

O-528-15

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION No. 2315482 IN THE NAME OF MEMORY OPTICIANS LIMITED

AND IN THE MATTER OF REVOCATION APPLICATION No. 500201 BY SDS INVESTCORP AG

AND IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON BY THE REGISTERED PROPRIETOR AGAINST A DECISION OF MR OLIVER MORRIS DATED 16 DECEMBER 2014

DECISION

Background

1. This is an appeal against a decision of Mr. Oliver Morris, acting for the Registrar, BL O/539/14, in which he revoked for non-use UK Trade Mark Registration number 2315482 standing in the name of Memory Opticians Limited (formerly in the names of Martin Memory and John Memory).
2. The decision was taken in consolidated proceedings involving amongst other things an opposition by Martin Memory and John Memory to a request for UK protection of International Trade Mark Registration number 943609 by SdS InvestCorp AG.
3. The Hearing Officer referred to the parties as “Messrs Memory” and “SdS” respectively, and I will do the same.
4. International Registration number 943609 is for the trade mark STRADA DEL SOLE in Classes 9 and 25.
5. Messrs Memory grounded their opposition in part on UK Registration number 2315482 for the earlier trade mark STRADA in Classes 3, 9 and 44.
6. SdS counterattacked by: 1) demanding proof of use of UK Registration number 2315482 in the opposition; and 2) applying to revoke UK Registration number 2315482 on grounds of non-use.
7. The Hearing Officer held that no genuine use of UK Registration number 2315482 had been established by Messrs Memory in any of the periods relevant to the opposition or the revocation. The effects were, therefore: a) UK Registration number 2315482 could not be relied on by Messrs Memory in the opposition, which had failed; and b) UK Registration number 2315482 would totally be revoked as from 16 August 2008.

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8. In case his decision totally revoking UK Registration number 2315482 was overturned on appeal (and to avoid any remission to the Registrar), the Hearing Officer alternatively ruled that: i) UK Registration number 2315482 was partially revoked with effect from 16 August 2008 but the trade mark remained registered for “Spectacles, sunglasses; spectacle cases”; and ii) the opposition succeeded to the extent of “Spectacles, sunglasses; spectacle cases” only.
9. On 13 January 2015, Messrs Memory filed Notice of appeal to the Appointed Person under Section 76 of the Act against the Hearing Officer’s decision totally to revoke UK Registration number 2315482.
10. There was no appeal against any other aspect of the Hearing Officer’s decision including to revoke in its entirety at the suit of SdS the other earlier trade mark relied upon by Messrs Memory in the opposition, UK Registration number 2445953 for STRADA in Classes 35 and 44.
11. Further, were the Appointed Person minded to overturn the Hearing Officer’s decision totally to revoke UK Registration 2315482, Messrs Memory were content to abide by the Hearing Officer’s alternative decision as to partial revocation and to that extent, partial success in the opposition.
12. At the appeal hearing before me, Mr. Jonathan Hill of Counsel represented Messrs Memory. Mr. Jeremy Heald of Counsel appeared on behalf of SdS.

Standard of appeal

13. Mr. Hill urged me not to adopt too cautious approach to his client’s appeal. He referred me to the following passage in the decision of Mr. Daniel Alexander QC sitting as the Appointed Person in *PETMEDS.CO.UK Trade Mark* BL O/471/11 at paragraph 13:

“... Difference of view is plainly not enough and, to that extent, the applicant’s submissions are correct. However, those cases and the practice of appellate tribunals specifically to trade mark registration disputes show that the degree of caution should not be so great as to permit decisions based on genuine errors of approach to go uncorrected.”
14. Mr. Heald unsurprisingly reminded me that the appeal was by way of review not rehearing. I must be satisfied that the Hearing Officer made a distinct and material error of principle, or that he was clearly wrong. Surprise at the Hearing Officer’s conclusion, or a belief that he reached the wrong decision were insufficient. Further, giving too much or too little weight to one or more factors in a multifactorial assessment was not an error principle which justified interference by the appellate tribunal. Mr. Heald referred me to the summary of the applicable case law at, for example, *100% CAPRI Trade Mark*, BL O/357/14, paragraphs 8 – 14.
15. I have borne these principles in mind.

Grounds of appeal

16. By the time of the hearing the grounds of appeal had crystallised into the following:
- (a) The Hearing Officer overzealously applied Case C-141/13 P, *Reber Holding GmbH & Co. KG v. OHIM*, 17 July 2014, which caused him against the authorities to import a *de minimis* test into his assessment of genuine use.
 - (b) The Hearing Officer ignored material evidence, and/or made erroneous factual findings regarding:
 - (1) the public display of STRADA spectacles;
 - (2) the use of STRADA on the arms of spectacles;
 - (3) STRADA promotions.

The Hearing Officer's decision

17. The Hearing Officer went through the evidence (there was no suggestion that his review was incomplete) and considered that certain primary aspects were made out (para. 25):
- “i) The history of the coining of the mark is well explained and is to be accepted.
 - ii) The mark has been applied to the spectacles by way of a sticker on the dummy lens. Even though the photographs are after the relevant date, the witnesses have stated that they have always been presented in this way and I have no reason to disbelieve this.
 - iii) The mark has, as a matter of fact, been applied to the arm of the spectacles. However, as none of the photographs actually show this I cannot hold that its impact is great – it may be extremely small.
 - iv) That some customers have purchased spectacles in the STRADA range, albeit the numbers are very low. The numbers given by Ms Noke mean that across the three opticians, just over 41 pairs per year were sold.
 - v) That spectacles bearing STRADA on the dummy lens (and also on the arm) have at times been on display. The frequency of display is, however, not known. Although the witnesses refer to them being on display for the majority of the time, this lacks any objective detail from which to make a finding.”

18. However, based on the totality of the evidence he added (para. 26):
- “vi) There has been no use of the mark on the Internet, no sales in other shops or retail outlets.
 - vii) There is no real promotion or advertising of the mark. The only evidence put forward is of an internal document whereby staff were advised of promotional pricing for the spectacles in 2008.”
19. Having: (a) cited the summary of principles governing the assessment of genuine use set out by Arnold J. in *Stichting BDO v. BDO Unibank Inc.* [2013] EWHC 418 Ch, paragraph 51 (in turn referring to the summary set out by Anna Carboni sitting as the Appointed Person in *SANT AMBROEUS Trade Mark* [2010] RPC 28, para. 42); and (b) invited and received the parties’ written submissions on the Order of the Court of Justice of the European Union (“CJEU”) in Case C-141/13 P, *Reber Holding GmbH & Co. KG v. OHIM*, 17 July 2014, the Hearing Officer continued as follows:

“30. *Reber* has not really changed the law with regard to genuine use, but it is nevertheless a very good example of a form of commercial use that was neither sham nor token, but nevertheless was not genuine; it is therefore a clarification of the earlier case-law. Mr Evans has made a comparison of some of the relevant facts between *Reber* and the present proceedings. I do not necessarily disagree with his view that the level of use in *Reber* constitutes a smaller scale of use than in the present proceedings. However, that does not mean that the use by Messrs Memory is genuine use. I must consider all the relevant circumstances relating to the use before the tribunal. Some of the relevant factors I bear in mind are that:

- i) The UK market for the goods and services relied upon is reasonably large. A good many people wear and purchase spectacles and an even greater proportion will visit opticians.
- ii) The quantum of sales is extremely low when compared to the likely size of the market. Such sales do, on the other hand, have a certain degree of frequency.
- iii) The geographical spread of use is limited to three towns, all in roughly the same geographical area.
- iv) There is no evidence of the mark having been promoted in brochures, advertisements or on the web etc.

31. None of the above factors are determinative per se, but they must all be borne in mind. Another factor is the way in which the marks have been used. Whilst I have accepted that STRADA was applied to dummy labels, the only evidence of the goods as used in the opticians is the photograph of them in a cabinet draw. This will hardly have done much to bring the mark to the attention of potential customers with a view to creating/maintaining a market share. SdS witnesses have stated that the goods will also have been on display, but for how long and in what form is not clear. The displays are not

shown. None of this is symptomatic of a business wishing to create or maintain a market share. My reservations as to the way in which the marks have been used is supported by the fact that Mr Dabin, in his discussions with staff members, encountered one or two who had not heard of the brand. Whilst this is, of course, hearsay, and it is not the strongest of evidence, it supports my view that Messrs Memory were not putting much, if any, effort into creating or maintaining a market share for their STRADA goods. I do not say that the mark has not been used at all, there are sales figures and there is direct evidence from people who worked in the shop, but what I will refer to as the very low-key way in which the mark has been used is another circumstance to bear in mind.

32. Mr Evans submitted that there is no *de minimus* level. This is true. However, the use must be considered genuine in accordance with the tests the Courts have laid down. I have considered whether the use in question is “warranted in the economic sector concerned as a means of maintaining or creating a market share for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark” (per *Ansul*, paragraph 43, *Sunrider v OHIM*, paragraph 70, and the order in *La Mer Technology*, paragraph 27). **In my view, the very small scale, very geographically limited use shown, coupled with the low-key means of using it, is insufficient to constitute real commercial exploitation of the mark in the UK market and therefore, this is not genuine use in any of the relevant periods. The consequence of this is that the earlier mark cannot be relied upon in these proceedings and the revocation actions succeed.”**

Ground of appeal (a)

20. The first ground of appeal was that the Hearing Officer put too much store by the CJEU Order in *Reber*, and used it as a yardstick for genuine use.
21. There was an initial skirmish between Counsel as to the appropriateness of the Hearing Officer drawing the *Reber* case to the attention of the parties, especially when only French- and German-language versions of the CJEU’s Order were available on the www.europa.eu website.
22. The Hearing Officer had provided the parties with an unofficial English-language translation of the Order in *Reber* prepared by the UK Government.
23. My view was that it was now too late to object to the translation (if that was intended) on appeal. The proper time for any such objection would have been before the Hearing Officer, so that an agreed translation could be produced. Moreover, since the Hearing Officer patently intended to refer to *Reber* in his decision, it was correct for him to mention this to the parties and invite their submissions.

Reber

24. The facts of *Reber* were that a CTM application for WALZER TRAUM figurative for coffee and sugar in Class 30 was opposed on the basis of a German national trade mark registration for “Walzertraum” for pastries, baked goods, chocolate goods and confectionary also in Class 30. The Opponent was put to proof of use, the opposing trade mark being more than 5 years old at the date of publication of the CTM application.
25. The proof of use established that the “Walzertraum” mark had been used in connection with a range of praline chocolates in a bakery in a small tourist-orientated town on the German border with Salzburg, Austria.
26. The chocolates were advertised under the “Walzertraum” mark on the Opponent’s website, but there was no evidence that the chocolates could be bought otherwise than in the Opponent’s bakery, where the pralines were handmade and sold for immediate consumption.
27. The “Walzertraum” mark was not imprinted on the chocolates themselves, but the chocolates were shown in the evidence to have been displayed in the bakery with the “Walzertraum” mark clearly in front of them.
28. The Opponent proved retail sales from the bakery of around 40 – 60 kg “Walzertraum” chocolates per year, and it was accepted that such sales had been continuous in the five-year period.
29. Whilst recognising that the small volumes and geographical extent of the sales were only two of several relevant factors, when compared to the German market for chocolates or pralines (around 80 million citizens), the Opponent’s use was minimal and could not be classified as genuine use.
30. The Fourth Board of Appeal of OHIM therefore overturned the Opposition Division’s finding that the “Walzertraum” mark had been genuinely used in the proof of use period, and the Board’s decision was confirmed by the General Court, and ultimately (on the law) by an Order of the CJEU.
31. The Hearing Officer cited the following passages from the CJEU Order¹:

“31. As a first stage, in paragraphs 33 and 37 of the judgment under appeal, the General Court held – having regard to the evidence produced by the appellant – that the actual commercial use of the earlier trade mark ‘Walzertraum’ was undisputed and that there was a certain degree of continuity in its use.

32. However, contrary to the view taken by the appellant, the assessment of the genuine use of an earlier trade mark cannot be limited to the mere finding of a use of the trade mark in the course of trade, since it must also be a genuine use within the meaning of the wording of Article 43(2) of Regulation

¹ Or more accurately, the English-language translation of the Order prepared by the UK Government.

No 40/94. Furthermore, classification of the use of a trade mark as ‘genuine’ likewise depends on the characteristics of the goods or service concerned on the corresponding market (*Ansul*, EU:C:2003:145, paragraph 39). Accordingly, not every proven commercial use may automatically be deemed to constitute genuine use of the trade mark in question.”

32. Instructively the Court continued:

“33. As a second stage, in accordance with the case-law cited in paragraph 32 of the present judgment, the General Court therefore then examined whether the Fourth Board of Appeal of OHIM had interconnected all the relevant factors. Thus, after having found in paragraph 39 of the judgment under appeal that the use of a trade mark does not always have to be extensive in order to be regarded as genuine, in paragraphs 42 to 48 of that judgment the General Court examined the nature of the goods concerned and the geographical coverage of the use of the trade mark Walzertraum. The General Court conducted an overall assessment of that trade mark, taking into account the volume of sales of the goods protected by the trade mark, the nature and characteristics of those goods, the geographical coverage of the use of the trade mark, the advertising on the website of Paul Reber GmbH & Co. KG and the continuity of the trade mark’s use. It thus established a certain degree of interdependence between the factors capable of proving genuine use.

34. The General Court therefore correctly applied the concept of “genuine use” and did not err in law in its assessment of that use. The appellant’s argument is thus unfounded”.

33. I also note that the appellant’s view rejected by the CJEU in *Reber* (para. 32) was that an enquiry into genuine use was limited to actual commercial use even though quantitatively insignificant (genuine) versus artificial use to preserve the rights conferred by the trade mark (non-genuine) (para. 20).

Argument on *Reber*

34. Mr. Hill argued that *Reber* neither changed the law nor (as suggested by the Hearing Officer) clarified it². It was always the case that “commercial use” in the sense of use in the course of trade might not qualify as genuine use. The “dichotomy” between genuine use on the one hand, and token use on the other hand, established in Case C-40/01, *Ansul BV v. Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02, *La Mer Technology Inc. v. Laboratoires Goemar SA* [2004] ECR I-1159 and Case C-416/04 P, *The Sunrider Corp. v. OHIM* [2006] ECR I-4237 had been retained.

35. I am with Mr. Hill in that: (1) *Reber* does not in my view mark a departure from prior CJEU law (c.f., *100% CAPRI Trade Mark*, BL O/357/14, para. 19, Case T-398/13, *TVR Automotive Ltd v. OHIM*, 15 July 2015, para. 44); and (2) there have been prior cases where commercial uses were held insufficient to constitute “genuine use” for

² Mr. Hill emphasised that the CJEU had proceeded to judgment without seeking the benefit of an AG’s Opinion and nowhere in its judgment indicated that it was departing from its previous jurisprudence.

the purposes of EU law (e.g., Case T-131/06, *Sonia Rykiel création et diffusion de modèles v. OHIM* [2008] ECR II-0067).

36. Moreover, I accept Mr. Hill's further points that: (a) neither the commercial success of use, nor the economic strategy of an undertaking is necessarily telling (*TVR*, paras. 45 and 58); and (b) there is no quantitative threshold for genuine use, and even small uses can suffice for genuine use (*La Mer*, para. 21).
 37. However, I would add to Mr. Hill's last point (b) that the CJEU has made consistently clear that genuine use depends on whether the use is warranted in the economic sector concerned to maintain or create a share in the market for the registered goods or services (*Ansul*, para. 38, *La Mer*, para. 21, *Sunrider*, para. 70, *Reber*, para. 29).
 38. That involves the tribunal making a consideration of all the relevant facts and circumstances in any particular case including the nature of the goods or services in question, the characteristics of the market concerned and the scale, geographical scope and frequency of the proprietor's use of the mark for those goods or services (*Ansul*, para. 39, *La Mer*, paras. 22 – 23, *Sunrider*, paras. 71 and 76, *Reber*, paras. 32 and 33, Case C-149/11, *Leno Merken BV v. Hagelkruis Beheer BV*, 19 December 2012, paras. 30 and 36).
 39. Since those factors are interdependent, tribunals deciding different cases may assess differently the genuineness of any alleged uses even where such uses have produced comparable sales volumes (*Sunrider*, para. 77).
 40. Thus, whilst the *La Mer* case, on the one hand, confirmed that slight use could amount to genuine use, the *Reber* case, on the other hand, showed that use in a particular locality might not qualify as genuine use; the outcome depends on the facts in each case.
- “Dichotomy”
41. As for the “dichotomy” so said by Mr. Hill to have been established by the CJEU in *Ansul* and *La Mer*, if by this Mr. Hill meant that where use was not token use merely to preserve the value of the trade mark it must be genuine use, I do not agree.
 42. Although that is one way in which paragraph 36 of *Ansul* might be read, it is clear from paragraph 43 that this was not what the CJEU intended. The CJEU ruling at paragraph 43 in *Ansul* (consistently followed in subsequent CJEU judgments on use) was that genuine use did not “include token use for the sole purpose of preserving the rights conferred by the mark” (emphasis added) and not that all other uses must be genuine use³.
 43. In any event, as previously mentioned, the view that: “it is necessary only to verify whether the trade mark in question has been put to use in order to create or preserve an outlet for the [products] concerned, or whether its use served merely to preserve the rights conferred by it, with the result that that use amounted merely to artificial

³ That “genuine” in this context is not to be equated with “non-sham” (as was “bona fide” under the UK 1938 Act) appears also to be borne out by the different language versions of Council Regulation (EC) 207/2009 and Directive 2008/95/EC, e.g., “ernsthaft” (DE), “genuine” (EN), “effectivo” (ES), “serieux” (FR), “effettivo” (IT), “normaal” (NL), “seriamente” (PT).

use” was expressly rejected by the CJEU in *Reber* (para. 32; and see Case C-609/11, *Centrotherm Systemtechnik GmbH v. centrotherm Clean Solutions GmbH & Co. KG*, 26 September 2013, paras. 67 – 74).

44. If on the other hand – given that Mr. Hill conceded that certain actual commercial use might not constitute genuine use – Mr. Hill was contending that “token use” included more than use merely to preserve registered rights, I cannot see where that gets him. This is just a question of semantics.
45. To conclude at this point, I was not persuaded that the Hearing Officer’s below comment indicated that he about to fall into error in his assessment of genuine use:

“*Reber* has not really changed the law with regard to genuine use, but it is nevertheless a very good example of commercial use that was neither sham nor token, but nevertheless was not genuine; it is therefore a clarification of the earlier case-law” (para. 30)

Did the Hearing Officer undertake the requisite global assessment?

46. As I have said, it is clear from the CJEU case law including *Reber* that the relevant question for the tribunal to address is whether the proven use was commercially warranted in the marketplace taking account of all the relevant facts and circumstances of the case, which are interdependent.
47. As a first stage, the Hearing Officer found on the evidence that the STRADA mark had been used by Messrs Memory on spectacle glasses, and that that use had been continuous throughout the relevant 5-year periods.
48. As a second stage, the Hearing Officer identified that the UK market for spectacles and optician services was reasonably large. Against that, sales of around 41 pairs of glasses per year across 3 opticians shops in the Salisbury area (Amesbury, Salisbury and Tidworth), were in volume very small and geographically very limited. The Hearing Officer also noted that there was no evidence of use of the STRADA mark for the goods or services on the Internet, or in outward facing advertising. Whilst he accepted the proprietor’s witnesses’ statements that STRADA spectacles were displayed in the shops (STRADA being applied to stickers on the dummy lenses) there was no supporting evidence other than an undated photograph showing STRADA spectacles in a cabinet drawer. That had to be balanced against the evidence of SdS’s investigator who had uncovered no use of STRADA when he visited the 3 stores.
49. Mr. Hill criticised the Hearing Officer’s definition of the market for spectacles and opticians as being the UK market. Mr. Hill contended that the market was Salisbury and surrounding areas, where Messrs Memory opticians were based. I do not agree. In my view, the Hearing Officer correctly defined the market for spectacles and opticians’ services territorially as the UK.
50. According to the 2011 Census the populations of Amesbury, Salisbury and Tidworth were together around 95,000 and the population of Wiltshire around 470,000. Even if the market were to be confined to the environs of Messrs Memory’s 3 optician shops,

sales of 41 pairs of spectacles per year were hardly compatible with the creation and retention of a market share.

51. Mr. Hill also accused the Hearing Officer of using the facts of *Reber* as a yardstick. Again, I do not agree. The Hearing Officer took care to explain that his concern was with the relevant circumstances relating to the use before the tribunal (para. 30).
52. In my judgment (subject to the second ground of appeal) the Hearing Officer did conduct the requisite global assessment of the use of STRADA established in this case. On the law as it presently stands, I think it was open to him to conclude that that use was of mere local significance and did not qualify as genuine use in the relevant periods.

Ground of appeal (b)

53. The second ground of appeal was that the Hearing Officer erred in his treatment of certain parts of the evidence.

Display

54. First, it was argued that the Hearing Officer wrongly assessed the evidence regarding STRADA spectacles being on display, namely statements by:
 - (1) Martin Memory that STRADA glasses were on “open display” in the shops for the “majority” of the time; otherwise kept in display drawers (Martin Memory 2, 24 July 2014, para. 3).
 - (2) Bernadette Noke, Branch Manager, Salisbury that STRADA glasses were regularly displayed in the shops for the past 10 years (Bernadette Noke, 24 July 2014, para. 4).
 - (3) Tamsin Kemp, Assistant Manager, Salisbury that STRADA glasses were displayed in the Salisbury shop and: “there have only ever been a handful of months where there have been no Strada glasses on display to the public at one time” (Tamsin Kemp, 24 July 2014, paras. 5 and 11).
55. The criticism was that whilst the Hearing Officer accepted that STRADA spectacles were at times on display in the shops, he erroneously held that the witnesses’ evidence lacked any detail from which to make a finding.
56. Mr. Hill appeared to be arguing that the Hearing Officer should instead have found that spectacles were openly displayed under the STRADA mark more than 50% of the time.
57. I do not accept that criticism. There was no evidence showing the actual display of spectacles in the shops; simply an undated copy photograph of STRADA spectacles in cabinet drawers. The evidence of display to the public was at best thin. It was entirely a matter for the Hearing Officer to decide what weight he accorded to the display evidence, and in my view he did so without error.

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58. I also reject the contention that the Hearing Officer ignored the evidence of the spectacles being shown to potential customers on home visits (Martin Memory 2, 24 July 2014, para. 6). The Hearing Officer recorded this at paragraph 21 of his decision.

Use on arms of spectacles

59. Second, it was argued that the Hearing Officer discounted the evidence relating to use of the STRADA mark on the arms of spectacles. This was said to follow from his observation that the impact of such use was likely extremely small.

60. However, that observation needed to be understood in context, which was his finding:

“The mark has, as a matter of fact, been applied to the arm of the spectacles. However, as none of the photographs actually show this I cannot hold that its impact is great – it may be extremely small.”

61. At the hearing, Mr. Heald showed me a colour copy of the photograph exhibited at BN2 of Ms. Noke’s Witness Statement⁴. STRADA in very small writing could just about be made out on the arm of a pair of spectacles shown in the photograph.

62. Be that as it may, the Hearing Officer accepted at various points in his decision that the STRADA mark had been used on the arms of spectacles. I accordingly saw no merit in the argument that the Hearing Officer discounted such use.

Promotions

63. Third, there was criticism of the Hearing Officer’s statement that there was “no real promotion [or advertising]” of the mark (para. 26 vii)).

64. The Hearing Officer said this in the context of his consideration of an admittedly internal document whereby members of staff of Memory Opticians were advised of promotional pricing for STRADA spectacles in 2008 (MM2-1/BN2). Earlier, the Hearing Officer had noted the reply evidence of Martin Memory, Bernadette Noke and Tasmin Kemp in relation to this internal document (paras. 21, 23, and 24).

65. In the disputed statement at paragraph 26 vii), the Hearing Officer was making a last finding “based on the totality of the evidence”. He rightly observed that this was the only evidence put forward of promotion or advertising of the STRADA mark, for which he cannot be faulted.

66. To my mind, this third point represented merely a challenge to the weight attributed by the Hearing Officer to this part of the evidence. No error was identified that justified interference.

⁴ My papers contained only a black and white copy from which it was impossible to make anything out on the arm.

Conclusion

67. In conclusion, the appeal has failed.
68. The Hearing Officer made a costs award in favour of SdS as the successful party in the proceedings before him in the sum of £2,500. I will order Messrs Memory to pay SdS the additional sum of £850 towards SdS's costs of this appeal, such sums to be paid by Messrs Memory to SdS within 28 days of the date of this decision.

Professor Ruth Annand, 11 November 2015

Mr. Jonathan Hill of Counsel instructed by Chapman & Co. appeared on behalf of the Appellant/Proprietor/Opponent

Mr. Jeremy Heald of Counsel instructed by Boulton Wade Tennant appeared on behalf of the Respondent/Revocation Applicant/Applicant