

o/923/21

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. 2631680

IN THE NAME OF BIO-SYNERGY LTD

AND IN THE MATTER OF AN APPLICATION BY SPARTAN RACE INC

FOR THE REVOCATION OF THE TRADE MARK ON THE GROUND OF NON-USE

AND IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON

BY BIO-SYNERGY LTD

AGAINST A DECISION OF MR ALLAN JAMES

DATED 10 MARCH 2021

DECISION

Introduction

1. This is an appeal from a decision of Mr Allan James, acting for the Registrar, dated 10 March 2021, in which he revoked UK trade mark registration number 2631680 (“the Trade Mark”) for non-use under section 46(1)(a) of the Trade Marks Act 1994 (“the Act”).

UK Trade Mark registration number 2631680

2. The Trade Mark was registered in the name Bio-Synergy Ltd (“the Proprietor” or “the Appellant”) with the following details:
 - ✓ Mark: Spartan nutrition
 - ✓ Filing date: 15 August 2012
 - ✓ Registration date: 23 November 2012
 - ✓ Class 5: *Sports, weight management and health supplements.*

Application for revocation

3. On 8 February 2019, Spartan Race Inc (“the Respondent”) filed an application for revocation claiming that the Trade Mark had not been put to genuine use since it was registered and requesting revocation under s.46(1)(a) of the Act with effect from 24 November 2017. In the alternative, the Respondent claimed that the use had been suspended for uninterrupted periods of five years ending on 6 May 2018, 6 November 2018 and 6 February 2019, and so requested revocation under s.46(1)(b) of the Act with effect from 7 May 2018, 7 November 2018 and 7 February 2019 (“the relevant periods”).
4. The original counterstatement filed by the Proprietor was found to be unclear and to include information relating to ‘without prejudice’ communications between the parties, requiring it to be amended. The amended counterstatement claimed that there had been use of the Trade Mark by the Proprietor on all the goods of the registration within the period of five years before the application for revocation was filed, and that at the date of the revocation action the Proprietor “*was in advanced preparation to restart use of the Trade Mark on all the goods of the registration*”. These preparations were described in the amended counterstatement in the following terms:
 - “5. *The proprietor and the applicant for revocation were in discussion before and after the revocation for non-use was filed. These discussions involved plans to use the trade mark Spartan Nutrition on all the goods of the registration. In addition the plans included a possible assignment of the registration to the applicant and a proposed licence agreement involving the registration and the applicant's own Spartan Race trade marks.*
 6. *The discussions between the parties were friendly negotiations and did not involve any dispute.*”
5. The Proprietor relied on evidence of use before the Hearing Officer that consisted of a witness statement from Mr Simon Walters, the Proprietor’s trade mark attorney, with 10 exhibits. However, following a CMC, it was ordered that three of the 10 exhibits should be removed because they contained without prejudice material. At a further CMC, it was ordered that a fourth exhibit should be treated as hearsay evidence of zero weight.
6. I note in passing that paragraph 17 of the Decision of the Hearing Officer states that the Proprietor indicated that it intended to appeal against the CMC decision ordering the removal of the three exhibits at the conclusion of the proceedings before the registrar pursuant to Rule 70(2) of the Trade Mark Rules. However, no such appeal was brought before me – the Form TM55P filed by

the Appellant only indicated a wish to appeal the “Decision on substance” rather than a “Procedural decision”, and the issue was not covered in the grounds of appeal. Accordingly, I have taken no account of exhibits SW4, SW5, SW6 or SW7 in my decision.

The Hearing Officer’s decision

7. The parties requested a decision on the papers without a hearing, and the Hearing Officer issued his written decision on 10 March 2021 (the “Decision”), with a further decision on costs on 11 May 2021 (which was not appealed).
8. Having explained that section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period, the Hearing Officer confirmed that because the provisions of the Act were derived from an EU Directive he would continue to make reference to trade mark cases of the EU courts. He then cited a number of relevant EU and UK judgments and set out a summary of the applicable law. Neither party sought to challenge that summary in the appeal before me.
9. In particular, the Hearing Officer set out in paragraph 57 of the Decision the following extract from *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) in which Arnold J (as he then was) summarised the various principles derived from CJEU judgments as follows:

“(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: Ansul at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: Ansul at [36]; Sunrider at [70]; Verein at [13]; Leno at [29]; Centrotherm at [71]; Reber at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: Ansul at [36]; Sunrider at [70]; Verein at [13]; Silberquelle at [17]; Leno at [29]; Centrotherm at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: Gözze at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way,

particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: Ansul at [37]-[38]; Verein at [14]; Silberquelle at [18]; Centrotherm at [71]; Reber at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: Ansul at [38] and [39]; La Mer at [22]-[23]; Sunrider at [70]-[71], [76]; Leno at [29]-[30], [56]; Centrotherm at [72]-[76]; Reber at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: Ansul at [39]; La Mer at [21], [24] and [25]; Sunrider at [72] and [76]-[77]; Leno at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: Reber at [32]."

10. In paragraph 58 of the Decision the Hearing Officer also bore in mind the following guidance given by Mr Daniel Alexander Q.C., as the Appointed Person, in *Awareness Limited v Plymouth City Council* (Case BL O/236/13):

“22. The burden lies on the registered proprietor to prove use ... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

11. Having reviewed the evidence which was admissible, the Hearing Officer stated in paragraph 64 of the Decision:

“64. Taken at its highest, the evidence suggests that preparations to use the trade mark might have been underway during the 7-8 months preceding the date of the application for revocation. It is true that genuine use of the contested trade mark may relate to goods which are about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns. However, there is no evidence of any advertising, or of any other external use of the contested trade mark by the proprietor, or with his consent, to secure customers (including trade customers) during the relevant periods.”

12. The evidence that the Hearing Officer was referring to was evidence that, at the beginning of 2013, the Proprietor was approached by a company called Spartan Race Ltd (the evidence included a copy of an executed non-disclosure agreement between the Appellant and Spartan Race Ltd dated 1 February 2013), and that at the end of 2018 the Respondent approached the Proprietor to propose a sponsorship agreement. That agreement, which was apparently never completed, would have granted a company called Spartan Race UK Operations Ltd (a company that organised obstacle races and which the Hearing Officer assumed was associated with the

Respondent) a non-exclusive right to use the Proprietor's unspecified trade marks for certain limited purposes relating to the Proprietor's potential sponsorship of one of the races.

13. The Hearing Officer pointed out that the evidence did not confirm whether or not the Trade Mark was one of the trade marks to be covered by the proposed sponsorship agreement. Nor did it show use of the Trade Mark by the Proprietor, or with his consent, during the relevant periods, to "create or preserve an outlet for the goods or services that bear that mark" (as referred to in the extract set out in paragraph 9 above).
14. Although the Proprietor had sought to rely on some evidence of use of the Trade Mark on two websites, where goods were offered for sale, and on an Instagram account, all of that evidence post-dated the date of application for revocation and so fell outside of the relevant periods.
15. The Hearing Officer therefore concluded as follows:

"65. It follows that the proprietor has failed to show any relevant use of the contested trade mark, let alone genuine use, during the relevant periods. Section 46(3) of the Act provides that "preparations for the commencement..[of use]" may also be relevant, but only where use is commenced prior to the date of the application for revocation. There is no evidence that it was, so s.46(3) cannot apply."

16. The Trade Mark was therefore revoked in full with effect from 24 November 2017.

The Appeal

17. On 7 April 2021, the Proprietor filed a Notice of Appeal to the Appointed Person under section 76 of the Act, which was subsequently amended on 7 July 2021 on my order because the original did not contain sufficient detail to understand the Appellant's case.
18. At the hearing before me, which was held remotely on 13 October 2021, Mr Simon Walters appeared on behalf of the Appellant and Mr Richard Wylie of HGF represented the Respondent.

Standard of review

19. It is well established that in order to interfere with the decision of the Hearing Officer I must be satisfied that there was a distinct and material error of principle in the decision or that the Hearing Officer was wrong. The relevant principles were set out in particular in *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17 by Daniel Alexander QC and by the Supreme Court in *Actavis Group PTC EHf v ICOS Corporation* [2019] UKSC 15. An appeal is by way of review, not a rehearing.

Neither surprise at a Hearing Officer's conclusion nor a belief that she or he has reached the wrong decision will justify interference.

Grounds of appeal

20. The Appellant's Amended Notice of Appeal stated that the Hearing Officer misunderstood the evidence and was wrong not to consider preparations for the commencement of use of the Trade Mark as being genuine use, and "*did not correctly apply the correct law to the facts of this case*". The preparations for use relied on by the Appellant were a reference to the paragraphs from the amended counterstatement set out in paragraph 4 above, which were reproduced in the Amended Notice of Appeal.
21. The Appellant therefore does not rely on any actual use made of the Trade Mark, but only on preparations to commence use of the Trade Mark. There was no evidence before the Hearing Officer of the content of those discussions, since that had been excluded at the CMC referred to in paragraph 5 above on the ground that the discussions took place on a without prejudice basis. Although it was clear at the hearing before me that Mr Walters did not agree that this evidence should have been excluded at the CMC, he accepted that that decision did not form part of the Appellant's appeal, so there was nothing he could do to change that. Mr Walters also accepted that the discussions did not result in any agreement being entered into between the Appellant and the Respondent.

Preparations for use under section 46(3)

22. Preparations for the commencement of use of a trade mark are referred to in section 46 of the Act in the following way:

"46. (1) The registration of a trade mark may be revoked on any of the following grounds-

*(a) that within the period of five years following the date of completion of the registration procedure it has not been **put to genuine use** in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;*

*(b) that **such use** has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;*

...

*(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if **such use as is referred to in that paragraph** is commenced or resumed after the expiry of the five year period and before the application for revocation is made:*

*Provided that, **any such commencement or resumption of use** after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless **preparations for the commencement or resumption began** before the proprietor became aware that the application might be made.” (emphasis added)*

23. Mr Walters sought to rely on this reference to preparations for use, but, in fact, section 46(3) of the Act had no application in this case for the reasons given by the Hearing Officer in paragraph 65 of the Decision. Since there had been no actual use of the Trade Mark prior to the application for revocation, there had been no commencement or resumption of use after the expiry of the five-year period and before the application for revocation was made, as required by section 46(3).
24. I therefore find that there was no incorrect application of the law by the Hearing Officer with respect to section 46(3).

Preparations for use amounting to genuine use

25. Mr Walters also sought to argue that preparations for use could amount to genuine use within the meaning of section 46(1) of the Act. If he was correct that the preparations for use in this case fell within section 46(1), then there would have been no need for the Appellant to rely on section 46(3) in any event.
26. In Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439 the CJEU said the following in relation to Article 12(1) of the Trade Marks Directive 89/104/EEC, the corresponding provision to section 46 of the Act:

“37. It follows that ‘genuine use’ of the mark entails use of the mark on the market for the goods or services protected by that mark and not just internal use by the undertaking concerned. The protection the mark confers and the consequences of registering it in terms of enforceability vis-à-vis third parties cannot continue to operate if the mark loses its commercial raison d’être, which is to create or preserve an outlet for the goods or services that bear the sign of which it is composed, as distinct from the goods or services of other undertakings. Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the

undertaking to secure customers are under way, particularly in the form of advertising campaigns. Such use may be either by the trade mark proprietor or, as envisaged in Article 10(3) of the Directive, by a third party with authority to use the mark.

38. Finally, when assessing whether there has been genuine use of the trade mark, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, in particular whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark.

39. Assessing the circumstances of the case may thus include giving consideration, inter alia, to the nature of the goods or service at issue, the characteristics of the market concerned and the scale and frequency of use of the mark. Use of the mark need not, therefore, always be quantitatively significant for it to be deemed genuine, as that depends on the characteristics of the goods or service concerned on the corresponding market.”

27. Mr Walters submitted that the discussions between the parties that had taken place prior to the application for revocation amounted to use of the mark in relation to goods about to be marketed and for which preparations to secure customers were under way. Since such use may also be by a third party with the authority of the proprietor of a trade mark, Mr Walters also relied on the existence of discussions between the parties relating to a possible licence agreement, a trade mark assignment and a sponsorship agreement, as it would not have mattered which of the parties were preparing to use the Trade Mark if such use would have been with the other’s authority.
28. Mr Walters therefore argued that the references to “*goods ... which are about to be marketed*”, “*preparations to secure customers*” and use “*to create ... an outlet for the goods or services that bear the mark*” are broad enough to include discussions between a trade mark proprietor and a third party to market goods, prior to any public disclosure of those goods. As an example, he gave discussions between a proprietor and a third party to develop client databases. He therefore submitted that the statement in the amended counterstatement referring to discussions to use the Trade Mark on all the goods of the registration amounted to evidence of genuine use, and while he accepted that the reference to draft agreements did not amount to separate evidence of genuine use, he suggested that they put those discussions in context.

29. In my view, this is not a correct interpretation of the case law.

30. Paragraph 37 of the judgment in *Ansul* commences:

*“It follows that ‘genuine use’ of the mark entails use of the mark **on the market** for the goods or services protected by that mark and not just internal use by the undertaking concerned.”* (emphasis added)

31. The later sentence, which refers to preparations to secure customers, must therefore be read in that context:

“Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns.”

32. The example of advertising campaigns given by the CJEU is an example of external use of the trade mark on the market to the public. While I accept that discussions with a third party are wider than internal use, they do not amount to external use on the market of the type envisaged by the CJEU in paragraph 37 of *Ansul*. To use Mr Walters’ example of discussions with a third party to create a client database, those discussions would not be known to the public and would therefore not amount to *“real commercial exploitation on the market”* or use which is *“consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin”* (as taken from the extract from *Walton International Ltd & Anor v Verweij Fashion BV* in paragraph 9 above).

33. Mr Wylie also referred me to the following paragraphs from the General Court’s judgment in Case R 217/2014-5 *EUIPO v Pirelli Tyre SpA* EU:T:2017:162:

“83. In the second place, as regards the evidence of genuine use of the contested trade mark relating to proposals to enter into negotiations on a trade mark licence agreement for goods in Class 12, that evidence shows merely an intention to propose such agreements but does not demonstrate the placing on the market of goods covered by the contested trade mark. However, even if it is the intention of the proprietor of the contested mark to make real use of his trade mark, if it is not objectively present on the market in a manner that is effective, consistent over time and stable in terms of the configuration of the sign, so that it cannot be perceived by consumers as an indication of the origin of the goods or services in question, there is no genuine use of the trade mark (see judgment of 23 February 2006, Il Ponte

Finanziaria v OHIM — Marine Enterprise Projects (BAINBRIDGE), T-194/03, EU:T:2006:65, paragraph 32 and the case-law cited).

84. In the third place, whilst it is true that, under Article 15(2) of Regulation No 207/2009, use of a trade mark by an authorised third party, such as the holder of a licence agreement, is not excluded, it is nevertheless necessary to adduce evidence of genuine use of the mark by that third party. In the present case, since the evidence relating to the licence agreement in respect of the contested trade mark concerns the existence of such an agreement and not the effective placing on the market of goods, it does not show that the contested trade mark was put to genuine use on the market.

85. It must therefore be stated, as did the Board of Appeal, that none of the items of evidence presented by the applicant indicate that goods covered by the contested trade mark were marketed on the market. Moreover, as the Board of Appeal correctly stated in paragraph 29 of the contested decision, it is not possible from the evidence presented by the applicant to assess the commercial volume of all the acts of use, the frequency of those acts of use or the period within which the acts of use were carried out.

86. The Board of Appeal was therefore fully entitled to find that the applicant had not proved, to the requisite legal standard, genuine use of the contested trade mark.

87. That conclusion is not called into question by the case-law relied on by the applicant.

88. It is true that it is clear from that case-law that genuine use of the contested trade mark may relate to goods and services which are about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns (judgment of 11 March 2003, Ansul, C-40/01, EU:C:2003:145, paragraph 37, and order of 27 January 2004, La Mer Technology, C-259/02, EU:C:2004:50, paragraph 19).

89. However, it should be pointed out, as EUIPO has done, that, even if the items of evidence in question are not limited to use internal to an undertaking, they do not constitute an advertising campaign. Indeed, they are not intended to promote goods covered by the contested trade mark under that mark, in accordance with the essential function of the trade mark, but on the contrary, are aimed at promoting the mark itself.

90. Furthermore, it follows from the case-law relied on by the applicant that it is necessary to show that goods are about to be marketed. However, the applicant has not adduced any

evidence to that effect, the items of evidence provided show merely that the applicant proposed licence agreements and concluded such an agreement.”

34. In that case, there was actual evidence of the content of negotiations for a trade mark licence relating to the trade mark in question, but that evidence could not amount to genuine use because it did not amount to the marketing of goods covered by the trade mark on the market. The same reasoning set out above from that case applies equally in this case, where there was no evidence at all of the content of the discussions and no evidence that the sponsorship agreement, which was never signed, even related to the Trade Mark. Even if there had been such evidence, discussions between the proprietor and a third party are not sufficient to amount to genuine use.

Without prejudice rule

35. Mr Walters argued that it would be unfair on a party such as the Appellant to be prevented from relying on discussions relating to sponsorship agreements, licence agreements or trade mark assignments because of the without prejudice rule when the party with whom those discussions took place then applies to revoke the trade mark which was the subject of those discussions. However, no unfairness due to the failure to be able to rely on evidence of such discussions arises, because mere discussions do not amount to evidence of genuine use for the reasons given above. If a party in that position wanted to protect itself from a non-use challenge, then it should put its trade mark to genuine use through actual, external use of the type envisaged by the CJEU in *Ansul*.
36. Mr Walters’ argument that an applicant for revocation for non-use should not be allowed to rely on the without prejudice rule to argue that there is no evidence of genuine use of a trade mark would also result in a perverse situation in reverse. In any case where there had in fact been no genuine use of a trade mark, but where the parties had entered into without prejudice discussions to try to settle their differences prior to the commencement of a revocation action, under Mr Walters’ reasoning the revocation action would have to fail because the Hearing Officer should infer genuine use simply from the fact that without prejudice discussions between the parties had taken place. That would clearly be wrong.

Misunderstanding of the evidence

37. The Appellant also claimed in the Amended Notice of Appeal that the Hearing Officer misunderstood the evidence and so was wrong not to consider the preparations described in the amended counterstatement as being genuine use. Particular attention was drawn to paragraphs 60, 64 and 65 of the Decision.

38. Paragraph 60 of the Decision stated as follows:

“60. This evidence does not “show” any use of the trade mark at all. And even it were appropriate to infer that Spartan Race Ltd or Spartan Race UK Operations Ltd were interested in using the contested trade mark in relation to the goods for which it is registered (which it is not), this evidence still would not show use of the contested trade mark by the proprietor, or with his consent, during the relevant periods, to “create or preserve an outlet for the goods or services that bear the mark.”

39. Paragraph 64 of the Decision is set out in paragraph 11 above, and paragraph 65 of the Decision in paragraph 15 above.

40. Although Mr Walters accepted that the evidence did not show use of the Trade Mark, he argued that there were inferences that the Hearing Officer should have drawn from the reference to the discussions in the Appellant’s amended counterstatement.

41. In paragraph 10 above, I set out the extract from *Awareness Limited v Plymouth City Council* (Case BL O/236/13) regarding the burden of proof on proprietors to prove use of their trade marks, which the Hearing Officer said he bore in mind in paragraph 58 of the Decision. That judgment requires the evidence before the Hearing Officer to be “*sufficiently solid and specific*”. In this case, there simply was no evidence, and all the Appellant could point to were inferences to be drawn from discussions between the Appellant and the Respondent whose contents were not before the Hearing Officer. That falls a long way short of sufficiently solid and specific evidence.

42. Accordingly, even if discussions between a trade mark proprietor and a third party over failed negotiations to enter into a licence, assignment or sponsorship agreement could amount to genuine use (which, for the reasons I have given, cannot in any event), the Hearing Officer was correct to state that the evidence did not “show” any use of the Trade Mark at all.

43. I therefore find that the Hearing Officer did not misunderstand the evidence, and correctly applied the law to the facts of this case in finding that there was no genuine use of the Trade Mark by the Appellant since it was registered or during the relevant periods. The appeal therefore fails, and the Trade Mark is revoked in full with effect from 24 November 2017.

Costs

44. The Respondent is entitled to a contribution to its costs of the appeal. I will order the Appellant to pay the Respondent £900 in respect of the appeal, to be added to the £10,106.18 ordered by

the Hearing Officer, to be paid within 21 days of the date of this decision.

Simon Clark
The Appointed Person
17 December 2021

Representation:

Appellant: Mr Simon Walters

Respondent: Mr Richard Wylie (HGF Ltd)