

**O/425/18**

**TRADE MARKS ACT 1994**

**TRADE MARK APPLICATION No. 3171240**

**BY ASSOCIATED SECURITY GROUP LTD**

**AND**

**OPPOSITION No.407711**

**BY MR STEPHEN JOHN TURNER AND MR ROY TURNER**

**AND**

**TRADE MARK REGISTRATIONS 2598341 & 2598338**

**IN THE NAMES OF MR STEPHEN JOHN TURNER AND MR ROY TURNER**

**AND**

**APPLICATIONS 501748 & 501750 BY ASSOCIATED SECURITY GROUP LTD**

**FOR THE INVALIDATION OF THESE REGISTRATIONS**

## Background and pleadings

1. On 24<sup>th</sup> June 2016, Associated Security Group Ltd (“ASG”) applied to register the trade mark shown below in relation to “security services” in class 45.



2. The application was opposed by Mr Stephen John Turner and Mr Roy Turner (“the Turners”), who are the joint owners of registered trade marks 2598338 (“the 338 mark”) and 2598341 (“the 341 mark”). The 338 mark consists of the words ASSOCIATED SECURITY. The 341 mark consist of a series of two figurative marks, one of which is shown below.<sup>1</sup>



3. The 338 and 341 marks were applied for on 18<sup>th</sup> October 2011 and registered on 20<sup>th</sup> January 2012. They are registered in relation to security services in class 45 and a range of goods and services in classes 6, 7, 9, 37 and 40, most of which are obviously related to security.

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<sup>1</sup> The other mark is the same, except that the elements shown above in grey are shown in a shade of blue. Nothing seems to turn on this because the mark shown above could also be used with these elements in blue. Therefore, I will treat the two marks as one for the purposes of this decision.

4. The Turners rely on all the goods and services covered by the earlier marks. They claim that ASG's mark is similar to the earlier 338 and 341 marks and there is a likelihood of confusion on the part of the public. Specifically, the Turners claim that:

"The opposed trade mark has the wording 'Associated Security Group' as its dominant element. This is highly similar to the Opponents' earlier Trade mark, which features the wording 'ASSOCIATED SECURITY'. The opposed trade mark relates to 'security services'. The identical services are protected by the Opponent's earlier trade mark, along with various similar services and goods. There is a clear likelihood of confusion."

5. Consequently, the Turners claim that registration of ASG's mark would be contrary to s.5(2)(b) of the Trade Marks Act 1994 ("the Act").

6. ASG denies this. On 4<sup>th</sup> August 2017, ASG applied under s.47(2) of the Act to invalidate the 338 and 341 marks on the grounds that the registration of those marks was contrary to s.5(4)(a). This is because ASG has been using the words ASSOCIATED SECURITY GROUP, the opposed mark, as well as several variant marks, in the UK since 1975 in relation to:

"CCTV, alarms, access control, security gates and barriers, safes, safe doors, doors, security doors, fittings for doors, shutters, locks, lock systems, locking installations, locking apparatus and instruments, bolts, chains, keys, articles made by locksmiths, articles of metal for use by locksmiths, security devices, security fittings, apparatus for use in security control, security control instruments, electric security apparatus and installations, parts and fittings for all the aforesaid goods.

Security installation, installing, repair and maintaining alarm systems, installing, repair and maintaining safes.

Installation, maintenance and repair services in relation to safes, safe doors, safe parts and fittings, installation, maintenance and repair services in relation to alarms, security gates and barriers, security grilles, security doors, doors, shutters, locking systems, security fittings, locking apparatus and instruments, security control instruments, locksmith services, security services, vehicle

security services, providing information and advice and consultancy services in relation to the above services.”

7. ASG claims to have acquired a valuable goodwill under the marks in relation to these goods/services. It claims that use of the Turners’ 338 and 341 marks would amount to passing off. Consequently, ASG is the owner of a relevant earlier right for the purposes of s.5(4)(a) of the Act.

8. The Turners filed counterstatements denying the grounds for invalidating the 338 and 341 marks.

### **Representation**

9. ASG is represented by Murgitroyd & Co. The Turners are represented by Wilson Gunn.

### **Case management**

10. ASG subsequently sought leave to file more than the 300 pages of evidence which is permitted as a matter of course under Tribunal Practice Notice 1/2015. Consequently, a case management conference (“CMC”) was held on 5<sup>th</sup> January 2018. ASG was represented by Ms Alison Wilson of Murgitroyd & Co. The Turners were represented by Mr Terry Rundle of Wilson Gunn. Following the CMC, I issued these directions to the parties.

- “(i) The applicant for invalidation has permission to file up to 500 pages of evidence in support of the applications for cancellation;
- (ii) Cancellation applications 501748 and 501750 should be consolidated with opposition 407711.

The pleaded case for the invalidation of trade marks 2598341 & 25983338 is based on the words ASSOCIATED SECURITY being the dominant and distinctive element of both parties’ marks. No other similarity of marks was identified in the applications for invalidation. That being the case, I was not

persuaded that it was necessary to extend the evidence so as to show the 5 pleaded device marks being used in particular colour schemes.

The relevant issues appear to be (i) whether Associated Security Group Ltd is the senior user of the words ASSOCIATED SECURITY, (ii) if so, for which goods/services, (iii) whether ASSOCIATED SECURITY was distinctive of Associated Security Group Ltd at the relevant dates in 2011, and (iv) whether the use of trade marks 2598341 & 25983338 by the proprietors of the marks would have constituted a misrepresentation to the public at the relevant dates [in 2011].”

11. ASG subsequently filed 434 pages of evidence in support of its applications for invalidation of the 338 and 341 marks. This consisted of two witness statements, one by Mr Michael Challen, the Chairman of ASG, with 33 exhibits, one of which is a witness statement by Mr Mayuri Patel. Mr Patel is an accountant with Mayuri & Co and is employed by ASG on a sub-contract basis.

12. No evidence was filed on behalf of the Turners.

13. On 16<sup>th</sup> March 2018, a submission was received from the Turners’ legal representatives to the effect that ASG’s evidence revealed that it had acquiesced to the Turners’ use of the 338 and 341 marks. It sought to rely on the statutory defence of acquiescence under s.48(1) of the Act, and to assert an equitable defence of estoppel through acquiescence.

14. To run these defences would have required amendments to the Turners’ pleadings. Consequently, I appointed a further CMC for 11<sup>th</sup> April to determine if the Turners should be allowed to amend their pleadings to introduce defences based on acquiescence. However, on 4<sup>th</sup> April the Turners’ attorney withdrew the proposed reliance on acquiescence. This led to a request from ASG for an award of the costs wasted preparing for the CMC. I return to this below.

## The evidence

15. The evidence filed on behalf of ASG could have been better organised and focused. However, it is sufficient to establish that ASG has been trading under the name Associated Security Group since, at least, 1975. These words have been used as part of the trading name Associated Security Group Limited, and as part of the figurative mark shown in paragraph 1 above. The company is based in Hackbridge, Surrey, but also has a showroom in Fulham, as well as a website. By 1997 ASG provided *locks, safes, alarms, grilles, CCTV systems and vehicle security*.<sup>2</sup> According to copies of invoices from 1980 to 1985 it also provided *maintenance services* [for security equipment], *security mirrors, cash boxes/cases, door closers, key boxes, door furniture, burglar bars, security gates, bandit screens and entryphone systems*.<sup>3</sup> Some of the goods, e.g. locks and safes, appear to carry third party trade marks, whilst others, e.g. alarms, security gates, grilles and shutters, appear to be marked with ASG's name. ASG's connection to the third-party products it sells appears to be in their selection, installation and maintenance. This analysis is consistent with a current leaflet ASG uses to promote its goods/services.<sup>4</sup>

16. According to the information provided by Mr Patel, ASG's turnover in the 1980s was around £500k to £800k per annum. In the 1990s turnover was around £800k to £1.1m per annum. During the more recent period 2011 to 2016, turnover was around £650k to £750k per annum. The amount spent on advertising appears relatively modest. The most spent in any of the years in the 1980s was £48k. Typically it was closer to £30k. In the 1990s the amount spent on advertising increased to a high of £64k per annum with a low of £32k per annum. More recently the amount spent on advertising has markedly reduced to around £4k to £7k per annum, most of which was spent on printing costs.

17. Mr Challen states that the Turners operate under the company name Associated Security Solutions Limited, which was incorporated in 2009. However, they may have operated under other companies in the past, including Associated Security

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<sup>2</sup> See exhibit MC9

<sup>3</sup> See exhibit MC11

<sup>4</sup> See exhibit MC17

Services Limited (incorporated in 1989) and Associated Security Services Group Limited (incorporated in 2008, now dissolved). Mr Challen provides copies of invoices, emails and a letter sent in error to ASG by third parties, which he says were all intended for the Turners.<sup>5</sup> The earliest of these communications is dated 1998.<sup>6</sup> Others are dated 1999, 2010 and later. A letter from Gleeds (construction engineers) dated 19<sup>th</sup> February 1999 is particularly relevant.<sup>7</sup> The letter was concerning work carried out for Granada Little Chef and Travelodge. It stated that:

*“Granada also deal, on a limited basis with a company in the Birmingham Area, trading as Associated Security Services. This is leading to a great deal of confusion from the placing of work orders to the payment of invoices. At the moment we are finding that a large proportion of works that should be assigned to yourselves, is actually being passed to the Manchester operation in error. We believe that the similarity in name is also the root cause for several of your invoices being paid from the accounts department at Stockport to Associated Security Services. Obviously, a name change by yourselves would not be acceptable, however we feel it necessary to highlight that Granada Little Chef & Travelodge can not be held accountable for overdue accounts in instances where the invoices have been paid to the incorrect company”.*

18. Mr Challen claims that each reference in this letter to Associated Security Services is a reference to the Turners' business. He says that ASG tolerated the Turners whilst they were based in the North, but that they have since opened a London branch which is causing more confusion. According to an advertisement for staff for the London branch of Associated Security Services Limited, it appears that this opened in February 2011.<sup>8</sup> There is no evidence that ASG has taken any action as a result.

19. Mr Patel provides another example of confusion between the parties. He says that (in January 2018) he received a telephone call from a female at McDonalds,

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<sup>5</sup> See exhibits MC25, MC26, MC27, MC30, MC32 & MC33

<sup>6</sup> See exhibit MC32

<sup>7</sup> See exhibit MC29

<sup>8</sup> See exhibit MC31

Kensington, regarding a newly installed safe that was faulty. However, this safe had been installed by the Turners. Mr Patel therefore re-directed the caller accordingly.

### **ASG's application to invalidate the Turner's 338 and 341 marks**

20. Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

21. The relevant parts of section 47 are as follows:

“47. (2) The registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

“(5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed.”

22. In *Discount Outlet v Feel Good UK*<sup>9</sup> Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the Jif Lemon case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

23. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*,<sup>10</sup> Mr Daniel Alexander QC, as the Appointed Person, approved my summary in *SWORDERS TM*<sup>11</sup> as to how to calculate the relevant date for the purposes of s.5(4)(a), which is as follows:

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<sup>9</sup> [2017] EWHC 1400 IPEC

<sup>10</sup> BL O-410-11

<sup>11</sup> BL O-212-06

“Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.”

24. ASG equates the Turners with the companies through which they trade. I will do the same.

25. The Turners appear to have operated under the name Associated Security Solutions Limited since 2009. However, there is evidence that they previously operated under the name Associated Security Services Limited, at least as far back as 1998. I will therefore consider first the position in 1998, and then whether it had changed by the date of the Turners’ trade mark application on 18<sup>th</sup> October 2011.

26. By 1998, ASG had been trading for 13 years. The business provided security services and related goods, as described in paragraph 15 above. The business was turning over around £1m per annum. It was therefore a relatively small (but not trivial) business. It was based in the South East of England, although it had customers from further afield, including some national businesses. There is no doubt that by 1998 ASG had developed a business with sufficient goodwill to qualify for protection under the law of passing off.

27. The business was known by its corporate name – Associated Security Group Limited. Both this name and the logo shown in paragraph 1 above, were distinctive of ASG’s business to its customers.

28. The 338 mark – ASSOCIATED SECURITY – is plainly very similar to the name Associated Security Group Limited. Indeed as ‘Limited’ is just a legal designation, the only real difference is that ASG’s name includes the additional word “Group.” That word is incapable of distinguishing the 338 mark from ASG’s word mark for two reasons. Firstly, the word ‘Group’ is a collective name indicating a group of related

companies. Consumers are therefore used to that word being omitted from the corporate and trading names of individual members of the group. Secondly, because of its widespread use in corporate names, the word 'Group' is non-distinctive of any one business. It is true that the word 'Security' is also non-distinctive in relation to ASG's goods/services, but the combination ASSOCIATED SECURITY was the distinctive element of its trading name. It follows that the use of those words in 1998 by the Turners in relation to security services was likely to amount to a misrepresentation to the public that it was ASG, or a related company. I find that the same applies to security-related goods. It is true that some of the goods ASG provides are third-party branded goods. However, even for those goods that carried third-party brands, ASG would be seen as commercially connected to the goods by having selected them for sale and taken responsibility for fitting them etc. Additionally, the fact that some of ASG's goods are own-branded adds to the likelihood of its customers or potential customers expecting there to be a connection between security goods sold under ASSOCIATED SECURITY and ASG. I therefore find that ASG's goodwill extended to security related goods as well as services. In these circumstances, the Turners' use of the 338 mark in relation to security services and related goods was bound to lead to damage to ASG's business through diversion of trade and/or loss of control of its reputation.

29. This is consistent with the evidence of misaddressed invoices and, more importantly (and unusually in passing off cases) contemporaneous evidence of some actual diversion of business because of confusion between the parties' trading names.

30. I therefore find that the Turners' use of ASSOCIATED SECURITY in 1998 in relation to security services and related goods was liable to be restrained under the law of passing off.

31. Turning to the 341 mark – the logo – I find that the most distinctive element of it is the words Associated Security. I have already found that those words were distinctive of ASG's business in 1998. Further, the fact that the words in the 341 mark are arranged around the outside of a roundel, in a similar way to those same words appear in ASG's logo mark, adds to the likelihood of the Turners' logo being

mistaken for ASG's logo. I therefore find that the use of the 341 mark in 1998 would also have constituted a misrepresentation to the public, with the same consequence of damage to ASG's goodwill as described above.

32. I therefore find that the Turners' use of the 341 mark in 1998 in relation to security services and related goods was liable to be restrained under the law of passing off.

33. Turning to consider the position in October 2011, I note that ASG's evidence indicates that the parties had been trading concurrently since at least 1998. It is therefore possible, as a matter of law, that use which would have been restrained in 1998 would no longer be restrained because of established concurrent use.

34. In *W.S. Foster & Son Limited v Brooks Brothers UK Limited*,<sup>12</sup> Mr Iain Purvis Q.C., sitting as a Deputy Judge, set out the following analysis of when honest concurrent use could provide a defence to a passing off action:

"61. The authorities therefore seem to me to establish that a defence of honest concurrent use in a passing off action requires at least the following conditions to be satisfied:

(i) the first use of the sign complained of in the United Kingdom by the Defendant or his predecessor in title must have been entirely legitimate (not itself an act of passing off);

(ii) by the time of the acts alleged to amount to passing off, the Defendant or his predecessor in title must have made sufficient use of the sign complained of to establish a protectable goodwill of his own;

(iii) the acts alleged to amount to passing off must not be materially different from the way in which the Defendant had previously carried on business when

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<sup>12</sup> [2013] EWPC 18 (PCC)

the sign was originally and legitimately used, the test for materiality being that the difference will significantly increase the likelihood of deception.”

35. It seems likely that the Turners’ use of the 338 and 341 marks in 1998 amounted to passing off. Therefore, if the first condition requires that the first use of the Turners’ mark was not an act of passing off, it does not appear to be satisfied on the evidence before me.<sup>13</sup> In saying this, I do not mean to imply that I accept ASG’s argument that the Turners have deliberately sought to deceive the public into believing that the parties are one and the same business, or are connected businesses. In my view, ASG’s evidence does not establish that much. This is partly because, although ASSOCIATED SECURITY had become distinctive of ASG’s business by 1998, the words themselves are not strikingly distinctive (for security goods/services), i.e. they are the sort of words that it would be easy to accept that two unconnected businesses would choose through pure coincidence. Having made that point I should also point out that, although intention is relevant, it is not necessary to establish passing off. An unintentional act of passing off is still an act of passing off.

36. As the Turners have filed no evidence, it is not possible to establish whether the use they made of the 338 and 341 marks was sufficient to establish their own independent passing off right by 2011. Therefore, the second condition is not satisfied.

37. Whatever the true legal and factual positions are with regard the first and second conditions, it seems unlikely that the third condition is satisfied. This is because the Turners appear to have made a material change to their business in 2011 when they opened a branch in London, i.e. much closer to ASG’s business. That was bound to increase the risk of deception, as ASG claims. Further, when the Turners applied to register their marks in October 2011 they sought protection for the marks throughout the UK. That requires the risk of passing off to be assessed throughout the UK, including in all the geographical areas in which ASG operates.

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<sup>13</sup> The authorities are divided on this point. According to Wadlow’s *Law of Passing Off: Unfair Competition by Misrepresentation* 5<sup>th</sup> Ed., paragraph 9-83, even use that would have been actionable at the outset may, if it continued unchallenged, later provide a defence to passing off.

38. The Turners have not relied on concurrent use as a defence in these proceedings. However, even if they had, the defence was likely to have failed for the reasons given above.

39. I therefore find that the Turners' use of the 338 and 341 marks throughout the UK in October 2011 in relation to security services and related goods was liable to be restrained under the law of passing off.

40. This means that the s.5(4)(a) based ground for invalidation of these marks succeeds insofar as they are registered in relation to security services and related goods. The 338 and 341 marks are registered in relation to:

Class 6: Safes; safe doors; cash safes; fire safe cabinets; safe deposit lockers; strongrooms; strongroom doors; strongboxes; security vaults; security cabinets; security chests; security stores; security boxes; security receptacles; security closures; security doors, windows, partitions, gates, grilles, shutters and screens; roller shutter doors; security barriers; security bollards; security posts; road blockers and barriers; security structures; security devices; security fittings; fittings for doors, drawers and windows; door security devices for buildings; security locking devices for the doors of safes; metal building materials and reinforcements; small items of metal hardware and ironmongery; barrier materials of metal for use in the construction of safes; metal shelves, trays and drawers; locks; lock systems; locking installations; locking apparatus and instruments; lock barrels; lock casings; latches; catches; bolts; chains; keys; key blanks; key rings; key chains; articles made by locksmiths; articles of metal for use by locksmiths; parts and fittings for all of the aforesaid goods.

Class 7: Conveying and handling systems; pneumatic conveyor systems; pneumatic tube conveyors; pneumatic tubes for conveying and delivering items by air pressure; parts and fittings for all of the aforesaid goods.

Class 9: Apparatus for use in security control; security control instruments; electric or electronic security apparatus and installations for buildings; electric or electronic controlled access security apparatus; electric or electronic installations for use in security; electric or electronic door security devices;

electric or electronic security locking devices for the doors of safes; digitally controlled locks; electric locks and locking devices; electric door locks; electric lock switches; electric lock controllers; automatic security barriers; data security instruments; parts and fittings for all of the aforesaid goods.

Class 37: Installation, maintenance and repair of security apparatus and systems; installation, maintenance and repair services in relation to safes, safe doors, safe parts and fittings, cash safes, fire safe cabinets, safe deposit lockers, strongrooms, strongroom doors, strongboxes, security vaults, security cabinets, security chests, security stores, security boxes, security receptacles, security closures, security doors, windows, partitions, gates, grilles, shutters and screens, roller shutter doors, security barriers, security bollards, security posts, road blockers and barriers, security structures, security devices, security fittings, fittings for doors, drawers and windows, door security devices for buildings, security locking devices for the doors of safes, locks, lock parts and fittings, lock systems, locking installations, locking apparatus and instruments, conveying and handling systems, pneumatic conveyor systems, pneumatic tube conveyors, pneumatic tubes for conveying and delivering items by air pressure, apparatus for use in security control, security control instruments, electric or electronic security apparatus and installations for buildings, electric or electronic controlled access security apparatus, electric or electronic installations for use in security, electric or electronic door security devices, electric or electronic security locking devices for the doors of safes, digitally controlled locks, electric locks and locking devices, electric door locks, electric lock switches, electric lock controllers, automatic security barriers and data security instruments; locksmithing; project management in relation to security installations; information, advisory and consultancy services in relation to all of the aforesaid.

Class 40: Locksmithing (custom manufacture); key cutting; key duplicating; information, advisory and consultancy services in relation to all of the aforesaid.

Class 45: Security services; security advisory services; advisory services relating to the security of premises; security consultancy; provision of security information; lock opening services; opening of security locks; opening of

safes; information, advisory and consultancy services in relation to all of the aforesaid.”

41. Apart from the goods in class 7 and related services in class 37, the registered goods and services appear to be goods/services relating to security. Where it is not obvious because the term is a broad one, e.g. *small items of metal hardware and ironmongery*, the terms cover more specific descriptions of goods/services where the connection is obvious. In this example, *latches, catches, bolts and chains*.

42. Admittedly, it is not as obvious how *pneumatic conveyor systems* and related descriptions of goods in class 7 (and, by extension, fitting services in class 37) are for use in the security field. However, given the apparent nature of the Turners' business, this is more likely to be the result of my lack of familiarity with the specific goods of interest than that those goods are not used for security purposes. Further, the letter inviting the Turners to apply for a hearing, or file written submissions in lieu, specifically invited a fall-back specification to be provided. None was provided. In these circumstances, I am prepared to infer that the goods in class 7 and related services in class 37 are also used in the field of security.

43. I therefore find that use of the 338 and 341 marks in relation to all the goods/services for which they are registered would have amounted (or did amount) to passing off at the relevant dates in 1998/2011. The ground for invalidating the marks under s.47(2) of the Act because they were registered contrary to s.5(4)(a) therefore succeeds in full.

#### **The Turners' opposition to ASG's trade mark application 407711**

44. The only ground of opposition to ASG's application depends on the earlier 338 and 341 marks. As I have declared those marks to be invalid, it therefore follows that the opposition to ASG's application no longer has any basis and must be rejected.

## **Overall outcome**

45. Trade mark registrations 2598338 and 2598341 are declared invalid and deemed never to have been made.

46. Opposition 407711 to trade mark application 3171240 is rejected. ASG's trade mark will therefore proceed to registration.

## **Costs**

47. ASG having succeeded, it is entitled to a contribution towards its costs. ASG asks for off-scale costs in relation to the work generated by the Turners' aborted application to introduce defences based on acquiescence. ASG contends that the matter was raised (on 16<sup>th</sup> March 2018) as a delaying tactic and/or as a way of increasing ASG's costs.

48. The parties were advised on 27<sup>th</sup> March 2018 that a CMC would take place on 11<sup>th</sup> April to discuss the proposed reliance on defences of acquiescence. The Turners' representative withdrew the proposed reliance on these defences on 4<sup>th</sup> April. There is nothing in this timing which points towards delaying tactics. Nor do I see any basis for the submission that it was just about increasing ASG's costs. On the contrary, the withdrawal of the proposed reliance on acquiescence seems more likely to be linked to the Turners' concern about their own costs (costs having been added to the agenda for the CMC). I therefore see no basis for an award of compensatory costs in relation to the second scheduled CMC. I will, however, cover that matter within my assessment of on-scale costs.

49. I assess these as follows.

£600 for filing two applications for invalidation and a counterstatement in opposition 407711;

£400 for the official fees for filing two applications for invalidation;

£1500 for filing evidence;

£100 for considering the proposed reliance on defences based on acquiescence;  
£200 for filing written submissions in lieu of a hearing.

50. I therefore order Mr Stephen John Turner and Mr Roy Turner to pay Associated Security Group Ltd the sum of £2800 within 50 days of the date shown below. The Turners shall be jointly and severally liable for these costs.

**Dated this 16th day of July 2018**

**Allan James  
For the Registrar**