

O-267-18

TRADE MARKS ACT 1994

IN THE MATTER OF UK APPLICATION NO 3188667
BY PETRUS INTERNATIONAL LIMITED TO REGISTER:

PETRUS

AND

THE OPPOSITION THERETO UNDER NO 408866
BY S.C. DU CHATEAU PETRUS

BACKGROUND AND PLEADINGS

1. On 30 September 2016, Petrus International Limited (the applicant) applied to register the above trade mark. Following amendment to the specification, it stands as follows:¹

Class 3

Perfumery; essential oils; cosmetics; make-up; eye make-up; eyeliners; blushers; lipsticks; hair lotions; soaps.

Class 14

Precious metals; jewellery; precious stones; chronometric instruments.

Class 38

Telecommunication services; communication services for the electronic transmission of voices; transmission of data; electronic transmission of images, photographs, graphic images and illustrations over a global computer network; transmission of data, audio, video and multimedia files; simulcasting broadcast television over global communication networks, the Internet and wireless networks; provision of telecommunication access to video and audio content provided via an online video-on-demand service; satellite communication services; telecommunications gateway services.

2. The application was published on 23 December 2016, following which S.C. Du Chateau Petrus (the opponent) filed notice of opposition.

3. The opponent bases its case on sections 5(3), 5(4)(a) and 3(6) of the Trade Marks Act 1994 (the Act). It relies upon the following two marks under section 5(3) against all of the goods and services in the application:

Mark details	Goods
WO0000000535376	Class 33

¹ *International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).*

PETRUS

International registration date:

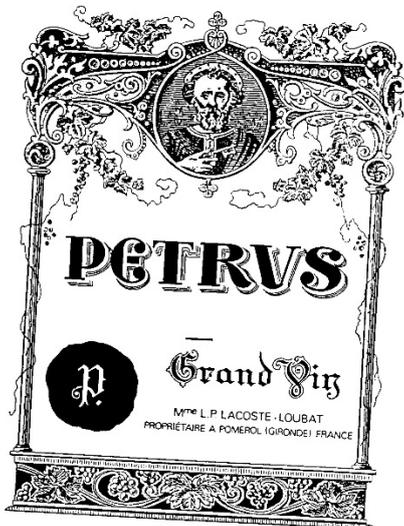
23 February 1989

Date of protection in the UK:

8 May 2014

Wines.

UKTM 1552232



Filed:

30 October 1993

Registered:

10 January 1997

Class 33

Wines; all included in class 33.

4. Under section 5(4)(a) of the Act the opponent relies on the same two marks which it submits have been used in relation to wines throughout the UK since October 1993.

5. The ground under s. 3(6) of the Act is directed against all of the goods and services in the application. The opponent says of its own business:

“9. The opponent is a well known and established Bordeaux wine estate producing red wines. Its products are widely regarded as the outstanding wines of the Pomerol appellation by consensus and are consistently among the world's most expensive wines.

10. With the substantial reputation that the Opponent has developed, the Application would have been made with a view to exploiting the established goodwill in the Earlier Trade Marks. Conducting simple, appropriate, checks of the UK trade marks register prior to applying for the Mark At Issue would have highlighted the earlier rights of the Opponent. Accordingly, the Applicant has either failed to check the Register, or has done so and decided to apply for the mark irrespective of the legitimate earlier rights of the Opponent.

11...The Applicant is acting in a way which falls short of the standards of acceptable commercial behaviour experienced by reasonable and experienced men.”

6. The applicant filed a counterstatement in which it denies the grounds of opposition. The bulk of the counterstatement refers to section 5(2) case law and submissions which are not relevant as the opponent has not pleaded a section 5(2) ground in its notice of opposition. With regard to sections 5(3) and 5(4)(a) the applicant submits that the opponent has not shown the necessary reputation or goodwill. It concludes that there will be no link or misrepresentation as ‘there is no relevant degree of similarity between the marks’.

7. With regard to the opponent’s claim under section 3(6), the applicant submits that there is a presumption of good faith unless the contrary is proven. It submits:

“In the case at hand, the Opponent has not provided sufficient arguments or evidence to show that the application of the subject mark was made in anything other than good faith.”

8. With regard to intent to use the mark applied for the applicant says:

“33...it must be noted that according to the law of the UK, the owner of a trade mark is not expected to make genuine use of the mark while examination or opposition proceedings are pending or, under any circumstance, before the five-year 'grace period' has begun.

Considering the above, there is no requirement for the Applicant to show intent to use the subject mark, as the registration is pending and the application is under opposition proceedings. In any case, a registered proprietor is entitled to make use of a trade mark at any point during the five-year grace period; there is no strict requirement to prove the intent to put a mark to use immediately before or after the registration. In certain cases, according to the UK law, an owner is not required to put its trade mark to use until 1 day before the expiration of the 'grace period' granted by the Act upon registration. The bona fide intention to make use of the subject mark if and when it achieves registration can, according to UK law, only be evaluated in the course of a revocation action due to non-use after 5 years of registration. Accordingly, and in any other circumstance, the present application for registration was made in good faith and the claims of the Opponent to the contrary should be dismissed.”

9. Only the opponent filed evidence and submissions and requested a hearing. It filed a skeleton argument in advance of that hearing which took place before me, by video conference. The opponent was represented by Mr Aaron Wood of Wood IP, instructed by Novagraaf UK. The applicant did not attend or file submissions in lieu of attendance. Both sides seek an award of costs.

Preliminary issue

10. The opponent's initial pleadings under section 3(6) of the Act were rather vague. However, the applicant responded to the bad faith ground, in its counterstatement, in respect of its intention to use the mark and its use of the UK trade mark registration system. It relies on (i) the presumption of good faith; and (ii) the period of five years in which to use the mark (following registration) and it denies that it is attempting to abuse

the trade mark registration system at the UKIPO. Such a response from the applicant leads me to conclude that the applicant has been aware of the case made against it, from the outset. Furthermore, in addition to being aware of the claim at defence stage, the opponent's case was clearly expressed, in detail, by the time the applicant was set a period for filing its evidence, so it had ample opportunity to respond to all of the points made by the opponent.

Evidence

11. I will summarise the evidence to the extent that it refers to the pleaded ground under section 3(6) of the Act and will only return to the other grounds and related evidence if it proves necessary to do so.

12. The opponent's evidence comprises a witness statement by Claire Louise Jones, dated 26 September 2017. Ms Jones is a Trade Mark Attorney at the opponent's instructing attorneys. The key points from her evidence are as follows:

13. The company Petrus International Limited was incorporated at Companies House on 31 March 2016. The only Director listed is Michael Gleissner.

14. A print from Companies House shows that Michael Gleissner currently has 1102 appointments listed on the register at Companies House.²

15. Two articles are provided from *World Trademark Review*, both written by Tim Lince.³ The first is dated 23 August 2016 and concerns trade mark filings by businesses linked to Mr Gleissner. Its investigations are said to show that between February 2016 and the date of the article, some six months later, Mr Gleissner personally registered more than 1000 companies in the UK, with him listed as the sole employee in every case. I also note the filing of EUIPO in Portugal by EUIPO INTERNATIONAL LIMITED⁴ (another of the companies registered to Mr Gleissner). The article concludes that the reason for this particular trademark filing practice

² CLJ01

³ CLJ02

⁴ CLJ02, page 18

remains a mystery, but speculates that it may be to obtain or devalue domain names. The author of the article says that a lawyer for one of Mr Gleissner's companies described one of his job responsibilities on LinkedIn as 'manipulating trademarks to reverse hijack domain names through UDRP' (a comment he has now removed).

16. The second article is dated 26 April 2017 and is a follow up to the first. It says that in the previous eight months trade mark filings at the USPTO by Gleissner companies had doubled from 350 to 730. The article quotes a source related to one of Mr Gleissner's companies who wished to remain anonymous but said that this 'unusual business model' is based on the philosophy of 'creating a brand incubator', simply, 'a way to invest in property...where the value of [Mr Gleissner's] investments increases over time. There was not much intent for profit but for owning...this particular operation was for increasing the value of a portfolio over the mid-to-long term'.⁵

17. Ms Jones also provides a number of articles from IP blogs and news pages which she states mention the *World Trademark Review* investigations and a number of decisions of the UK IPO.

18. The first of these is from CEO Today at www.ceotodaymagazine.com and is dated 24 July 2017. It is titled, '*Here's Why You Need to Protect Your Brand From Trademark Trolls*'. It includes the following:

*"Recently, we have seen a worrying development in which one individual appears to be using his companies to register hundreds of trademarks, many of which are similar to those used by existing businesses in the UK and around the world...A search through a business checker found that Gleissner has more than 1,100 other directorships of companies, making large numbers of trademark applications."*⁶

19. Having discussed its own case involving one of the Gleissner companies, the author concludes by saying, "*I believe this could be the tip of the iceberg and many*

⁵ CLJ02, page 22

⁶ CLJ04, page 49

other UK businesses may find themselves in a similar position.” The final part of the article includes advice about steps other businesses should take to try to protect themselves.

20. The second article is from www.onlinedomain.com and is dated 8 September 2016. It is titled, *‘The Michael Gleissner UDRP Tracker – Reverse Domain Name Hijacking’*.⁷ The article lists the outcome of a number of domain name disputes involving Mr Gleissner and his companies. The article includes the following:

“...He has so far failed with 6 UDRP losses and 4 terminations. He still has one UDRP dispute pending.

Michael Gleissner is filing these frivolous complaints with the help of his thousands of shell companies and his hundreds of questionable trademarks all over the world.”

21. The final article is taken from Stobbs IP blog. It is dated 22 September 2017 and is titled *‘Michael Gleissner Strikes Again’*.⁸ The article provides an update of cases involving Mr Gleissner and his businesses. Following a synopsis of the decision published as BL O/403/17 which concerned two Apple trade marks IMOVIE and MacX, challenged on the grounds of non-use, the author of the article says: *“This followed on from an earlier decision between the parties (O/118-17) making a total of 70 applications struck out and a total costs award to Apple of £38,335.”*

22. Given that the applicant did not file evidence, this concludes my summary, insofar as the section 3(6) ground is concerned.

⁷ CLJ04, page 51

⁸ *Idem*, pages 56 and 57

Decision

23. Section 3(6) of the Act states:

“3(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

24. The law relevant to this ground was summarised by Arnold J. in *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited*⁹ in the following terms:

“131. First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see *Case C-529/07 Chocoladenfabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH* [2009] ECR I-4893 at [35].

132. Secondly, although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date: see *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2008] EWHC 3032 (Ch), [2009] RPC 9 at [167] and cf. *Case C-259/02 La Mer Technology Inc v Laboratoires Goemar SA* [2004] ECR I-1159 at [31] and *Case C-192/03 Alcon Inc v OHIM* [2004] ECR I-8993 at [41].

133. Thirdly, a person is presumed to have acted in good faith unless the contrary is proved. An allegation of bad faith is a serious allegation which must be distinctly proved. The standard of proof is on the balance of probabilities but cogent evidence is required due to the seriousness of the allegation. It is not enough to prove facts which are also consistent with good faith: see *BRUTT Trade Marks* [2007] RPC 19 at [29], *von Rossum v Heinrich Mack Nachf. GmbH & Co KG* (Case R 336/207-2, OHIM Second Board of Appeal, 13 November 2007) at [22] and *Funke Kunststoffe GmbH v Astral Property Pty Ltd* (Case R 1621/2006-4, OHIM Fourth Board of Appeal, 21 December 2009) at [22].

⁹ [2012] EWHC 1929 (Ch)

134. Fourthly, bad faith includes not only dishonesty, but also "some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined": see *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 and *DAAWAT Trade Mark* (Case C000659037/1, OHIM Cancellation Division, 28 June 2004) at [8].

135. Fifthly, section 3(6) of the 1994 Act, Article 3(2)(d) of the Directive and Article 52(1)(b) of the Regulation are intended to prevent abuse of the trade mark system: see *Melly's Trade Mark Application* [2008] RPC 20 at [51] and *CHOOSI Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) at [21]. As the case law makes clear, there are two main classes of abuse. The first concerns abuse vis-à-vis the relevant office, for example where the applicant knowingly supplies untrue or misleading information in support of his application; and the second concerns abuse vis-à-vis third parties: see *Cipriani* at [185].

136. Sixthly, in order to determine whether the applicant acted in bad faith, the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case: see *Lindt v Hauswirth* at [37].

137. Seventhly, the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant's conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant's own standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry: see *AJIT WEEKLY Trade Mark* [2006] RPC 25 at [35]-[41], *GERSON Trade Mark* (Case R 916/2004-1, OHIM First Board of Appeal, 4 June 2009) at [53] and *Campbell v Hughes* [2011] RPC 21 at [36].

138. Eighthly, consideration must be given to the applicant's intention. As the CJEU stated in *Lindt v Hauswirth*:

"41...in order to determine whether there was bad faith, consideration must also be given to the applicant's intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant's intention at the relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 48)."

25. The applicant in this case is Petrus International Limited, not Mr Michael Gleissner. However, in *Joseph Yu v Liaoning Light Industrial Products Import and Export Corporation*,¹⁰ Professor Ruth Annand, sitting as the Appointed Person, stated:

¹⁰ BL/013/15

“22. [A] claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application.”

26. Mr Gleissner is the sole Director of, and therefore controls, the applicant. This has not been disputed by the applicant and I find that, as a consequence, Mr Gleissner’s motives can be attributed to the applicant in this case.

27. The opponent’s case is based on two factors. Firstly, the opponent submits, the applicant has applied to register a well-known trade mark which it is inconceivable that the applicant had not heard of. At the hearing, Mr Wood drew my attention to the paragraphs in Tim Lince’s article concerning filings by the applicant’s companies at the USPTO, in particular for BAIDU and THE HOME DEPOT.¹¹ He also referred me to the paragraph concerning the worldwide activities of the Gleissner companies, in particular, the filing of TESLA and PAN AM at the Benelux office. Mr Wood relied on the evidence filed by Ms Jones in support of this point, in particular the investigations by *World Trademark Review* and the report in onlinedomain.com concerning a finding that Mr Gleissner’s companies had been engaged in attempted ‘reverse domain name hijacking’ using famous name domain names and trade marks.

28. Mr Wood submitted that evidence from IP specialist press reports is, to an extent, hearsay evidence but concluded that this does not detract from the report’s factual findings which indicate that Mr Gleissner has established a large network of shelf companies in whose names he has acquired a substantial portfolio of trade marks.

29. This leads on to the opponent’s second point that this substantial portfolio which is held by a very large international network of shelf companies is often used by Mr Gleissner (and/or his companies) as the basis for legal proceedings to oppose or cancel third party trade marks and/or to acquire domain names. Mr Wood concludes that this type of blocking strategy shows that the applicant has no intention to use the mark for its essential function.

¹¹ CLJ02, page 17

30. The opponent submits that there is no evidence to show that the Applicant has used or has any intention to use the mark it has applied for, which is contrary to the declaration it made during the application process. It submits that the applicant's business is listed at Companies House as a company interested in television programming and broadcasting activities so the filing for services in class 38 links to the nature of its business, but the application for goods in a number of other unrelated classes does not. At paragraph 31 of his skeleton argument, Mr Wood concludes:

"...we submit that the evidence makes clear that there is a prima facie case that there was no intent to use the mark, or that [the application] was made for a collateral (and improper) purpose."

The five year grace period

31. The applicant submits that under UK law an owner is not required to put its trade mark to use until one day before the expiration of the 'grace period' granted by the Act upon registration of a trade mark. It concludes that any assessment of intention to use the mark can only be made at that point.

32. It is clear from *Red Bull*¹² that the relevant date for assessing the proprietor's intention is the date of application which in this case is 30 September 2016. When it signed the application form, the applicant confirmed, in accordance with section 32(3) of the Act, that the trade mark was being used (for the goods and services) or that there was a bona fide intention it would be so used.

33. In *CKL Holdings NV v Paper Stacked Limited*, Geoffrey Hobbs QC, sitting as the Appointed Person, considered this point. He said:

"22. However, that does not detract from the proposition that a declaration made pursuant to the requirements of s. 32(3) can be false by reason of the absence of any bona fide intention to use a mark, with that in fact being indicative or symptomatic of the relevant mark having been put forward for

¹² See paragraphs 131 and 138

registration in relation to goods or services of the kind specified in an improper manner or for an improper purpose, such as to justify refusal of the relevant application for registration on the ground of bad faith.”

34. In other words, the applicant’s submission is wrong in law as it conflates the separate provisions which (i) allow for a five year grace period following the registration of a trade mark for the commencement of actual use of that mark and (ii) the declaration pursuant to section 32(3) of the Act that, at the date of application for a trade mark, the mark is in use in relation to the goods and services or that there is a bona fide intention so to use it.

Presumption of good faith

35. The applicant submitted in its counterstatement that there is a presumption of good faith, unless the contrary is proven and concludes that the opponent:

“...has not provided sufficient arguments or evidence to show that the application or subject mark was made in anything other than good faith.”

36. Evidently, the counterstatement was filed before the evidence rounds were completed so this statement cannot refer to documents which were subsequently filed by the opponent.

37. With regard to the ‘good faith’ point, the opponent draws my attention to the decision in *Ferrero SpA’s Trade Marks*¹³ which concerned the ‘stockpiling’ of trade marks. In that case David Kitchen Q.C. (as he then was), sitting as the Appointed Person, upheld a finding that the proprietor had applied to register trade marks in bad faith on the basis of unanswered evidence that it had been stockpiling unused marks. He held:

“16. I have also come to the conclusion that the hearing officer was entitled to find the allegation established on the basis of the materials before him.

¹³ [2004] RPC 28

By the date of Mr Rickard's declaration the registered proprietors had filed in excess of 60 applications to register trade marks including the word KINDER but had only ever used six. The number of applications had increased to some 68 by the date of Ms Bucks' witness statement. The large number of unused applications and the period of time over which the applications had been made led Mr Rickard to conclude that the registered proprietors were filing applications without any real and effective intention to use them. The evidence of Mr Rickard was never answered by the registered proprietors. No attempt was made to justify or explain the filing policy.

17. [...] the hearing officer was entitled to come to the conclusion that the applicants had established a *prima facie* case that the registered proprietors did not have a genuine intention to use the marks in issue at the dates they were filed. He was also, in my view, entitled to come to the conclusion that the *prima facie* case was not answered and that the allegation was therefore made good."

38. Whilst this case is a number of years old, there is no reason to conclude that it is no longer legally sound to the extent that it states that stockpiling trade marks with no intention to use them may well justify an allegation that the unused marks have been applied for in bad faith. *Ferrero* clearly indicates¹⁴ that once a *prima facie* case has been established it is incumbent on the proprietor to answer the complaint.

39. I also bear in mind *EUIPO v Copernicus Trademarks Ltd*¹⁵ in which the GC held that filing an EU trade mark application as part of a blocking strategy, with no intention to use the trade mark in accordance with its essential function (to distinguish the goods/services of one undertaking from those of others), is an act of bad faith.

40. At the hearing, Mr Wood drew my attention to a number of other cases before this tribunal, concerning companies owned by Mr Gleissner. In particular, he referred me to the decision in *ALEXANDER Trade Mark*¹⁶ which was subsequently upheld on

¹⁴ At paragraph 17

¹⁵ Case T-82/14

¹⁶ O-442/17

appeal.¹⁷ In that case the hearing officer upheld an opposition under section 3(6) of the Act on the basis that the contested mark was part of a blocking strategy intended to obtain financial benefit from third parties; meaning that at the time of filing the application, the applicant had no intention of using the trade mark in accordance with its essential function. Whilst there are some similarities between this case and the ALEXANDER case, not all of the same evidence has been provided, nor are the cases factually on all fours with each other. In other words, I cannot simply transfer the findings in that case to this one. I must, as always, decide this case on its own facts.

41. In my judgement, the opponent has presented a prima facie case that the application was filed in bad faith, as the applicant had no intention to use the mark in accordance with its essential function to distinguish the goods and/or services of one undertaking from those of others.

42. The applicant's counterstatement made some general points, which I have considered above and none of these assists its case. A 'presumption of good faith' cannot operate where a prima facie case of bad faith has been established and the applicant has elected to remain silent; nor can the five year period allowed under the Act in which to use a registered trade mark remove the requirement that at the time of application the applicant must have an intention to use the mark in accordance with its essential function.

43. The applicant has not provided any evidence that it, or any other of Mr Gleissner's companies, has used this trade mark in the course of trade. The applicant has not provided any rationale for filing the application nor has it responded to any of the specific points raised by the opponent. Other than filing a counterstatement, the applicant has not engaged in these proceedings.

44. I am satisfied that the applicant has made out a prima facie case of bad faith, to which no response or rebuttal has been made by the applicant.

45. The opposition under section 3(6) of the Act succeeds.

¹⁷ O-036/18

Remaining grounds

46. Having made such a finding with regard to the 3(6) ground, there is no need to consider the remaining grounds as they do not improve the opponent's position.

COSTS

47. The opponent, having been successful, is entitled to an award of costs in its favour.

48. At the conclusion of the hearing Mr Wood requested actual costs be awarded to the opponent, due to the behaviour of the applicant, referring me to the cost award made in O-118/17 which also concerned Mr Gleissner. He concluded that as a result of that case, Mr Gleissner and his companies are well aware of the risk of a higher cost award where behaviour has been unreasonable.

49. Mr Wood reminded me of the well-known *Rizla*¹⁸ decision, in which the court accepted that the registrar has the power to award costs on a compensatory basis. Anthony Watson QC, sitting as a deputy judge, stated that:

“As a matter of jurisdiction, I entertain no doubt that if the Comptroller were of the view that a case had been brought without any bona fide belief that it was soundly based or if in any other way he were satisfied that his jurisdiction was being used other than for the purpose of resolving genuine disputes, he has the power to order compensatory costs. It would be a strange result if the Comptroller were powerless to order more than a contribution from a party who had clearly abused the Comptroller's jurisdiction.

The superintending examiner in his decision correctly, in my view, framed the issue he had to decide as: “...whether the conduct of the referrer constituted such exceptional circumstances that a standard award of costs would be unreasonable.””

¹⁸ *Rizla Ltd's Application* [1993] RPC 365 at 377

50. However, although the courts have endorsed the registrar's power to award compensatory costs in cases of unreasonable behaviour, it does not follow that compensatory costs must be awarded whenever there is unreasonable behaviour. Rather, as stated in *Rizla's Application*, the question is whether "*the behaviour in question constituted such exceptional circumstances that a standard award of costs would be unreasonable.*" This must be assessed taking into account all the relevant factors.

51. I requested a breakdown of the opponent's costs which was duly filed on 22 March 2018. The request was copied to the applicant and no comments or submissions have been received.

The cost award

52. Mr Wood offered two reasons why costs above the usual scale would be appropriate. The first is the applicant's decision not to engage with these proceedings beyond filing its notice of defence. This point does not assist Mr Wood. Filing a defence and electing not to file evidence or submissions is a course of action the applicant is entitled to take. Secondly, Mr Wood points to a wider pattern of behaviour displayed by the applicant, in a number of other cases. The fact that actual costs were awarded against Mr Gleissner in a different case, does not constitute a reason for awarding actual costs in this case. The case referred to by Mr Wood, concerned 68 related revocation actions and on that occasion, Mr Gleissner was joined to the proceedings as an individual, along with the company. The circumstances of this case are different and I must assess any award on the facts of this case only.

53. Tribunal Practice Notice 2/2000 states that Hearing Officers will be prepared to exceed the usual scale of costs when circumstances warrant it, in particular, but not exclusively, to deal proportionately with breaches of rules, delaying tactics and other unreasonable behaviour.

54. The fact that the applicant is subject to an adverse finding under 3(6) is not, in itself, sufficient to warrant an award of costs above the usual scale. The applicant has

not breached the rules of this tribunal, nor has it engaged in delaying tactics. In terms of its conduct during these proceedings and the way in which the applicant has chosen to run its defence, I do not find there to be any reasons to conclude that the applicant's behaviour has been unreasonable. I award costs on the following basis:

Official fees: £200

Preparing the notice of opposition and considering the counterstatement: £300

Preparing evidence: £700

Preparing for and attending a hearing: £700

55. I order Petrus International Limited to pay S.C. Du Chateau Petrus the sum of £1,900. These costs should be paid within 14 days of the date of this decision or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

Dated this 5th day of May 2018.

Al Skilton
For the Registrar