

O-207-06

TRADE MARKS ACT 1994

**IN THE MATTER OF AN INTERLOCUTORY HEARING HELD IN RELATION TO
OPPOSITION No: 92907 BY NINE DOTS LLC TO APPLICATION No. 2354920 IN THE
NAME OF THE DRUNKEN MONKEY LIMITED**

TRADE MARKS ACT 1994

**IN THE MATTER OF an
interlocutory hearing held in
relation to Opposition No: 92907
by Nine Dots LLC to application
No. 2354920 in the name of
The Drunken Monkey Limited**

BACKGROUND

1. On 2 February 2004, The Drunken Monkey Limited (hereafter DM) applied to register: the drunken monkey, THE DRUNKEN MONKEY and The Drunken Monkey as a series of three trade marks for a range of services in Classes 41 and 43.
2. The application was published for opposition purposes on 20 August 2004. On 28 October 2004, Nine Dots LLC (hereafter ND) filed Notice of opposition. The opposition was based on Sections 5(2)(b) and 5(3) of the Act. Following requests for more information from the Trade Marks Registry dated 1 and 24 November 2004, the Notice was served on DM on 7 December 2004 and they were allowed until 7 March 2005 to file Form TM8 and counter-statement. On 4 February 2005, DM filed a Form TM8 and counter-statement and the proceedings were joined.
3. As part of the opposition was based on section 5(2)(b) of the Act, and in accordance with rules 13B(1) and 13B(2) of the Trade Marks (Amendment) Rules 2004, on 22 February 2005 the registrar issued a Preliminary Indication (PI). This PI indicated that the opposition was likely to fail on the ground based on Section 5(2)(b) of the Act, and allowed ND until 23 March 2005 to file Form TM53 if it wished to proceed to the evidential stages.
4. On 21 March 2005, ND filed Form TM53. In an official letter dated 6 April 2005, the Trade Marks Registry, under the provisions of rule 13C(1)(a) of the Amendment Rules mentioned above, allowed ND a period of three months i.e. until 6 July 2005, to file their evidence-in-chief.
5. On 6 July 2005, ND filed a request for an extension of time of three months. The request read:

“The Opponent wishes to submit evidence to attest to its reputation in the United Kingdom in relation to its clothing brand. The Opponent feels that establishing this reputation will assist it in establishing its opposition case. It has proved more difficult in obtaining all of the relevant information than had originally been anticipated due to the fact that sales in the United Kingdom for the Opponent have been handled through independent third parties and as such, unfortunately, it has not yet been possible to finalise the evidence....”
6. In an official letter dated 19 July 2005, the Trade Marks Registry issued a Preliminary View indicating that the extension of time was granted until 6 October 2005, subject to any objections from DM. A period expiring on 2 August 2005 was allowed for DM to provide written

submissions and to request a hearing. In a letter also dated 19 July 2005, DM commented, *inter alia*, as follows but I note that no hearing was requested.

“It is considered that this extension will delay the proceedings to the detriment of the applicant. It is considered that it should only be granted with a warning that no further extensions of time will be allowed beyond 6th October 2005.

The file will show that the opposition form was filed on 1st November 2004. There were two false starts as the Registry rejected the papers filed. Now, after eight months, no evidence exists to support the major allegation in spite of the agent’s Declaration in section 7 of TM7. The Registry’s non-binding preliminary opinion is that the opposition should be dismissed.”

7. On 6 October 2005, ND filed a further request for an extension of time of one month. The request read:

“The Opponent wishes to submit evidence to attest its reputation in the United Kingdom in relation to its clothing brand. The Opponent has compiled evidence and a Witness Statement has been prepared and finalised, and will be signed by the opponent’s distributor. A copy of the Witness Statement is enclosed for your attention. We are currently seeking to have this document executed and unfortunately it has not been possible to do this within the current deadline....”

8. In an official letter dated 21 October 2005, the Trade Marks Registry issued a Preliminary View indicating that the extension of time was granted until 6 November 2005, subject to any objections from DM. A period expiring on 4 November 2005 was allowed for DM to provide written submissions and to request a hearing. In a letter dated 22 October 2005, DM commented on much the same basis as their previous letter. They also said:

“If as the Official letter indicates, the reason is for a Witness Statement to be executed the time required would seem to be excessive. All that is required is for the witness to sign the document.

...It is considered that the present extension should be limited to two weeks”.

Once again no hearing was requested and the Preliminary View was maintained in the official letter of 26 October 2005.

9. In a letter dated 4 November 2005, ND filed a copy of the witness statement of Christian Stewart together with exhibits CS1 to CS7 thereto. They also sought a further extension of time for two weeks. The request read:

“Whilst we accept the fax copy of the Witness Statement and we were informed that the original was sent by first class post on Thursday, we have not yet received the original of this document. We respectfully request the additional time within which to submit the original version of the Witness Statement.”

10. In an official letter dated 10 November 2005, the Trade Marks Registry issued a Preliminary View indicating that the extension of time was granted until 20 November 2005, subject to any objections from DM. A period expiring on 24 November 2005 was allowed for DM to provide written submissions and to request a hearing. In a letter dated 8 November 2005 (which crossed with the official letter of 10 November) DM commented on much the same basis as their previous letters. They also said:

“...It is not considered that the failure to obtain a signature from a witness in one month is a detailed and compelling reason. The enclosed draft document shows the witness to be a United Kingdom resident. A witness statement does not require legalisation.

In view of the Opponent’s total disregard for the constraints indicated in the official letters relating to the previous extensions of time it is requested that the proceedings continue without the evidence....”

The Preliminary View was maintained in the official letter of 15 November 2005 and, once again, I note that no hearing was requested.

11. On 21 November 2005, ND filed the original witness statement of Christian Stewart. In their letter dated 18 November 2005, they comment as follows:

“We have noticed that the document has not been dated but confirm that it was signed prior to 4 November 2005.”

12. In a letter dated 23 November 2005, DM commented on this witness statement in the following terms:

“A copy of an “original” Witness Statement by Christian Stewart has been received. It is signed but undated. The recipient is willing to accept the agent’s statement that it was signed prior to 4th November 2005.

However the statement remains in its draft form and does not show “position in the company” of the witness nor does it accurately define the organisation “my company” in which he holds a position. Companies House records show sixteen limited companies containing the word “Siesta”. There is one company called Siesta Limited but the details available indicate that Mr Stewart is not involved.”

13. In an official letter dated 2 December 2005, the Trade Marks Registry indicated that having reviewed the witness statement, its Preliminary View was that the document could not be admitted into the proceedings because it was incomplete. The evidence was returned to ND with an indication that if the evidence was to be re-submitted a retrospective request for an extension of time would be required; ND were allowed until 16 December 2005 to file any such request.

14. On 16 December 2005, ND filed a further request for an extension of time of one month. The request read:

“The Opponent wishes to resubmit the evidence in its completed form. As previously advised, it has proved extremely difficult to obtain the relevant information and have the witness statement executed on behalf of the opponent as we have been dealing with an independent third party. Unfortunately, as this is an extremely busy time of the year in the retail sector, and as we are relying on Mr Christian Stewart’s co-operation it has been impossible to obtain the completed statement within the allocated time. We are confident that we will be able to, however, in the near future....”

15. In a letter dated 18 December 2005, DM commented on this request, inter alia, in the following terms:

“The reason is purportedly delays caused by the festive season making execution of the witness statement difficult. In the past, before the festive season, a signature was obtained.

The present true reason for requesting an extension of time is that the Witness Statement was not checked either by the witness or the agent involved before submission to the Registry. It should be explained in the request for the latest one month extension of time why the witness statement was not checked.”

16. In an official letter dated 11 January 2006, the Trade Marks Registry indicated that having considered the respective parties’ comments, the preliminary view was to grant the extension of time to 16 January 2006; a period expiring on 25 January 2006 was allowed for DM to provide written submissions and to request a hearing.

17. On 16 January 2006, ND filed a further request for an extension of time of one month. The request read:

“The Opponent wishes to resubmit the evidence in its completed form and has been attempting on a daily basis, to contact the third party who is executing the Witness Statement. Mr Christian Stewart has been unobtainable due to external meetings and it has not been possible to obtain the completed Witness Statement within the allocated time. I have been assured that the Witness Statement is on Mr Christian Stewart’s desk and that he will be returning to the office next week. As you know, the witness is a third party licensee and so we are dependent on their co-operation in this matter and so we are unable to apply any further pressure. We are therefore confident that we will be able to submit the executed document in the very near future...”

18. In an official letter dated 20 January 2006, the Trade Marks Registry commented as follows:

“The Registry would expect any request for an extension of time to include full and detailed reasons in support. It is noted from your previous request that it was expected that the evidence would be filed within the allocated time and the reasons submitted in the present request are not considered sufficient to allow a further period. Therefore, the preliminary view of the Registry is to refuse the request.”

The official letter allowed ND until 3 February 2006 to provide written arguments and to request a hearing.

19. In a letter dated 3 February 2006, ND provided written submissions with a view to having the Preliminary View mentioned above reversed. I do not propose to reproduce here the totality of that letter as its contents were repeated in the skeleton argument provided by ND prior to the interlocutory hearing. At this stage, it is sufficient to say that the first part of the letter related to the Trade Marks Registry's Preliminary View to refuse ND's request for additional time. In their submissions, ND refer to the nature of the relationship between themselves and Mr Christian Stewart and by reference to comments of the Appointed Persons in *Liquid Force* and *Siddiqui's* Trade Mark cases [1999] RPC 429 and BL 0/481/00 respectively, that their request for additional time should be granted. The second part of their letter argued as follows:

“As a second issue, I refer to your letter dated 2 December 2005 which advised that it was your preliminary view that the executed Witness Statement could not be admitted into proceedings as it was not complete and was missing information from Paragraph 1. At the time of receiving your letter we thought that the simplest way to address the issue would be to submit a re-executed document, hence the extension of time request, the refusal of which is discussed above. With specific regard to the admissibility of the executed document we herewith submit that there is no justified reason for the document having been returned to us. In Guy Selby-Lowndes' letter of 23 November 2005, they quite clearly state that they are willing to accept that the Statement was signed prior to 4 November 2005. However, they state that the document remains in draft form and does not show “position in the company”. It is clear from your letter dated 2 December 2005, that it is because of Guy Selby-Lowndes' comments that you decided that the Statement is not complete and could not, therefore, be admitted into the proceedings.

We submit that the document, in the form, in which it was originally signed is perfectly admissible. The document clearly states the name of the signatory, the name which the company trades under and its address and even goes on to give full and detailed information regarding Mr Christian Stewart's length of employment with the company. There is absolutely no legal requirement for any further information to be included in this document in order for it to be admissible. The complaint made by Guy Selby-Lowndes' is that the Witness Statement was in draft. However, the document was in fact drafted by us, on instruction. We then sent it to Mr Stewart for review and, assuming he was happy with it, we asked him to complete and sign the document. Mr Stewart signed the document and sent it back to us and on this basis the executed Witness Statement constitutes completed evidence. In the circumstances, we herewith submit that the original Witness Statement should not have been refused.”

20. In a letter dated 14 March 2006, the Trade Marks Registry indicated that ND's comments in relation to both the request for additional time and the form of evidence had been considered. However, the Preliminary view to refuse the request for additional time was maintained and ND's arguments in relation to the form of the evidence were rejected. ND were allowed until 28

March 2006 to request a hearing; this they did in their letter of 28 March 2006. An interlocutory hearing was scheduled for 31 May 2006.

21. In my preparation for the hearing, I considered ND's comments and in particular their comments in relation to the form of the evidence provided. Having done so, and mindful of DM's comments regarding the delay which had occurred in the proceedings to date, and in an effort to reduce costs, I asked the Case Work Examiner dealing with the proceedings to write to the parties. In an official letter dated 17 May 2006, he did so in the following terms:

"The Hearing Officer has reviewed the file in preparation for the hearing and, in particular, has noted the request in your letter that the evidence already filed be admitted into the proceedings. The Hearing Officer proposes that the Witness Statement of Christian Stewart and exhibits CS1-CS7 should be admitted, however, the opponent should note that the evidence contains the following deficiencies:

The position in the company and details of the company Siesta have not been included in paragraph 1.

Paragraph 9 appears to contain typographical errors; "terms" in line 2, "services" in line 4 and "bearding" in the final line.

Exhibits CS6 and CS7 appear to be reversed.

The Witness Statement is not dated.

The signature appears to be a copy and not an "original".

I would draw your attention to the Law Section Work Manual, paragraph 7.4 which deals with defects in evidence.....Although the Hearing Officer is willing to allow the evidence to stand and proceed to be considered at the substantive hearing or decision from the papers, you should be aware that it may be considered inadmissible at a later stage."

22. The parties were allowed until 24 May 2006 to consider this approach. In the event, both parties indicated in letters dated 22 and 24 May 2006 respectively that they wanted the interlocutory hearing to go ahead. In their letter of 22 May 2006, DM commented, inter alia:

"This suggestion, if agreed, would lengthen the proceedings. The admissibility of the evidence would certainly be disputed at the substantive Hearing and evidence in reply would have to be prepared and filed prior to this Hearing. Overall it would severely inconvenience the applicant and add to costs."

23. A hearing took place before me, by telephone conference, on 31 May 2006. At the hearing, ND was represented by Mr Julius Stobbs of Boulton Wade Tennant and DM by Mr Guy-Selby Lowndes, the respective parties' professional representatives in this matter.

The Skeleton Arguments

The main points arising from the parties' skeleton arguments were as follows:

The Applicant

- that the refusal of the extension of time is subject to the Registrar's discretion;
- that the discretion should be exercised against the Opponent on the basis of their conduct from the beginning of the proceedings;
- that the rules of procedure contained in the Trade Marks Work Manual had been blatantly disregarded.

The Opponent

The extension of time

- that the Opponent is a US company whose business is entirely reliant upon licensees like Mr Stewart, and that while the respective companies have a commercial relationship, the relationship does not impose any legal requirement upon the licensee to provide information and documentation in Opposition proceedings. As such, it was not possible to apply too much pressure to Mr Stewart as he was not duty bound to comply with the request;
- that the comments of the Appointed Persons in the *Liquid Force* and *Siddiqui's* Trade Mark cases to the effect that valid applications should succeed and valid objections should be upheld without undue delay, and that the Registry must ensure fairness to both parties indicate, that the Opponent should not be penalised because of the way in which their business functions are structured;
- that if their commercial activity was structured differently, it would not be necessary for them to rely upon a third party over which they have no control.

The witness statement

- that a witness statement is acceptable under the Trade Marks Rules;
- that the Civil Procedure Rules (CPR) at Volume 1, Part 32, practice direction 17, identifies the form which a witness statement should take and does not require details of the witnesses' position within a company;
- that in so far as the typographical errors and the reversal of the exhibits are concerned, Part 32, practice direction 25 of the CPR indicates that such errors do not constitute defects;

- that the original witness statement was submitted by post on 18 November 2005 and its receipt was acknowledged by the Trade Marks Registry;
- that the omission of the date on the witness statement was an oversight on the part of the signatory. Regardless, when the provisions of the CPR, Volume 1, Part 6 (service of documents) is considered, the original witness statement must be deemed to have been served on the Trade Marks Registry on 21 November 2005.

The decision at the hearing

24. I communicated my decision at the hearing to the parties in a letter dated 1 June 2006, the relevant part of which reads:

“Having considered the skeleton arguments and the submissions at the hearing, and bearing in mind Mr Selby-Lowndes’ submissions regarding the delays which have occurred in these proceedings to date, and the potential for increased costs if the Witness Statement of Mr Christian Stewart is admitted into the proceedings in its current form, my decision was, utilizing the discretion provided to me by Rule 68(1)(b) of the Trade Marks Rules 2000 (as amended), to allow the Opponent a period of one month from the date of this letter for Mr Stewart to correct the deficiencies contained in his Witness Statement. If this was not possible within the period allowed, I agreed to accept a Witness Statement from you attesting to the date issue and correcting the deficiencies identified; you also agreed to return to the Trade Marks Registry Mr Stewart’s Witness Statement bearing his original signature.”

25. On 5 June 2006, DM filed Form TM5 requesting a statement of reasons for my decision; I give this decision below.

DECISION

The Law

26. Insofar as it is relevant, rule 13C(1) “Opposition proceedings; evidence rounds (Form TM54)” reads:

“(1) The person opposing the registration, within three months of the initiation date -

(a) shall file any evidence he considers necessary to adduce in support of his grounds of opposition; and

(b) where -

(i) the opposition is based on an earlier trade mark;

(ii) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication; and

(iii) the truth of a matter set out in the statement of use is either denied or not admitted by the applicant,

shall file evidence supporting the statement of use.”

27. Rule 68 (as amended by The Trade Marks (Amendment) Rules 2004) is also relevant. The relevant parts read:

“68. – (1) The time or periods-

(a) prescribed by these Rules, other than the times or periods prescribed by the rules mentioned in paragraph (3) below, or

(b) specified by the registrar for doing any act or taking any proceedings,

subject to paragraph (2) below, may, at the written request of the person or party concerned, or on the initiative of the registrar, be extended by the registrar as she thinks fit and upon such terms as she may direct.

(2) Where a request for the extension of time or periods prescribed by these Rules-

(a) is sought in respect of a time or periods prescribed by rules 13 to 13C, 18, 23, 25, 31, 31A, 32, 32A, 33, 33A or 34, the party seeking the extension shall send a copy of the request to each person party to the proceedings;

(b) is filed after the application has been published under rule 12 above the request shall be on Form TM9 and shall in any other case be on that form if the registrar so directs.

(3) The rules excepted from paragraph (1) above are rule 10(6) (failure to file address for service), rule 11 (deficiencies in application), rule 13(1) (time for filing opposition), rule 13A(1) (time for filing counter-statement), rule 23(4) (time for filing opposition), rule 25(3) (time for filing opposition), rule 29 (delayed renewal), rule 30 (restoration of registration), rule 31(3) (time for filing counter-statement and evidence of use or reasons for non-use), rule 32(3) (time for filing counter-statement), rule 33(6) (time for filing counter-statement), and rule 47 (time for filing opposition).

(4) Subject to paragraph (5) below, a request for extension under paragraph (1) above shall be made before the time or period in question has expired.”

28. At the hearing, Mr Stobbs fairly accepted that regardless of whether I was with him on the extension of time issue, the disputed extension of time request filed on 16 January 2006 would, even if granted, have expired on 16 February 2006. As no further extensions of time had been filed by ND, the decision to grant or refuse this disputed extension of time request was, in effect, irrelevant. Having clarified that the delay in obtaining the evidence from Mr Stewart was the result of a dispute between Mr Stewart and the Opponent, Mr Stobbs, asked me, using the powers available to the registrar, to set a “live” period from the date of the hearing for Mr

Stewart to correct the deficiencies. If that was not possible because of the dispute mentioned, Mr Stobbs indicated that he would provide a witness statement in his own name, correcting the deficiencies from information which was publicly available. His secondary argument at the hearing was that the witness statement in its current form was admissible for the reasons mentioned in his skeleton argument.

29. In brief submissions, Mr Selby-Lowndes argued that the proceedings had been allowed to drag on too long, adding that the admittance of the witness statement of Mr Stewart in its current imperfect form was likely to increase costs as the proceedings continued.

30. It is clear from the comments of the Appointed Person Mr Geoffrey Hobbs QC in *Liquid Force Trade Mark* that:

“In the interests of legal certainty it is plainly desirable that valid applications for registration should succeed and valid objections to registration should be upheld without undue delay. The time limits applicable to opposition proceedings under the 1994 Act and the 1994 Rules were formulated with that consideration in mind. The registrar endeavours to ensure that the prescribed time limits are observed, subject to his power to grant fair and reasonable extensions of time in appropriate cases.”

31. The Trade Marks Registry’s practice in relation to witness statements and to defects in evidence are set out in paragraphs 7.1.1 and 7.4 of the Law Section Work Manual. The relevant parts of these read as follows:

“7.1.1 Witness Statement

In the Civil Procedure Rules Volume 1, Part 32, Rule 3.8 and Practice Directions 32PD.17 to 32PD.23 inclusive detail the form that a witness statement should take.

...Each witness statement should be correctly headed for the proceedings for which it has been filed... Any defect may attract adverse comments from the Court or Appointed Person if used in a later appeal....The witness statement should be in the intended witnesses own words, be expressed in the first person and commence with the following information

- the full name of the witness
- the witnesses place of residence, **or**, if making the statement in a professional, business or occupational capacity, the address at which the witness works, the position the witness holds and the name of their firm or employer
- the witnesses occupation, if not already stated, **or**, if the witness has no employment, their description
- if the witness is a party to the proceedings, or is the employee of a party to the proceedings this will need to be stated

Exhibits introduced with the statement should be verified by the witness, clearly identified (normally with the witnesses initials and a unique number) and remain separate from the body of the statement.....

A witness statement is the equivalent of the oral evidence that the witness would give in court and as such must include a statement by the witness that they believe the facts contained in the statement to be true. The evidence therefore is concluded with a statement of truth and the witnesses signature and the date that they signed the statement. The statement of truth is as follows: "I believe that the facts stated in this witness statement are true."

"7.4 Defects in evidence

On receipt, the registry will scrutinise the evidence for defects in their format. Such defects may arise in the heading, content itself, exhibits or attestation. The defect will be brought to the attention of the filer and an opportunity will be given to put matters in order. Under no circumstances will the registry correct evidence on behalf of the filer; to do so may bring the admissibility of the evidence, particularly if it goes to appeal, into question.

A copy of the evidence will be kept on the dispute file in the registry and the original evidence will be returned to the filer who will be invited to remedy matters within a specified period, and generally this will result in a suspension of the proceedings. Any amendments to the text of the evidence must be initialled by the declarant or deponent and the witness.

In certain circumstances, e.g. if the filer refuses to amend evidence, or the defect is such that the Registrar has been advised or considers that she can admit the evidence, the evidence will be allowed to stand and proceed to be considered at the substantive hearing or decision on the papers. An example of a circumstance where the Registrar has been advised that she may accept evidence is where a statutory declaration made under the 1835 Act has not been properly attested, but this was where the declaration nevertheless satisfied the Registrar as to its evidential worth in that it appeared to be a serious statement as to the witnesses belief which was stated to be the truth, and was attested by a Notary or other authorised person.

Ultimately the admissibility of evidence or otherwise will be a matter for the Registrar and any appeal authority. Where defects are minor the registry may accept the evidence as filed, but caution the filer that his evidence may be considered inadmissible at a later stage."

32. It was as a result of reviewing this guidance prior to the hearing, that I asked the Case Work Examiner to write to the parties (see paragraph 21 above). It was my view that while the Trade Marks Registry had adopted the correct approach in challenging Mr Stewart's witness statement (given that it contained a number of obvious errors and omissions and in line with the guidance provided in paragraph 7.4 above), nevertheless as ND point out in their letter of 3 February 2006, the witness statement in this form did constitute completed evidence, and as such, in my view,

the witness statement and the associated exhibits were admissible. That said, it was appropriate for the Trade Marks Registry to point out these errors and omissions to ND, as they are factors the Principal Hearing Officer deciding the proceedings (and, if appropriate, any appellate tribunal) would need to bear in mind when deciding what weight to accord to Mr Stewart's evidence. Clearly neither party was content with this approach.

33. Given my initial opinion expressed prior to the hearing, it will come as no surprise that at the hearing itself, I was prepared to accept Mr Stewart's evidence as filed. However, I was mindful of Mr Selby-Lowndes concerns regarding the delays which had already occurred and the effect the admission of the uncorrected evidence may have on the rest of the proceedings. It is of course regrettable that the proceedings had been delayed because of the difficulties ND had experienced in contacting Mr Stewart. However, with that in mind, and in an effort to ensure that given the delays that had already occurred in the proceedings to date that the remainder of the proceedings continued as quickly and cost efficiently as possible, I allowed ND, using the power available to me under Rule 68(1) of the Trade Marks Rules 2000 (as amended), a final period of one month from the date of the hearing in which to file either a corrected witness statement from Mr Stewart, or if that was not possible, for Mr Stobbs to file a witness statement in his own name providing (where appropriate) information from publicly available sources which corrected the deficiencies.

34. Whilst it was of course preferable for the corrections to be made by Mr Stewart himself, given DM's acceptance of ND's position regarding the dating of the witness statement, together with the nature of the other deficiencies (i.e. typographical errors and the correct identification of the company and Mr Stewart's position in it), I was content that these could be provided by Mr Stobbs from publicly available information. In my view, such an approach was consistent with the overriding objective, with the comments of Mr Hobbs mentioned above, and was likely to assist the proceedings to continue in a timely and cost effective manner.

Conclusions

35. In summary, I have concluded that:

- given the time which had elapsed between the filing of the disputed request for additional time (16 January 2006) and the date of the interlocutory hearing (31 May 2006), and in the absence of further requests for additional time from ND beyond 16 February 2006 (the expiry date of the disputed request for additional time), it was not necessary for me to reach a view on the disputed request (a view with which neither party took issue);
- the original witness statement of Mr Christian Stewart filed in time on 21 November 2005 was admissible as filed;
- rule 68(1) of the Trade Marks Rules 2000 (as amended) allows the registrar to extend time periods as he thinks fit and on such terms as he may direct;

- to allow a period of 1 month from the date of the hearing for the deficiencies to be corrected either by Mr Stewart himself or by Mr Stobbs from publicly available information was consistent with the over-riding objective.

36. Finally, I note that on 3 July 2006 the Trade Marks Registry received, under cover of a letter dated 30 June 2006, the original version of Mr Stewart's witness statement, together with a witness statement dated 30 June 2006 in Mr Stobbs' name, in which the various deficiencies are corrected.

Dated this 24th Day of July 2006

C J BOWEN
For the Registrar
The Comptroller-General