGLES for Hobbs Ltd were made exclusively with Ms Loughlin–Chapman. All samples requested, whether during meetings at Hobbs Ltd’s head office or at trade fairs, were requested through Ms Loughlin–Chapman.

25) Exhibited at MCL5 is a witness statement made by Enid Hastings. Ms Hastings is the owner of Sienna Ltd in Kirkby Lonsdale. Ms Hastings has purchased and sold BO-JANGLES jewellery. Ms Hastings states that all dealings with BO-JANGLES orders or merchandise were conducted exclusively with the office of Ms Loughlin–Chapman. All orders placed at trade fairs were made exclusively with Ms Loughlin–Chapman or Ms Hulf. Any recommendations or advice regarding the BO-JANGLES products came through the office of Ms Loughlin–Chapman.

Witness statement of Mr Atkinson

26) Mr Atkinson is a director of Jax Jewellery Limited.

27) Mr Atkinson states that the BO-JANGLES name is used in respect of a range of jewellery which uses imitation pearls.

28) Mr Atkinson states that he does not agree with Ms Loughlin–Chapman that the idea for BO-JANGLES line, ie a range of jewellery using imitation pearls, emanated from her. Mr Atkinson was already selling this product prior to Ms Loughlin–Chapman’s involvement with the project, albeit without the BO-JANGLES “catch”. Mr Atkinson invited Ms Loughlin–Chapman to come with him to Hong Kong in June 2004 as he had dealt with her before and had known her for many years. Mr Atkinson organised the hotel and the itinerary. Mr Atkinson states that he got Ms Loughlin–Chapman involved as he wanted to expand potentials and possibilities of the range of jewellery using the pearl product. He would not have introduced Ms Loughlin–Chapman to his contacts and suppliers if they were not going to work together in a joint venture. Mr Atkinson states that he did not invite Ms Loughlin–Chapman to come along on the business trip. The purpose of the trip to Hong Kong was “to look at the venture going forward a new business arrangement for the existing jewellery range which I had created”. Ms Loughlin–Chapman had no or limited experience in this area whereas Mr Atkinson, through his business Jax Jewellery Limited, had considerable experience of selling imitation shell pearls and, therefore, was “aware of the many imitations and competitors on the market. This was through my contacts and my knowledge of that particular jewellery market that contacts were made through the company and an agreement was set out for the production of the Bo-Jangles range.”

29) Mr Atkinson states that the BO-JANGLES name did not derive from a conversation with Ms Loughlin–Chapman on the aeroplane returning from Hong Kong in June 2004. The name was created by Mr Atkinson in a bar in Hong Kong, the name BO-JANGLES was his idea.

30) Exhibited at DA1 is what Mr Atkinson describes as a hand drawn logo which he drew as a design for the BO-JANGLES clasp. He states that the actual creation of the artwork was by him, whilst it may have been finely tuned by Ms

Loughlin–Chapman the idea for the design came solely from him. Mr Atkinson states that it is pertinent to note that Ms Loughlin–Chapman states that she developed the logo in her office, she does not state that she actually designed it. Exhibited at DA2 are copies of what Mr Atkinson describes as hand written notes by his employees for the BO-JANGLES design. Mr Atkinson denies that Ms Loughlin–Chapman chose all of the original designs for the BO-JANGLES range. The pages exhibited relate to descriptions of items of jewellery. On the first page of the exhibit the following appears:

“with one silver bead marked with logo made by Ring. (What’s cheapest – logo/BoJangles”.

The first page is headed “Bo-Jangles range”, the third page bears the name “Bo Jangles”. The third page also includes the following descriptions:

“Dangly jangly chain ones
Jangly bracelets and necklaces from Heng Lee”.

31) Mr Atkinson states that the BO-JANGLES range is not about colour. “It is about the design of the clasp and the production, being imitation pearls. The colour was delegated to her and it is disingenuous for her to say that it is all about colour as she knows that I am colour blind and therefore that is why she took over this aspect of the marketing.” Mr Atkinson states:

“It is denied that there was any changes adapted or additions to the range and if they were they were made by the Opponent’s office. It is not the case that I took no interest.”

Exhibited at DA3 are pictures of jewellery which Mr Atkinson states show existing products the he had brought from his supplier. He states that there was nothing to adapt as he “had already come up with a product, then the name then the catch and I had suppliers already making these catches.” Mr Atkinson states that “Bo-Jangles are simple necklace and bracelets and therefore the product is relatively simple to design which I had done previously. I had used a logo and catch on other jewellery products made by another supplier before it was ever used by the opponent. It is now produced and shown to me a photograph of a Bo-Jangles catch of that design DA4.” DA4 shows a string of, presumably, false pearls, the clasp/catch bears the name BO-JANGLES. Mr Atkinson states that the BO-JANGLES range was created from existing products and that it is very basic jewellery with “a little design element involved”.

32) Mr Atkinson states that Ms Loughlin–Chapman may have taken some photographs of the jewellery and created a catalogue but this was in connection with a design that had been previously created by him. The creation of the catalogue and advertising copy came from Ms Loughlin–Chapman as this was her delegated responsibility.

33) Mr Atkinson states that it is not the case that his Jax Jewellery Limited clients were not interested in buying the BO-JANGLES range of products. Mr Atkinson states that he constructed and manned stands “at the Trade Fair and was responsible for the sales 92% of which were generated from trade shows”. He does not dispute that customer mailings were sent out by Ms Loughlin–Chapman’s office. Mr Atkinson states that Ms Loughlin–Chapman’s staff were also engaged in the sales “at the trade fair”. He states that this was her area of involvement as his had been the design of the range. Mr Atkinson states that at trade fairs he designed and built the stand but kept Ms Loughlin–Chapman involved as they were in business together. The responsibility for the creation of the stand was completely his.

34) Mr Atkinson states that as “part of the agreement, the accounts and administration were carried out by the Opponent. It is the case that when I dispatched goods to customers this process was the inefficient and reverted to the Opponent.” He goes on to state:

“The Opponent’s suggestion that I originated the imitation pearl idea is again misleading. Of course there were imitation pearls being sold however by using giant clamshells for the pearl and covering the now round bead of shell with paint was a new and innovative approach. This was the new line that I had created through Bo-Jangles. It is interesting to note that the Opponent does not indicate that she had any involvement with the imitation pearl business prior to her involvement the introduction of which was through me. Prior to the Bo-Jangles range I was selling shell pearl with a different catch one of which was a silver catch. The introduction of simple colours was a joint effort and we were all involved and reference is made to the hand-written notes which is exhibited at “DA2”.”

35) The suppliers used in the BO-JANGLES range were all from his contacts and whilst Ms Loughlin–Chapman did the ordering Mr Atkinson states “the ordering from the suppliers was provided by me through my network”.

36) Mr Atkinson states that proper audited accounts have not been prepared, rather Ms Loughlin–Chapman has prepared a statement of income and expenses which does not stand up to scrutiny “as the Opponent refuses to provide the information as requested”. Mr Atkinson states that no sales figures have been provided for the various shows, in particular the Pure Show “which we all attended and manned the stand”. He states that the statement that no salary was paid or incurred is plainly incorrect. He states “Expenses have been incurred and deducted by her without reference”. Mr Atkinson states that the threats of legal action have been made in relation to the furnishing of proper accounts of the profits of the business, the requests have been “resisted” by Ms Loughlin–Chapman. He states that it is disingenuous for Ms Loughlin–Chapman to state that she has been trying to arrange mediation as there is no point in

mediation until there is a full disclosure “of what are the issues at stake which in this case is the sums due and the value of the partnership in relation to the Bo-Jangles business”.

37) Mr Atkinson states that he found the suppliers, made the samples, made the exhibition stand, went to China. Ms Loughlin–Chapman’s involvement was to sell the products.

Second witness statement of Ms Loughlin–Chapman

38) Ms Loughlin–Chapman states that the only imitation pearl used in the BO-JANGLES range was shell pearl.

39) Ms Loughlin–Chapman states that Mr Atkinson’s versions of events is incorrect. Mr Atkinson mentioned to her, when she had telephoned him in relation to another matter, that the Hong Kong Jewellers’ Association was sponsoring a trip for jewellers from the United Kingdom and that there were still a few spaces available if she was interested in going. He mentioned that he could book for her and that she could forward payment to him. At no time did Mr Atkinson mention getting involved with the expansion of his range. Ms Loughlin–Chapman was not a competitor as she dealt with handmade silver jewellery and a range of semi-precious stone jewellery from Mexico, which she designed and which were all quite different from the style of jewellery that Mr Atkinson sold. Mr Atkinson never mentioned any intention to involve Ms Loughlin–Chapman in the expansion of his business. Mr Atkinson was selling shell pearl prior to her involvement but not under the name of BO-JANGLES and not in the same styles. Ms Loughlin–Chapman had no involvement with shell pearl products prior to the trip in June 2004 but when she saw the cover of *Vogue* she became interested in such products. Mr Atkinson did not mention at that time that shell pearl was an integral part of his collection. He told her, when they went to see one of his suppliers, that the product that she had seen in the magazine was one which they had noticed in the office. The conversation continued and Ms Loughlin–Chapman suggested that she “might like to do something with this”. There was no mention of Mr Atkinson having a “line” which he was thinking of developing. The agreement to finalise any association between Ms Loughlin–Chapman and Mr Atkinson was not made on the initial trip but they discussed the possibility of getting samples and the name of the range on the return flight.

40) Ms Loughlin–Chapman states that the genesis of the name BO-JANGLES came about on the plane home as she previously stated. Ms Loughlin–Chapman disagrees that Mr Atkinson designed the clasp exhibited at DA1. She states that the design of the clasp came about as a result of discussions between herself and Mr Atkinson. Ms Loughlin–Chapman states that the OT clasp is one that is widely used in the jewellery industry the world over and is not something that Mr Atkinson invented. The clasp has been used in pieces of jewellery from her collections for many years. The style was an obvious choice for the line and it is

“easy” and lends itself to branding. The placing of the name on the clasp and the style of the lettering were the subject of discussions between Ms Loughlin–Chapman and Mr Atkinson. Ms Loughlin–Chapman does not agree that Mr Atkinson chose any of the original designs. The original designs for the BO-JANGLES range (which at the time did not exist) were made during the June 2004 visit to one of Mr Atkinson’s suppliers. At that time Ms Loughlin–Chapman chose some combinations that she thought might be good. Ms Loughlin–Chapman recognises the notes exhibited at DA2 as relating to the designs that she had worked on during the initial visit to the supplier. Ms Loughlin–Chapman maintains that colour is a fundamental component of the product. Mr Atkinson, as he is colour blind, had no part in the selection of colour. For the collection of pearl shells there were approximately 10 single colours and 5 mixed colour combinations. The selection of colours and combinations was made in Ms Loughlin–Chapman’s office from the colour cards supplied by the shell pearl manufacturer.

41) Ms Loughlin–Chapman maintains that there were changes, adaptations and additions to the range and that these changes were made in her office. She disagrees that Mr Atkinson “bought the design shown in item DA3”. She states that DA3 shows the original designs that were made in silver for the first BO-JANGLES range and which became redundant once Ms Loughlin–Chapman and Mr Atkinson decided to sell only shell pearl products under the name BO-JANGLES. The products shown are from a company called ZN Concept which she became acquainted with at the HK Jewellery Fair in March 2005 when Ms Loughlin–Chapman and Mr Atkinson went to source new suppliers after making the decision to take the BO-JANGLES brand forward. Their products were of a very high quality and their clasps were the OT style upon which Ms Loughlin–Chapman and Mr Atkinson had decided. They agreed to produce them with the BO-JANGLES logo. Mr Atkinson did not have any dealings with ZN Concepts prior to that time and did not sell their products in his line. The order for the samples shown at DA3 was placed at the HK Jewellery Fair. The invoice was sent to Ms Loughlin–Chapman and she paid it. Ms Loughlin–Chapman disagrees that Mr Atkinson designed the OT clasp shown at DA4. The design did not originate from Mr Atkinson and the model for the final clasp came from ZN Concepts who used the same clasp on its own designs.

42) Ms Loughlin–Chapman disagrees that there was little design element in the BO-JANGLES range of jewellery. She states that the colour and size of the pearls is of fundamental importance. As the range developed it included strands of uniformly sized pearls but this simple design concept was not something that Mr Atkinson originated but something which arose from research done by Ms Loughlin–Chapman with customers at the first trade fair in May 2005. When Mr Atkinson was consulted about changes he agreed. Ms Loughlin–Chapman disagrees that the designs were made by Mr Atkinson, she maintains that the ideas for the range came from her office. She researched colour trends and made the selection and the colour mix combinations based on this information.

Ms Loughlin–Chapman did this prior to a meeting with the buyer from Hobbs, who said that the colours were perfect for its collection and only made one change in the shade of one colour, Ms Loughlin–Chapman states that she also adapted the clasp and slightly changed the shape and added the Hobbs logo, this was again done through ZN Concepts. Ms Loughlin–Chapman states that she did not merely take photographs of the jewellery but had produced a full colour catalogue and posters for the trade fairs as well. These were developed and expanded by her over time and were useful marketing tools which allowed customers to order outside of the trade fairs.

43) Ms Loughlin–Chapman disagrees that Mr Atkinson was responsible for the sales generated by trade fairs. She also disagrees that 92% of the sales came from trade fairs. Ms Loughlin–Chapman states that 92.5% of the sales were evenly divided between the trade fairs and existing Azteca Trading customers. Very few of the BO-JANGLES client list were previously known to Mr Atkinson, only 7.5% of sales were as a result of Mr Atkinson's contacts. Ms Loughlin–Chapman states that the design of the stand was a joint effort with Mr Atkinson providing 5 MDF shelves and sourcing and obtaining supports for them. He also acquired slate and wood, which he painted. This basic design was used at all the subsequent exhibitions and adapted by Ms Loughlin–Chapman's team as they went along. The other stand display items, such as flooring, backdrop, pictures and other jewellery display items were provided by Ms Loughlin–Chapman. Ms Loughlin–Chapman disagrees that Mr Atkinson manned the BO-JANGLES stand at trade fairs. The only trade fair at which he manned the stand was the one in Harrogate in 2005. For the other fairs Ms Loughlin–Chapman and her team set up the stand and arranged the display of the jewellery. One example of the set up was at the Harrogate Fair in 2006 when the assistant of Ms Loughlin–Chapman, Ms Katharine Hulf, travelled to Harrogate before the fair opened to set up the BO-JANGLES stand and to arrange the jewellery display. She manned the stand of the opening day of the fair while Mr Atkinson and his assistant manned the adjacent stand for Jax Jewellery.

44) Ms Loughlin–Chapman states that she handled the administration, design and product development and selection, ordering and receiving of merchandise, dispatch of goods, customer relations, the catalogue, the PR and mailings as well as the majority of the set up, display and manning of the stands at trade fairs, with the exception of Harrogate 2005.

45) The process of producing shell pearl from clam shells existed before BO-JANGLES and Mr Atkinson did not create the product. Ms Loughlin–Chapman states that she did not have prior involvement with shell pearl but there was not a great deal to learn in relation to the product. Ms Loughlin–Chapman states that the copy of the notes exhibited at DA2 reflect the designs that she had worked on in China during the visit to Mr Atkinson's supplier in June 2004.

46) Ms Loughlin–Chapman confirms that all pertinent figures relating to the business have been supplied by her accountants. She states that Mr Atkinson has ignored all demands from her for information.

47) Ms Loughlin–Chapman goes on to exhibit various documents.

48) At MCL6 there is a witness statement from Elzbieta Davies. Ms Davies is an owner and buyer of jewellery from BO-JANGLES and Azteca Trading. Ms Davies has known Ms Loughlin–Chapman for 10 years during which time she has bought jewellery from her. Ms Davies was buying and design director of Hobbs Ltd, when she held this position she designed and bought jewellery from Ms Loughlin–Chapman. During this period Ms Loughlin–Chapman designed a collection of jewellery for Hobbs and for her store, All In Black, Guernsey. Ms Davies states that she has only worked with Ms Loughlin–Chapman. She has no knowledge of Mr Atkinson. To her knowledge Ms Loughlin–Chapman is the only designer at BO-JANGLES and Azteca Trading.

49) At MCL7 there is a witness statement by Anna Sixsmith. Ms Sixsmith has worked with Ms Loughlin–Chapman since 1994, acting as an independent agent for Azteca Trading. She is not an employee of Azteca Trading but is paid a commission for orders that she generates. Ms Sixsmith states that it is her recollection that Ms Loughlin–Chapman visited the Far East on several occasions to visit trade fairs and to negotiate with manufacturers and suppliers in order to source the BO-JANGLES range of jewellery. Ms Sixsmith states that Mr Atkinson brought to the collaboration his contacts in the Far East while Ms Loughlin–Chapman brought her experience in sourcing jewellery and of commissioning designs specific to the United Kingdom market, and also an extensive customer list that Azteca Trading had built up for contemporary jewellery. Ms Sixsmith states that as part of her work as an agent she helps to staff Azteca Trading stands at trade fairs in the United Kingdom. She states that the BO-JANGLES stand was staffed by Ms Loughlin–Chapman and/or her assistants. She does not recall seeing Mr Atkinson selling on the BO-JANGLES stand.

50) At MCL8 there is a witness statement by Linda Thomas, Ms Thomas is the owner of Expressions of Lancaster and a purchaser of BO-JANGLES jewellery. Ms Thomas states that she has stocked BO-JANGLES jewellery and has dealt exclusively with Ms Loughlin–Chapman at the trade fairs and at her office. She was aware that Mr Atkinson has his stand next to the BO-JANGLES stand but never had any dealings with him or saw him on the BO-JANGLES stand.

51) At MCL9 there is a witness statement by Alan J Martin. Mr Martin, t/a Orme Agencies, has been the agent in Ireland for Azteca Trading for 8 years. During this period Ms Loughlin–Chapman provided him with ranges of jewellery to sell on her behalf, one of these was the BO-JANGLES range, which he sold from October 2005 to May 2007. Mr Martin was aware that the jewellery ranges that

he sold on behalf of Ms Loughlin–Chapman were mostly designed by her and that she travelled to Mexico and the Far East to source companies to manufacture her designs. In relation to BO-JANGLES, Ms Loughlin–Chapman told him that she was going to design a new range and work with Mr Atkinson, who had contacts in the Far East and who had a large customer base in the United Kingdom. During the time that Mr Martin sold BO-JANGLES jewellery all her dealings were with Ms Loughlin–Chapman, who provided him with samples, catalogues and paid his commission. At no time did he have any business dealings with Mr Atkinson. On visiting trade shows he worked on the Azteca Trading stand. The BO-JANGLES stand was very close to the main stand and was always manned by Ms Loughlin–Chapman or a member of her staff. He never saw Mr Atkinson working on the stand or taking an interest in the stand. When Mr Martin did see Mr Atkinson the latter was working on his own stand.

52) At MCL10 there is a witness statement by Christina Syed. Ms Syed is the retired proprietor of The Present Perfect Company and was a buyer of BO-JANGLES jewellery from September 2005 to September 2007. During this period she dealt exclusively with Ms Loughlin–Chapman and her staff. Orders at trade fairs were always placed with Ms Loughlin–Chapman or her staff, or were placed directly with her office. She never had any dealings with Mr Atkinson.

53) At MCL11 there is a witness statement by Barbara Miers. Ms Miers is sole director of Vanilla Accessories Ltd. Ms Miers originally purchased BO-JANGLES jewellery from Ms Loughlin–Chapman. Ms Loughlin–Chapman was manning a BO-JANGLES branded stand at IJL trade fair, she believes in 2006. Ms Loughlin–Chapman was the only person on the stand and when she ordered the product she subsequently dealt with Ms Loughlin–Chapman’s office. Ms Miers states that she did not see the product again until the Harrogate Gift Fair in July 2008. She states that she saw some BO-JANGLES branded jewellery on the Jax Jewellery stand. Whilst the silver branded clasp was exactly the same and the range of pearls in size and colour almost the same as the original range the cost price was considerably lower. She asked the owner of the stand, Mr Atkinson, why this was so and he told her that he had re-sourced the product and was using glass pearls to make the product cheaper. Owing to the price she placed an order for delivery in the autumn. Although there was significant demand for the original product many customers were disappointed when they realised the product now contained glass and not the original pearl shells. She is now selling the last of the BO-JANGLES pearls at half the original price. Ms Miers states that she is now disappointed with the BO-JANGLES offer and feels that the brand has been significantly devalued by cheapening the product.

54) Exhibited at MCL12 to MCL17 are copies of invoices to the following undertakings: All In Black of Guernsey from 14 November 2005 to 11 June 2007; Hobbs Ltd from 15 May 2006 to 17 September 2007; The Present Perfect Co from 14 November 2005 to 8 August 2007; Barbara Miers c/o Vanilla from 23 November 2005 to 13 December 2005; Tomlinsons from 15 November 2005 to

13 May 2006; Sienna from 3 November 2005 to 16 August 2007. All of the invoices bear the name BO-JANGLES and the address 19 Chatsworth Way, London, SE27 9HN; this is the business address of Ms Loughlin–Chapman. The invoices state that the items remain the property of Azteca Trading until paid for. The email address sales@bo-jangles.co.uk appears on the invoices.

55) The relationship between Ms Loughlin–Chapman and Mr Atkinson is not clearly defined. Mr Atkinson refers to an agreement between himself and Ms Loughlin–Chapman (see paragraph 34). No agreement has been adduced into the proceedings. It is possible that the agreement refers to a verbal agreement. There is nothing in writing in the proceedings that regulates the relationship between Ms Loughlin–Chapman and Mr Atkinson. Mr Atkinson refers to a partnership at will between himself and Ms Loughlin–Chapman. In her statement of case Ms Loughlin–Chapman states that she and Mr Atkinson worked in partnership from mid 2005, each as an equal partner of the business. The parties use terms in relation to a partnership but there is nothing to suggest that they use these terms with a firm grasp of the legal meaning. Mr Atkinson refers to a partnership at will, a partnership at will exists where no fixed term has been agreed upon for the duration of a partnership. In the absence of any written agreement consideration must be given as to whether there was a partnership by parol, ie a verbal partnership. *Lindley & Banks on Partnership* (eighteenth edition) at 7-23 states:

“It has already been seen that partnerships can be, and frequently are, created by parol. It follows that the absence of direct documentary evidence of an agreement for partnership is not of itself fatal to the case of a claimant who seeks to establish a partnership between himself and the defendant. In addition to the claimant’s oral testimony, the existence of such a partnership will have to be proved by reference to the parties’ conduct and, in particular, to the way in which they have dealt with each other and with third parties. However, dealings of the latter type will only be of real evidential value if they were known to and, thus, conducted with any express or implied authority of the other alleged partner(s). Such knowledge may, *inter alia*, be proved by reference to books of account, letters, admissions and the oral evidence of employees, agents and other persons.”

The statements of Ms Roberts, Ms Cotterell, Ms Hastings and Ms Davies show that they identified the BO-JANGLES range with Ms Loughlin–Chapman. All of the invoices are in the name of Azteca Trading, the trading name of Ms Loughlin–Chapman. There are no invoices or contracts from those who supplied the jewellery, such invoices would identify who was responsible for the payment, which would be an indicator of whether there was a partnership. However, Ms Loughlin–Chapman does state that an invoice was sent to her by ZN Concepts and that she paid it; there is nothing to gainsay this statement. Ms Loughlin–Chapman and Mr Atkinson comment upon on their dispute as to monies owed or

wrongfully paid/claimed, however, neither has adduced any financial records. There is nothing in the external behaviour of the parties that suggests that Ms Loughlin–Chapman and Mr Atkinson would be seen as being in a partnership, within the context of the Partnership Act 1890.

56) Reference is made to Bo-Jangles Jewellery Ltd, of which Ms Loughlin–Chapman and Mr Atkinson were co-directors. No company accounts have been adduced into the proceedings. There is no indication that the company has ever traded. None of the invoices make any reference to the company, neither do the witnesses, with the exception of the two protagonists. Under the Companies Act 1985 and the Companies Act 2006, it is a requirement to include the name of a company upon invoices. In the absence of evidence, Bo-Jangles Jewellery Ltd cannot be considered to be relevant to these proceedings.

57) Mr Atkinson refers to being effectively constructively dismissed. Only an employee can be constructively dismissed but there is no claim that Mr Atkinson is or was an employee. This reference is taken to be more a rhetorical flourish than a factual description of the relationship between Ms Loughlin–Chapman and Mr Atkinson.

58) Ms Loughlin–Chapman and Mr Atkinson from June 2004 until sometime 2007 were in a loose alliance in relation to the creation, purchase and sale of shell pearl jewellery. Mr Atkinson suggested the name for the range of jewellery that was to be sold. There are no rights per se in a name unless it is a registered trade markⁱ, the purpose of his application and the reason for the opposition of Ms Loughlin–Chapman. The suggestion of the name by Mr Atkinson does not give him rights of itself in relation to the business conducted by reference to the name. (Although nothing turns upon this, it is noted that BO-JANGLES is not a term invented by Mr Atkinson, Mr Bo-Jangles is a much covered song written by Jerry Jeff Walker.) Mr Atkinson states that he does not wish to damage Ms Loughlin–Chapman but does want rights in the name BO-JANGLES, it is difficult to see how the latter cannot give rise to the former and how Mr Atkinson would not realise that this would be the result.

59) Mr Geoffrey Hobbs QC, sitting as the appointed person, considered the position of unincorporated bodies in *Canaries Seaschool Slu v John Williams and Barbara Williams* BL O/074/10:

“27. I consider that the starting point for the purposes of analysis in the present case is the general proposition that the goodwill accrued and accruing to the members of an alliance such as I have described is collectively owned by the members for the time being, subject to the terms of any contractual arrangements between them: *Artistic Upholstery Ltd v. Art Forma (Furniture) Ltd* [2000] FSR 311 at paragraphs 31 to 40 (Mr. Lawrence Collins Q.C. sitting as a Deputy High Court Judge). When members cease to be members of an ongoing alliance they cease to have

any interest in the collectively owned goodwill, again subject to the terms of any contractual arrangements between them; see, for example, *Byford v. Oliver* (SAXON Trade Mark) [2003] EWHC 295 (Ch); [2003] FSR 39 (Laddie J.); *Mary Wilson Enterprises Inc's Trade Mark Application* (THE SUPREMES Trade Mark) BL O-478-02 (20 November 2002); [2003] EMLR 14 (Appointed Person); *Dawnay Day & Co Ltd v. Cantor Fitzgerald International* [2000] RPC 669 (CA); and note also the observations of Lord Nicholls of Birkenhead in *Scandecor Development AB v. Scandecor Marketing AB* [2001] UKHL 21; [2002] FSR 7 (HL) at paragraphs [42] to [44]. This allows the collectively owned goodwill to devolve by succession upon continuing members of the alliance down to the point at which the membership falls below two, when 'the last man standing' becomes solely entitled to it in default of any other entitlement in remainder: see, for example, *VIPER Trade Mark* (BL O-130-09; 13 May 2009) (Appointed Person, Professor Ruth Annand)."

"30. The general rule with regard to the position of former members is as stated by Plowman J. in *Pompadour Laboratories Ltd v. Stanley Frazer* [1966] RPC 7 at p.10:

As I understand the law it is clearly settled that a defendant who formerly had a connection with the plaintiffs business, but has ceased to do so, although entitled to inform the world that he formerly had that connection, is not entitled to state that he still has such a connection if that in fact is not the case."

60) In this case the witness statements adduced by Ms Loughlin–Chapman make it clear that the BO-JANGLES range of jewellery is primarily identified with her and her trading name, Azteca Trading. Ms Loughlin–Chapman states that 92% of sales have been generated by her or her staff. With the exception of Ms Miers, all the evidence shows sales emanating from Ms Loughlin–Chapman. With the exception of one trade show, it is Ms Loughlin–Chapman and her staff and associates who have manned the stalls at trade shows. Ms Loughlin–Chapman has been responsible for the sales and marketing of the range. Ms Loughlin–Chapman and Mr Atkinson dispute the extent to which each was responsible for the design of the jewellery and who was primarily responsible for the sourcing of the products. The evidence of Ms Cotterell and Ms Davies, who works and worked for the fashion retailer Hobbs, shows that Ms Loughlin–Chapman did make decisions about the design of the jewellery. Mr Atkinson has adduced no independent evidence in support of the positions that he has maintained. It is not clear when the relationship between Ms Loughlin–Chapman and Mr Atkinson irrevocably broke down. It is clear that at the time of the application Ms Loughlin–Chapman was conducting a business by reference to BO-JANGLES, the invoice dated 17 September 2007 to Hobbs shows this.

61) Lord Macnaghten in *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 gave what is the commonly accepted definition of goodwill:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates. Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade. One element may preponderate here and another element there. To analyse goodwill and split it up into its component parts, to pare it down as the Commissioners desire to do until nothing is left but a dry residuum ingrained in the actual place where the business is carried on while everything else is in the air, seem to me to be as useful for practical purposes as it would be to resolve the human body into the various substances of which it is said to be composed. The goodwill of a business is one whole, and in a case like this it must be dealt with as such. For my part, I think that if there is one attribute common to all cases of goodwill it is the attribute of locality. For goodwill has no independent existence. It cannot subsist by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it, though elements remain which may perhaps be gathered up and be revived again."

There is no doubt that at the date of the application for registration the attractive force for the BO-JANGLES business lay with Ms Loughlin–Chapman by reference to herself and to her trading name. The evidence does not establish that Mr Atkinson enjoyed any goodwill at this date. There is nothing to suggest that at the date of application that anyone other than Ms Loughlin–Chapman was conducting business by reference to BO-JANGLES, she was the "last woman standing".

62) Section 3(6) of the Act states:

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

Bad faith includes dishonesty and "some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examinedⁱⁱⁱ". Certain behaviour might have become prevalent but this does not mean that it can be deemed to be acceptableⁱⁱⁱ. It is necessary to apply what is referred to as the "combined test". This requires me to decide what Mr Atkinson knew at the time of making the application and then, in the light of that knowledge, whether his behaviour fell short of acceptable commercial behaviour^{iv}. Bad faith impugns the character of an individual or collective character of a business, as such it is a serious

allegation^v. The more serious the allegation the more cogent must be the evidence to support it^{vi}. However, the matter still has to be decided upon the balance of probabilities.

63) At the time of making the application Mr Atkinson was fully aware of the business conducted by Ms Loughlin–Chapman by reference to BO-JANGLES. There is nothing to suggest that he was conducting any trade by reference to BO-JANGLES at the date of the filing of the application. In *Canaries Seaschool Slu v John Williams and Barbara Williams* Mr Hobbs QC stated:

“51. It seems to have been a matter of administrative convenience that the opposed application for registration was filed in the name of Andrew Williams’ partner, Janet Wills, before being assigned to the Applicant. No argument to the contrary has been raised on its behalf. On the basis of the evidence on file, the knowledge, intentions and motives of Andrew Williams can properly be attributed to the Applicant. They are amply sufficient to invalidate the opposed application in accordance with the principle of prohibition of abuse of law as reflected in the objection to registration on the ground of bad faith provided by Section 3(6) of the 1994 Act. The behaviour of Andrew Williams hence the behaviour of the Applicant towards the Opponents in connection with the filing of the opposed application for registration was, on the view I take of the evidence, tainted by a desire to deprive them of their entitlement to the goodwill appertaining to the verbal and non-verbal elements of the signs in issue. That appears to me to be unacceptable on any view of what can constitute applying for registration in bad faith.”

The application of Mr Atkinson falls four square within the above findings of Mr Hobbs. The application was tainted by a desire to deprive Ms Loughlin–Chapman of her entitlement to the goodwill she enjoyed in relation to BO-JANGLES in relation to jewellery. The effect of the registration would be to lay Ms Loughlin–Chapman open to infringement proceedings, or the threat of such proceedings. for use of BO-JANGLES, and so deprive her of that use.

64) The application was made in bad faith and is to be refused.

65) Owing to the above finding it is not necessary to consider the grounds of opposition under section 5(4)(a) of the Act.

Costs

66) Ms Loughlin–Chapman having been successful is entitled to a contribution towards her costs. I award costs on the following basis:

Opposition fee:	£200
Preparing a statement and considering the counterstatement:	£400

Preparing evidence and considering the evidence of Mr Atkinson: £1,000

Total: £1,600

I order Mr Atkinson to pay Ms Loughlin–Chapman the sum of £1,600. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful

Dated this 20 day of May 2010

David Landau
For the Registrar
the Comptroller-General

ⁱ Parker J in *Burberrys v J C Cording & Co Ld* [1909] 26 RPC 693 stated:

“The principles of law applicable to a case of this sort are well known. On the one hand, apart from the law as to trade marks, no one can claim monopoly rights in the use of a word or name. On the other hand, no one is entitled by the use of any word or name, or indeed in any other way, to represent his goods as being the goods of another to that other’s injury. It an injunction be granted restraining the use of a word or name, it is no doubt granted to protect property, but the property, to protect which it is granted, is not property in the word or name, but the property in the trade or good-will which will be injured by its use. If the use of a word or a name be restrained, it can only be on the ground that such use involves a misrepresentation, and that such misrepresentation has injured, or is calculated to injure another in his trade or business.”

Also see *Exxon Corporation and Others v Exxon Insurance Consultants International Ltd* [1981] FSR 238 re copyright.

ⁱⁱ *Gromax Plasticulture Limited v. Don and Low Nonwovens Ltd* [1999] RPC 367.

ⁱⁱⁱ *Harrison v Teton Valley Trading Co* [2005] FSR 10.

^{iv} (1) *Barlow Clowes International Ltd. (in liquidation)* (2) *Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* Privy Council Appeal No. 38 of 2004 and *Ajit Weekly Trade Mark* [2006] RPC 25.

^v See *Royal Enfield Trade Marks* [2002] RPC 24.

^{vi} *Re H (minors)* [1996] AC 563.