O/0688/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION NO. 3741868:

GEMINI

IN THE NAME OF HIGHLAND LIGHT VENTURES LIMITED

AND

AN APPLICATION TO RECTIFY THE REGISTER

BY MISSIONS DIVISION LIMITED

Background and pleadings

1. On 17 February 2025, Missions Division Limited ("MDL") applied to rectify the register of trade marks under s. 64 of the Trade Marks Act 1994 ("the TMA") in relation to registered trade mark number 3741868. The trade mark in question is shown below:

2. The trade mark was filed on 11 January 2022 and registered on 10 June 2022 for "diving equipment" in class 9.

3. The original proprietor of the trade mark was Lungfish Dive Systems Ltd ("Lungfish"). On 16 December 2024, a Form TM16 was filed to record the assignment of the trade mark to the current proprietor, Highland Light Ventures Limited ("HLVL"), with an effective date of assignment of 5 December 2024. The assignment was recorded on the register on 18 December 2024.

4. MDL says that full rights in the trade mark were assigned from Lungfish to MDL in an agreement signed on 29 July 2024 ("the Agreement"). Lungfish was liquidated some months later. MDL says that the assets purchased by HLVL after the liquidation of Lungfish did not include the trade mark and that the assignment was recorded on the register in error.

5. HLVL filed a counterstatement. It says that the trade mark was assigned by Lungfish to HLVL on 5 or 18 December 2024 (the date is not clear on the pleadings). It says that the publicly marketed auction of all Lungfish assets took place on 5 December 2024. This sale included all company products and IP generated by employees of the company. HLVL says that the liquidation was voluntary and disputes that the assignment relied upon by MDL effected a valid transfer of the trade mark, in particular because it was marked "subject to legal review" and because Lungfish's Shareholders' Agreement required investor director approval for any transfer of IP.

6. Neither party is professionally represented. Both parties filed evidence. Neither party requested a hearing but both filed submissions in lieu. This decision is taken following a careful reading of all of the papers.

Evidence

7. MDL's application form was filed by Craig Mainprize, its director. Mr Mainprize provided a statement of truth on the form and the evidence filed with the application is therefore admissible as his evidence. Mr Mainprize also filed two witness statements, with exhibits including the Agreement, in support of MDL's position that the trade mark was validly assigned.

8. HLVL's evidence includes two witness statements from Sarah Broderick, with exhibits. Ms Broderick is a director of HLVL, a position she has held since November 2024. Since January 2023 Ms Broderick has also been the director of Calico & Goose Ventures Limited, which is the company which originally placed the winning bid in the Lungfish asset auction. Ms Broderick's evidence explains the creation of HLVL after the asset auction as the entity to complete the sale and she includes documentation regarding the asset sale.

9. HLVL also filed a witness statement, with exhibits, from Daniel Reynolds, the founder of Lungfish. He was its director from its founding in 2008 through the sale of its assets and into voluntary liquidation in late 2024. Dr Reynolds joined HLVL in December 2024 to continue work on the Lungfish product portfolio, which he designed, including the GEMINI Switch Block. Dr Reynolds gives evidence about the circumstances of the Agreement, company governance and the liquidation of Lungfish in late 2024.

10. Both parties have filed evidence which is a mixture of evidence and submission. I will give it the weight I consider appropriate. Both parties have also filed evidence regarding issues which are not relevant to this decision. I will refer to the evidence only to the extent I consider necessary to determine the issues before me.

Preliminary matters

Transfer to the Court

11. The tribunal has the power to refer rectification proceedings to the Court under s. 64(2)(b) of the TMA. Some of the claims made in this case, particularly HLVL's defence that the signatories to the Agreement had no authority to transfer the trade mark, which links to the good faith of Mr Mainprize/MDL and what appears at face value to be a conflict of interest given Mr Mainprize's capacity as a director of Lungfish, involve issues of company law beyond the usual remit of this tribunal. I have therefore given thought to whether, despite the advanced stage of proceedings, it is appropriate to transfer this action to the court. This is particularly the case as, the parties being unrepresented, I have not had the benefit of cogent submissions on the relevant statute and case law. However, to transfer the case would increase the costs to the parties and would introduce further delay. Mr Mainprize has made various submissions to the tribunal about the detrimental effect on him and his business of delay, which is a real rather than theoretical prejudice. Having given the matter careful consideration, I have decided that the case can be dealt with in this forum, chiefly because I do not think that it is necessary for me to address HLVL's argument that the Agreement is void for want of authority in order to dispose of the matter.

Admissibility of HLVL's evidence

12. In his witness statement, Mr Mainprize makes a number of complaints about HLVL's evidence which, he says, should result in all of its evidence being considered inadmissible.

13. Mr Mainprize submits that the witness statement of Dr Reynolds and the first witness statement of Ms Broderick are inadmissible because, he says, they were not re-executed following an amendment. Mr Mainprize complains that the statements do not comply with CPR part 32. This is what he says on the point in Mainprize 2:

> "12. Both Mr Reynolds and Ms Broderick amended their witness statements on 23 July 2025 without re-signing the statement of truth, contrary to CPR Part 32.

> 13. The defect renders them procedurally non-compliant and deserving of no evidential weight",

and,

> "48. Crucially, **neither witness statement was re-signed with a fresh statement of truth** following amendment, despite the clear procedural requirement to do so.
>
> 49. I understand that under **CPR Part 32**, an amended witness statement must be verified by a renewed statement of truth. While CPR is not binding on UKIPO proceedings, it is routinely cited as persuasive authority where procedural fairness and evidential integrity are at issue",

and,

> "123. **Procedural defects in witness statements**. Both Mr Reynolds and Ms Broderick made amendments to their witness statements after signing the statement of truth. Under CPR Part 32, a statement verified by a statement of truth must represent the evidence as signed; any subsequent alterations without a fresh statement of truth are inadmissible. Accordingly, the signed versions cannot be relied upon as accurate, and the amended versions carry no evidential weight as they are effectively unsigned." (original emphasis)

14. I was unable to find a requirement in the CPR that a witness statement must be re-executed if it is amended. The Practice Direction to Part 32 does not appear to require a fresh signature or date, only that the amendments be initialled (paragraph 22.1). I therefore wrote to MDL asking it to clarify which words in CPR Part 32 were relied upon and why those words lay down the requirement claimed by Mr Mainprize. Mr Mainprize's response on behalf of MDL was that:

> "As a layperson, the words I relied upon were:
>
> - CPR 32.4(1), which describes a witness statement as a 'written statement signed by a person which contains the evidence that person would be allowed to give orally.'

- Practice Direction 32, paragraphs 20.1-20.2, which state that a witness statement must include a statement of truth confirming that 'the facts stated in this witness statement are true'.

My understanding from these words was that the signature and statement of truth verify the specific content of the witness statement as signed. If the content is later amended or supplemented, then the original statement of truth no longer verifies the updated version.

On that basis, my lay understanding was that an amended statement requires a renewed statement of truth, because the verification must apply to the actual version being put forward".

15. I accept that individuals, particularly those without legal training, giving evidence or making submissions before this tribunal may misunderstand or misconstrue relevant legal points. It is a reasonable point that a witness's signature would only attest to the veracity of material in the document when it was signed and not subsequently. However, that was not the submission originally made. Mr Mainprize asserted in terms that CPR Part 32 requires re-execution of a witness statement following an amendment. It does not. Even though litigants in person may be more susceptible to misunderstandings than professional representatives, the explanation provided is not satisfactory, particularly as the Practice Direction includes a provision headed "alterations to witness statements" at paragraph 22 which sets out the requirements. Mr Mainprize presented his arguments that CPR Part 32 required re-execution as a "clear procedural requirement". It is no such thing. Mr Mainprize was, at best, careless about the authority he cited for the proposition.

16. In terms of the validity of the statements, both witnesses have re-dated their statements following their amendments. I am satisfied that in doing so they have verified the contents and assured themselves that their signature attesting to the truth of the matters in the statements remains valid. The manner in which the amendments have been certified differs from the CPR Practice Direction (which does not, in any event, apply to this tribunal) but achieves the same end. I reject this complaint.

17. Mr Mainprize also says that Dr Reynolds' evidence is "procedurally improper" because Dr Reynolds says that he is authorised to speak for Lungfish in these proceedings. Mr Mainprize has provided an email from the liquidators which says that "no specific authority was given to Mr Daniel Reynolds to act on behalf of Lungfish Dive Systems Ltd" (Exhibit F to Mainprize 2). I accept that the Insolvency Act 1986 s. 103 provides that directors' powers cease at liquidation. I also accept that there appears to have been no grant of authority from the liquidator for Dr Reynolds to act on behalf of Lungfish. I am, however, not prepared to exclude his evidence on this basis. Whether or not Dr Reynolds is a director or authorised to act on behalf of Lungfish is irrelevant to his capacity to give evidence about events within his knowledge which occurred prior to or during the liquidation process in which he was involved. It is unfortunate that he says that he is authorised to speak on behalf of Lungfish given the company's status but I do not consider it necessary to reduce the weight I give his evidence because of this.

18. Mr Mainprize also complains that Dr Reynolds is estopped from disputing the validity of the Agreement to transfer the trade mark, saying that "under the doctrine of Estoppel, Dr Reynolds is barred from denying the validity of an agreement he personally executed". No authority is cited for this proposition, nor indeed is the specific type of estoppel relied upon made clear. I cannot see why Dr Reynolds would be prevented from challenging the validity of the Agreement in the particular circumstances of this case, which are essentially that his signature was not intended to bind Lungfish, for the reasons I explain below. Mr Mainprize also says HLVL cannot lawfully challenge the Agreement because it has "no privity to the original transaction and no standing under the Companies Act or Insolvency Act". Again, no authority is cited for this proposition. HLVL plainly has standing in these proceedings as the registered proprietor of the mark and as a party to the rectification action. It is seeking to defend the trade mark which it says it legally purchased against an attack based on the Agreement. There is no apparent reason why it should be prevented from challenging the validity of the Agreement and no clear basis for that has been advanced. I reject this point.

19. Mr Mainprize also makes what appear to be connected complaints about the "unlawful possession and use of personal email" and what he describes as "internal"

Lungfish documents adduced as evidence, which he says are inadmissible. At the risk of putting the cart before the horse, Ms Broderick has adduced a document headed "LUNGFISH DIVE SYSTEMS LIMITED – IN LIQUIDATION: Schedule of Assets".[1] The Schedule specifies:

- "Whatever right, title, or interest Lungfish has in available company communication by employees, past and current, including emails and additional correspondence on messaging platforms such as WhatsApp, Teams, etc.";

- "Whatever right, title or interest Lungfish has in documents, digital and physical, created by or for the company held on premises or in cloud servers as well as the personal devices, external hard drives or other devices"; and

- Whatever right, title or interest Lungfish has in other transferrable tangible or intangible assets or data not mentioned above".

20. There is also an invoice from JPS (the auctioneer) to HLVL for "whatever right, title or interest the above subject company has in: assets of the subject company". Lungfish is identified as the subject company.[2] The invoice is dated 5 December 2024.

21. This appears to be a complete answer to Mr Mainprize's complaint, as it shows that all Lungfish company communications and documents, along with rights, title and interest in any other asset not specified in the Schedule were transferred to HLVL. Prima facie, this includes the Shareholders' Agreement. Although Mr Mainprize criticises it, he has not sought to cross-examine Ms Broderick about the Schedule of Assets (or any other evidence) and has filed no evidence to show that it is unreliable. Mr Mainprize has relied heavily on an email from FTS Recovery, the liquidator, regarding the transfer of the Shareholders' Agreement, in which it said, in response to a query from Mr Mainprize, that "the agreement for the sale of the business and assets included a wide range of rights and titles, and there is no specific mention of a shareholders' agreement you reference".[3] This is plainly not the same as a statement that the Shareholders' Agreement was not part of the sale, which is what Mr Mainprize asserts. Although Ms Broderick does not say in terms that the Schedule of Assets lists

[1] Exhibit HLV16 to Broderick 2.
[2] HLV13 to Broderick 1. Also filed as exhibit H to Mainprize 2.
[3] Exhibit F to Mainprize 1 (refiled as exhibit E to Mainprize 2).

the assets sold to HLVL in the asset sale as evidenced by the invoice, that is a reasonable inference given the evidence that she does give.

22. Mr Mainprize also points to a statement by Ms Broderick that "the Shareholders' Agreement does not transfer to HLVL".[4] This, however, is in the context of a discussion about the validity of the claimed trade mark transfer to MDL and Ms Broderick goes on to say expressly that the Shareholders' Agreement was included in the asset sale.[5] I read Ms Broderick's statement at §16 of her statement as meaning that the terms of the Shareholders' Agreement did not transfer to HLVL. I do not think that it is relevant to the present dispute whether the Shareholders' Agreement was sold to HLVL or not but the evidence indicates that, it being a document created for or by the company, it was included in the sale. Lastly, Mr Mainprize relies on a data protection clause from the standard conditions of sale in support of his claim that HLVL's evidence was "excluded from the liquidation sale".[6] I can find nothing in the exhibit which might support such a contention and I reject it.

23. I would only add that even without the Schedule of Assets, it would be far from clear that either Dr Reynolds or HLVL had obtained the information unlawfully. Dr Reynolds is an intended recipient of the emails to him and he is named in the Shareholders' Agreement. It is not obviously unreasonable or unlawful for him to have retained copies of these documents, nor indeed is it unreasonable or unusual for a purchaser of a company to acquire all documents in the possession of the company.

24. I should also address Mr Mainprize's references to data protection and the GDPR, including assertions such as that "processing as evidence" of certain documents breaches GDPR. As regards the legality of the tribunal processing evidence which contains personal information, this is permissible because it is part of the tribunal's responsibilities to administer the intellectual property system in the UK and to maintain the register of trade marks. If Mr Mainprize means that the evidence was unlawfully obtained and should not be admitted, I disagree. As I have said, the material relied upon by HLVL appears to be information transferred to it in the asset sale but even if that is not the case, there is no clear evidence or authority for the proposition that

[4] Broderick 2, §16.
[5] Broderick 2, §17.
[6] Exhibit N to Mainprize 2.

HLVL or its witnesses obtained the documents unlawfully. Given the relevance of these documents to the present dispute and that it is in the interests of justice for the parties to be able to present their full case, I do not consider that a potential breach of GDPR by HLVL or its witnesses would be sufficient justification to strike out the evidence in the instant case.

25. Consequently, I am not prepared to exclude any of HLVL's evidence.

Other matters

26. Mr Mainprize makes a number of other points. Some of these relate to service of documents. I have reviewed the file and it is clear to me that, whilst there have been errors, MDL has been served with all of the necessary material and there has been no procedural unfairness to MDL. In particular, HLVL's counterstatement was formally served by the tribunal on 3 June 2025 and HLVL sent its evidence in chief (as amended) to MDL on 10 July 2025. Further, no hearing was requested in respect of preliminary views given by the tribunal, which were automatically confirmed and cannot now be challenged. To the extent that the remaining issues are relevant to the substance of this case, I deal with them below.

Validity of the Agreement

27. Rectification is provided for at s. 64 of the TMA, which reads, so far as relevant:

> "64. - (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register: Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.
>
> (2) An application for rectification may be made either to the registrar or to the court, except that-
>
> > (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
> >
> > b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

> (3) Except where the registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.
>
> (4) […]
>
> (5) The registrar may remove from the register matter appearing to him to have ceased to have effect."

28. Section 72 is also relevant. It states:

> "In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it."

29. The effect of this is that the burden of persuading the registrar that there is an error on the register which should be rectified is on an applicant for rectification. This means that the burden is not on HLVL. It is instead on MDL to prove its claim that it is the proper owner of the trade mark and only if MDL establishes a prima facie case does the burden shift to HLVL to establish its defence.

30. It is necessary for an applicant for rectification to have sufficient interest to make the application. MDL says that it is the proper owner of the trade mark and plainly satisfies this criterion.

31. MDL claims that the trade mark was transferred to it in a contract executed on 29 July 2024. HLVL disputes the validity of the contract. The first issue I must decide is whether there was a binding contract. I will begin with whether the parties intended to enter into a legally binding agreement.

32. In *RTS Flexible Systems Ltd v Molkerei Alois Muller Gmbh & Company KG (UK Production)* [2010] UKSC 14, Lord Clarke JSC, giving the judgment of the Supreme Court, said as follows:

> "45. The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a pre-condition to a concluded and legally binding agreement."

49. The Supreme Court also endorsed the following comments in the Court of Appeal of Lloyd LJ (with whom O'Connor and Stocker LJJ agreed) in *Pagnan SPA v Feed Products Ltd* [1987] 2 Lloyd's Rep 601:

> "(1) In order to determine whether a contract has been concluded in the course of correspondence, one must first look to the correspondence as a whole...
>
> (2) Even if the parties have reached agreement on all the terms of the proposed contract, nevertheless they may intend that the contract shall not become binding until some further condition has been fulfilled. That is the ordinary 'subject to contract' case.
>
> (3) Alternatively, they may intend that the contract shall not become binding until some further term or terms have been agreed...
>
> (4) Conversely, the parties may intend to be bound forthwith even though there are further terms still to be agreed or some further formality to be fulfilled...
>
> (5) If the parties fail to reach agreement on such further terms, the existing contract is not invalidated unless the failure to reach agreement on such further terms renders the contract as a whole unworkable or void for uncertainty
>
> (6) It is sometimes said that the parties must agree on the essential terms and it is only matters of detail which can be left over. This may be misleading, since

the word 'essential' in that context is ambiguous. If by 'essential' one means a term without which the contract cannot be enforced then the statement is true: the law cannot enforce an incomplete contract. If by 'essential' one means a term which the parties have agreed to be essential for the formation of a binding contract, then the statement is tautologous. If by 'essential' one means only a term which the Court regards as important as opposed to a term which the Court regards as less important or a matter of detail, the statement is untrue. It is for the parties to decide whether they wish to be bound and if so, by what terms, whether important or unimportant. It is the parties who are, in the memorable phrase coined by the Judge [at page 611] 'the masters of their contractual fate'. Of course the more important the term is the less likely it is that the parties will have left it for future decision. But there is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later. It happens every day when parties enter into so-called 'heads of agreement'."

33. The effect of "subject to" in contracts was considered in *Nautica Marine Ltd v Trafigura Trading LLC (Rev 1)* [2020] EWHC 1986 (Comm). There, the judge said:

> "43. In <u>RTS</u>, Lord Clarke JSC noted that sometimes the parties agree that no contract will be concluded until some formal step (such as the signing of a written contract) takes place ([46]). This is frequently done by using the 'subject to contract' rubric. In those circumstances, Lord Clarke JSC noted at [55]:
>
> > 'the question is whether the parties have nevertheless agreed to enter into contractual relations on particular terms notwithstanding their earlier agreement or understanding.'
>
> Lord Clarke JSC noted at [56] that whether, against the background of 'subject to contract' dealings, the parties have agreed nonetheless to enter into a contract without signing a written contract will 'depend upon all the circumstances of the case, although the cases show that the court will not lightly so hold'. He held that an agreement to be bound notwithstanding the absence of a written contract need not be express ([67]). In that case, the Supreme Court concluded that the parties had agreed to enter into contractual relations

notwithstanding the absence of a signed contract because 'any other conclusion makes no commercial sense' ([86]).

44. In addition to agreeing, by the use of 'subject to contract' or some similar rubric, that there will be no binding contract until a written contract has been signed, the parties may agree that there will be no binding contract until all terms of the proposed contract have been agreed, whatever their relative importance to the parties' overall bargain. A well-known formulation which achieves that effect in the charter market is to provide that agreement is 'subject to details'. In the leading authority on those words, Star Steamship Society v Beogradska Plovidba (The Junior K) [1988] 2 Lloyd's Rep 583, Steyn J held that the effect of the phrase was to prevent any contract being concluded until all of the terms had been agreed. […]

45. However, as with 'subject to contract', so with 'subject to details' it is possible for parties who have initially agreed to proceed on the basis that there will be no concluded contract until all the terms have been finalised, to decide nonetheless to enter into contractual relations on those terms which have been agreed while continuing to negotiate the outstanding terms (i.e. a contract of the type envisaged by Lloyd LJ in stage (4) of his summary in Pagnan).

46. The legal effect of the phrases 'subject to contract' and 'subject to details' is, therefore, to enable either party to avoid entering into contractual relations by refusing to sign a written contract or reach agreement on any outstanding terms, as the case may be. Similarly, no contract comes into existence when an agreement is reached 'subject to board approval' by one or other party, because the effect of those words is to postpone the decision on whether to enter into legal relations to a subsequent stage. In Goodwood Investments Holdings Inc v Thyssenkrupp Industrial Solutions AG [2018] EWHC 1056 (Comm), a case involving a settlement agreement which was subject to one party obtaining board approval, Males J held (at [33]) that the agreement was not binding on either party until board approval was given.

47. When the event on which the entry into contractual relations depends is a decision by one or both parties to undertake a legally binding commitment,

> there is no room for the argument that some form of preliminary agreement comes into existence imposing an obligation on one or both of the parties to seek to complete the bargain. This is both because the purpose of the 'subject' is to signal that the parties have not yet reached the stage of any legal commitment (as Devlin J noted in Windschuegl (Charles H) Ltd v Pickering & Co Ltd (1950) 84 Ll L LR 89, 92) and because of the traditional hostility of the common law to 'agreements to agree' given the difficulties of enforcing them (*Chitty on Contracts* 33rd edn. paras. 2-144 to 2-147).
>
> 48. In contrast, there are cases in which an agreement is said to be 'subject' to some event within the control of someone other than one of the parties, and in which it has been held that the 'subject' is not a 'pre-condition' which prevents a binding contract coming into existence, but instead has the effect that performance does not have to be rendered if the 'subject' is not satisfied for reasons other than a breach of contract by one of the parties ('a performance condition'). This is the position where a contract for international sale is made subject to obtaining an export licence (Brauer v James Clark [1952] 2 Lloyd's Rep 147) or an import licence (Windschuegl (Charles H) Ltd v Pickering (Alexander) & Co Ltd *supra*), and where a contract for the sale of land is made subject to obtaining planning permission (Batten v White (No 2) (1960) 12 P&CR 66, 71)."

34. Although the parties' subjective views on the Agreement are irrelevant, their evidence about discussions prior to and immediately after the Agreement is relevant context. Mr Mainprize emailed Dr Reynolds on 23 July 2024, saying, "Here is the doc from yesterday. If I can have a signature – that would make me a lot happier".[7] The attachment is not provided. An email from Dr Reynolds of the same day, apparently in response, says:

> "I'm OK with this in general. Did you include the bits we talked about at the meeting & was this drawn up by your own solicitor/should we get a legal check? I may or may not be able to sign unilaterally but I think we had a board

[7] Exhibit D to Mainprize 1.

consensus there. To action it we'd also have to get the forms off the IP website, but that is easy."

Mr Mainprize responds on the same day:

"Obviously understand. The forms need to be downloaded as you state but this just confirms/starts the process as discussed as it is you on the current form".

35. Mr Mainprize also emailed another individual, "S", on 26 July 2024 simply asking, "what is your view on the subject please?". S responds:

"Seems to represent the discussion we had the other day concerning the origins of the Alliance development, and in fact the discussion at the first dive show we met back in 2019 so it is difficult to disagree with. If Dan is in agreement as below, get it sorted.

What the company needs is certainty going forwards so getting an agreement in place where any IP related matters arise is important. We have enough problems on our plate already."

36. The Agreement is headed "Intellectual Property Assignment Agreement".[8] It states that the Agreement "is made and entered into as of 22/07/2024". The assignors are identified as "Dr. Daniel Reynolds, Lungfish Dive Systems Ltd" and "[S], Lungfish Dive Systems Ltd". The assignee is "Mr Craig Mainprize, Missions Division Ltd".

37. The pertinent clauses are set out below. The words in square brackets concerning "Gemini" in clause 1 are not mine: they are as written in the Agreement:

"**1. Assignment of intellectual property**

The Assignor hereby assigns, transfers, and conveys to the Assignee all right, title, and interest in and to the following intellectual property ("the Intellectual Property"):

[8] Exhibit A to Mainprize 1.

- **Gemini**: [Detailed description of the IP related to Gemini, including titles, registration numbers, and any relevant descriptions, e.g., patents trademarks, copyrights, trade secrets, etc.] UK00003741868

[…]

2. License to Lungfish Dive Systems Ltd

The Assignee agrees to grant Lungfish Dive Systems Ltd a perpetual, non-transferable, irrevocable, license-free, exclusive license to use the Intellectual Property, provided that the current management of Lungfish Dive Systems Ltd remains in place and that control of the company does not change. This license includes, but is not limited to, the right to manufacture, use, sell, and distribute products incorporating the Intellectual Property.

3. Representations and Warranties

Assignor's Representation and Warranties: The Assignor represents and warrants that:

The Assignor has the full right and authority to enter into this Agreement and to transfer the Intellectual Property to the Assignee.

The Intellectual Property is free and clear of any liens, encumbrances, security interests, or claims of third parties.

Assignee's Representations and Warranties: The Assignee represents and warrants that:

The Assignee has the full right and authority to enter into this Agreement.

4. Further Assurances

The Assignor agrees to execute and deliver any and all further documents and to take any and all further actions reasonably necessary or desirable to effectuate the purposes of this Agreement and to vest in the Assignee the full right, title, and interest in and to the Intellectual Property." (original emphasis)

38. Further clauses provide that the governing law is that of England and Wales, that the Agreement constitutes the entire agreement, that amendment is permissible under certain conditions and that if any part is held to be invalid the remaining provisions shall be valid and enforceable. At clause 11, Lungfish undertakes to bear the costs and expenses associated with the registration of the intellectual property and to maintain “the existing IP registrations in their current geographic areas at their own expense”. There is an annotation against clause 11, initialled by both Assignors, which reads “for the duration of the agreement”.

39. The Agreement is signed by the Assignors and by the Assignee on 29 July 2024. However, “subject to legal review” is written on each page of the Agreement with Dr Reynolds’ signature and the date. Dr Reynolds’ signature at the end of the Agreement is also preceded by the words “subject to legal review”.

40. There is also an email from Dr Reynolds dated 30 July 2024 to Mr Mainprize and another individual, “P”. It says:

> “Some confusion here evidently.
>
> We went through the basics of an agreement yesterday regarding that various IP would be transferred to Craig but exclusively licensed to Lungfish, in such a manner that if Lungfish was ever sold or wound up, it would transfer to him. […]
>
> At the end of the day yesterday we had an agreement in principle, subject to legal review by yourself, to ensure we had a watertight agreement and a legally valid document. […]
>
> @Craig: […]
>
> 2. If you consider any of the above to be inaccurate, feel free to comment.”

There is no response in evidence from Mr Mainprize.[9]

41. There is also an email from Dr Reynolds to FTS Recovery timed at 8:57pm on 27 November 2024 in which he states that:

[9] Exhibit J to Mainprize 2.

““I was presented with a version of the document you forwarded me (I have not checked it over to see if altered in any way) having returned to the office after surviving a spurious HR tribunal put on me by [S], who (having failed to use the threat of this to get me to resign) had that same day just resigned himself, and removed himself as a director on Companies House. In fact I was summoned by Craig with this news, saying I “had some papers to sign”.

Craig threatened to crash the major contracts I had referred to if I did not sign. I was taken aback at the situation, and having removed some of the worst clauses (which were on a piece of paper [S] had already signed despite having removed himself as a director) I wrote “subject to legal review” in the possibly naïve spirit of kindness that we would let our lawyer sit down and give Craig, who I had for many years regarded as a decent if occasionally volatile colleague, a fair hearing.

The next day, such a discussion being arranged by telephone, Craig stormed out in the first few seconds. This can be corroborated by our patent lawyer. Craig resigned himself a couple of days later, shortly afterwards stating the belief that this would ‘trigger’ the terms of this supposed agreement. […]

On that note, the document presented does not carry any legal weight as (1) [S] was not a director when he signed, and did so inappropriately, (2) I wrote was ‘subject to legal review’, and only put down anything under duress, and (3) by our articles, disposal of assets was the purview of the Investor Director – [P] – who has since confirmed his non-approval in writing.”

42. Evidence from the Companies Register records S’s termination date as 29 July 2024.[10]

43. It is not disputed that the trade mark is identified in the contract as the property which will be transferred. The main dispute is whether a contract was formed, particularly in light of the words “subject to legal review” written on the Agreement.

10 HLV2.

44. It does not appear to be MDL's case that a contract was formed in correspondence. For the record, I do not think that the emails of 23 and 26 July 2024 support a finding to that effect. The terms of any agreement are unclear and Dr Reynolds's references to getting a "legal check" and his uncertainty over whether he can sign unilaterally suggest to me that there was an agreement that the trade mark would be transferred but no contract had yet been entered into. This is supported by Mr Mainprize's email to S on 26 July 2024, in which he envisages a future agreement: had a contract been formed, S's views on the transfer would be superfluous. Neither of these emails suggest that Dr Reynolds, S or Mr Mainprize considered the company had already entered into a contract.

45. As for the Agreement, it seems to me that, as a matter of ordinary language, an indication that the Agreement was "subject to legal review" means that Lungfish's signatories, or at least Dr Reynolds, did not intend to be bound until their legal advisors had reviewed the terms of the Agreement. The intention appears to have been to transfer the trade mark to Mr Mainprize (or possibly MDL, though Mr Mainprize is named as the Assignee) but Dr Reynolds' signature on the Agreement is contingent on a legal review. This is consistent with the evidence, limited though it is, showing Dr Reynolds asking whether the Agreement had been drawn up by a solicitor/querying whether they should get "a legal check" before signature, and with the meeting arranged with Lungfish's patent lawyer for the next day. The fact of this meeting is not challenged by Mr Mainprize, who accepts that there was correspondence with Lungfish's intellectual property solicitor on 30 July 2024.[11] Dr Reynolds had no intention to create legal relations.

46. Dr Reynolds appears to accept that S had signed the contract before him (Dr Reynolds) and before he added "subject to legal review". I must therefore consider whether S alone had capacity to bind Lungfish. Mr Mainprize relies upon s. 44 of the Companies Act 2006, which reads, so far as relevant:

> "**44 Execution of documents**

[11] Mainprize 2, §62.

(1) Under the law of England and Wales or Northern Ireland a document is executed by a company—

(a) by the affixing of its common seal, or

(b) by signature in accordance with the following provisions.

(2) A document is validly executed by a company if it is signed on behalf of the company—

(a) by two authorised signatories, or

(b) by a director of the company in the presence of a witness who attests the signature.

(3) The following are “authorised signatories” for the purposes of subsection (2)—

(a) every director of the company, and

(b) […]

(4) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company.

(5) In favour of a purchaser a document is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2).

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(6) Where a document is to be signed by a person on behalf of more than one company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.”

47. S's date of termination as a director was 29 July 2024. I have not been taken to any authority which would suggest that S's continued employment as CEO overrides his resignation as a director. The fact that he remained in position as CEO after 29 July 2024 is therefore irrelevant. Nor have I been taken to any authority which would suggest that the date of termination should be understood as the day after S's appointment as director ended rather than the date on which his appointment ended. If his appointment ended on 29 July 2024, S was still a director on that date (for the record, I do not accept that his directorship continued after the termination date, as contended by Mr Mainprize. If that were true, the termination date on the Companies House register would be both pointless and misleading to anyone consulting the register). As directors, both S and Dr Reynolds were authorised signatories under s. 44(2) at the date of the Agreement.

48. S's signature alone would be sufficient to bind the company under s. 44(2)(b) if it were witnessed but it is not. The Agreement is not validly executed under s. 44(2)(b). Therefore, MDL must rely on s. 44(2)(a), under which two signatures are required. It cannot be disputed that the signatures of both S and Dr Reynolds appear on the Agreement. Dr Reynolds has plainly applied his signature to the document and, to that extent, it is signed by two directors and satisfies the formal requirements of s. 44(2)(a). I am, however, doubtful that the words "subject to legal review" can be ignored. It seems to me that by writing "subject to legal review" before his signature Dr Reynolds has indicated that he does not intend to enter into a contract and that he is not validly executing the document on behalf of the company. To take the point to an extreme, if at the end of a contract an authorised signatory wrote "I do not accept any of the above terms" and below that signed their name, I cannot see how this is a signature which binds the company, despite the fact that, technically, the document bears his or her signature. I also note that s. 44(4) says that "A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company". I do not think that the manner of Dr Reynolds' signature is an expression that the Agreement is executed on behalf of Lungfish. Therefore, I do not think that the Agreement would satisfy s. 44(4). If it is a requirement that the document is expressed to be executed by the company under s. 44(4), I do not see why there would be no such requirement where there is no common seal and documents are executed by authorised

signatories. It also seems to me that the requirements under s. 44 do not supplant the principle that the parties must have an intention to create legal relations. Although a signature on a contract usually removes any doubt about whether there was such an intention and the signatory is nearly always held to their signature, the manner in which Dr Reynolds has signed the Agreement is not, in my view, a signature acceding to the terms of the contract. He did not intend to enter into the Agreement there and then, as shown by the words “subject to legal review”. By extension, Lungfish cannot be said to have had that intention, because company law requires two directors to agree to a contract.

49. I am aware that there are broad protections under s. 44(5) for purchasers dealing with a company where a document purports to be signed under s. 44(2). A purchaser is defined as “a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property”. Leaving aside whether Mr Mainprize was acting in good faith, I doubt that the document purports to be signed under s. 44(2), given the caveat on Dr Reynolds’ signature. Further, it is true that the Agreement mentions “mutual covenants and promises herein contained and other good and valuable consideration” but whilst the transfer of the trade mark is valuable consideration going from Lungfish to MDL, I cannot see anything that moves from MDL to Lungfish. There is no payment for the trade mark, whether up-front or in the form of royalties. On the contrary, the trade mark would move from Lungfish to MDL with nothing going to Lungfish from MDL in return; at most, Lungfish would be permitted to use the trade mark under certain conditions. Although this is a promise of sorts on the part of MDL, it confers no benefit on Lungfish to which it was not already entitled. Absent any other consideration, it seems to me that the purported licence is not good consideration and that MDL/Mr Mainprize is not a purchaser under s. 44(5). This also means that, as consideration is an essential part of a contract required under the law, the Agreement would be void for that additional reason. Lack of consideration is a matter raised in HLVL’s submissions in lieu but was not pleaded. Had it been likely to be determinative, I would have invited HLVL to make an application to amend its pleadings.

50. For completeness, a contract is not the only acceptable form of conveyance of a trade mark. However, the Agreement is plainly not a deed. The formal requirements

of a deed begin with the document making “clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise)”: s. 1(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1989. The Agreement does no such thing, nor is it validly executed as a deed under ss. 1(2)(b) and 1(3) of the same Act, as there are no witnesses to the signatures.

51. My conclusion is therefore that the Agreement is not a valid contract and there was no assignment of the trade mark to MDL or M Mainprize.

52. MDL submits that, following the Agreement, Dr Reynolds “communicated with OTS and completed an order under the licence-free usage provisions of that agreement. This conduct evidences consideration (to the extent any was required) and is wholly inconsistent with his later assertion that the agreement was unapproved or ineffective”.[12] I have already explained why I do not consider that there was good consideration. The use also does not establish the point Mr Mainprize seeks to make because the owner of a trade mark is entitled to exploit it as it sees fit. The actions relied upon by Mr Mainprize were not dependent on a successful transfer of the trade mark and are equally consistent with no transfer having taken place and/or with Lungfish believing that to be the case. This use therefore does not establish that there had been any transfer of the trade mark.

53. MDL also casts doubt on the acquisition of Lungfish assets by HLVL. To the extent that this is based on a claim that the trade mark had been assigned to MDL/Mr Mainprize before the asset sale, that claim is dismissed for the reasons given above. There is no other basis for believing that the trade mark was not part of the Lungfish assets at the date of the asset sale. Additionally, it is, in my view, clear from the JPS invoice mentioned above that if the trade mark was Lungfish property at the time of the asset sale, as I have found that it was, then it was transferred to HLVL as part of that asset sale. The invoice particularises “whatever right, title or interest” Lungfish has in “assets of the subject company” and this in my view covers all assets, tangible or intangible. The Schedule of Assets is further confirmation, if it were needed, that “Whatever right, title or interest Lungfish has in trademarks and trademark related

[12] Mainprize 2, §98.

assets (such as brand assets)" was transferred as part of the asset sale. Absent any evidence to the contrary, this includes the trade mark.

54. MDL's pleaded case is based only on its purported ownership of the trade mark pursuant to the Agreement. The rectification as pleaded fails.

Other arguments

55. In view of the above, it is not necessary to consider HLVL's claim that the Agreement is not valid because there was no investor director approval and I decline to do so.

56. MDL has made several other points, which are not pleaded but which I will deal with as briefly as possible so that MDL understands why these additional bases for rectification would also have failed. Mr Mainprize says that "under UKIPO practice, a valid transfer of a registered trade mark requires explicit identification of the mark, including its number or name".[13] This is incorrect. Assignments of trade marks are provided for at s. 24 of the TMA, which stipulates that, so far as relevant:

> "(1) A registered trade mark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property.
>
> It is so transmissible either in connection with the goodwill of a business or independently.
>
> […]
>
> (3) An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative."

57. Nothing in this section requires that the trade mark be identified in the way claimed by Mr Mainprize. It is true that the form TM16 for recording an assignment at the UK IPO asks for the trade mark number but this form does not transfer ownership. The

[13] Mainprize 2, §§35 and 113.

TM16 is no more than the form filed at the IPO so that the details of the assignment can be entered on the register.

58. Similar claims about the specificity required to transfer a trade mark are made throughout Mr Mainprize's evidence, such as in relation to the form LIQ02 Notice of statement of affairs filed at Companies House and in relation to a "liquidation circular to creditors".[14] These mention, respectively, "IPR" and "IP". The form LIQ02 refers to ss. 95 and 99 of the Insolvency Act 1986 but these only require "particulars of the company's assets, debts and liabilities". Mr Mainprize's evidence is that:

> "18 **IP cannot be acquired by implication**: Under Rule 1.17 of the Insolvency (England and Wales) Rules 2016, a company's Statement of Affairs (SoA) must disclose 'such particulars of the company's assets and liabilities, including contingent and prospective liabilities, as may be prescribed.' [footnote 1: Insolvency (England and Wales) Rules 2016, SI 2016/1024, Rule 1.17] This is reinforced by Schedule B1, Paragraph 47 of the Insolvency Act 1986, which obliges company officers to provide complete and accurate disclosure of a company's financial position to the liquidator. [footnote 2: Insolvency Act 1986, Schedule B1, Paragraph 47] Professional guidance issued by the Insolvency Service, supported by the ICAEW and R3, further confirms that intangible assets such as intellectual property must be itemised by title, registration number, and ownership status. [footnote 3: Insolvency Service Guidance, 'Statement of Affairs Guidance for Ips' (2021); ICAEW TECH 02/16] The courts have also upheld that proprietary IP rights cannot be transferred through insolvency unless they are properly identified and disclosed. [footnote 4: *Re Idessa (UK) Ltd* [2011] EWHC 804 (Ch) – proprietary rights must be 'specifically identified and disclosed' to be transferrable in insolvency][15] (original emphasis),

and,

> "Under **Rule 1.17 of the Insolvency (England and Wales) Rules 2016** and the decision in **Re Idessa (UK) Ltd [2011] EWHC 804 (Ch)**, liquidators are required to specifically identify and itemise proprietary assets in the Statement

[14] Exhibits G and I to Mainprize 1.
[15] Mainprize 1, §§18-19.

of Affairs and formal notices to creditors, including any registered intellectual property. The absence of such detailed disclosure—for example, no reference to the 'Gemini' trademark [sic] or the 'Alliance' patents by name or registration number in this circular—confirms that these rights were not part of the liquidated estate and could not have been transferred through the 5 December 2024 sale. The generic mention of 'IP' does not meet the required legal threshold for asset transfer under insolvency law." (original emphasis)

59. The Insolvency Service Guidance referred to has not been adduced.

60. Rule 1.17 of the Insolvency (England and Wales) Rules 2016 reads:

> "1.17. A notice relating to a bankruptcy must also identify the proceedings, identify the bankrupt and state—
>
> > (a) any other address at which the bankrupt has resided in the period of 12 months before the making of the bankruptcy order;
> >
> > (b) any principal trading address if different from the bankrupt's residential address;
> >
> > (c) the bankrupt's date of birth;
> >
> > (d) the bankrupt's occupation;
> >
> > (e) any other name by which the bankrupt has been known; and
> >
> > (f) any name or style (other than the bankrupt's own name) under which—
> >
> > > (i) the bankrupt carried on business, and
> > >
> > > (ii) any debt owed to a creditor was incurred."

61. Schedule B1, paragraph 47 of the Insolvency Act relates to a company's statement of affairs. The relevant part is paragraph 47(2), which reads:

> "(2)The statement must—

(a) be verified by a statement of truth in accordance with Civil Procedure Rules,

(b) be in the prescribed form,

(c) give particulars of the company's property, debts and liabilities,

(d) give the names and addresses of the company's creditors,

(e) specify the security held by each creditor,

(f) give the date on which each security was granted, and

(g) contain such other information as may be prescribed."

62. As for *Re Idessa*, the judgment is about misfeasance by directors and recovery of monies. I have not been able to find the quotation relied upon in the judgment.

63. The reference to Schedule B1 of the Insolvency Act is broadly accurate, as the Schedule does require "particulars of the company's property, debts and liabilities". As I could not readily identify why MDL relied on the Insolvency Rules or *Re Idessa*, or which parts of the authorities were relevant, I also asked for clarification from MDL on these points. The response from Mr Mainprize was as follows:

"**Insolvency Rule 1.17 – Specificity in Insolvency Documentation**

I did not understand Rule 1.17 to be a rule about companies or trade mark assignments. I referred to it only because its wording illustrated to me, as a layperson, that insolvency procedures require information to be set out specifically and item by item, rather than in broad or generic terms.

The parts I noted were the requirements to list:

- each address
- the date of birth,
- the occupation, and

- each name or trading style used

- My understanding from this was simply that insolvency documentation must identify matters precisely. I applied that general understanding to assets: that is something is being transferred or relied upon in an insolvency process, it would need to be specifically identified, rather than described generically as "IP".

Re Idessa (UK) Ltd 2011 EWHC 804 (Ch)

The passage I relied upon was paragraph 14, where the judge noted:

- The 'complete absence … of any reference to valuable intellectual property or other intangible assets' in the company's formal accounts, and

- On that basis 'rejected the submission' that such assets should nevertheless be treated as belonging to the company.

As a layperson, I understood this to illustrate that in an insolvency context, proprietary rights must be clearly identified and evidenced in the formal documentation and cannot be assumed or implied from general descriptions.

I did not understand *Re Idessa* to concern trade marks or assignments; only that it illustrated the need for clarity and specificity when identifying assets."

64. Rule 1.17 of the Insolvency Rules does not contain the words attributed to it, which are presented in quotation marks in Mr Mainprize's witness statement. It has nothing to do with a company's statement of affairs, nor with the transfer of a company's assets. It is about bankruptcy rather than liquidation and it contains no requirement that assets be specifically identified or itemised, which is what is claimed. I consider that this is a fabricated authority.

65. As I have already said, I have not been able to find the words "specifically identified and disclosed*"* in *Re Idessa*. They are presented as a direct quotation but the quotation is inaccurate. Mr Mainprize points to [14] of the judgment but this

concerns the extent to which, if at all, alleged intellectual property rights and other intangible assets should be taken into account in determining whether the company should be treated as solvent on a balance sheet basis. The judge was presented with evidence about certain intellectual property rights and licences and held:

> "I have considerable doubts about the reliability of this evidence but it seems to me that it is unnecessary for me to decide whether the documents are genuine or not and without forensic or other expert evidence it would be unwise for me to do so especially as [the liquidator] has indicated his intention to make further inquiries in the light of the evidence given on the point by [the witness]. Of more significant weight to my mind is the complete absence in the Company's abbreviated accounts (for any of the three years for which they were produced) of any reference to valuable intellectual property or other intangible assets. I therefore reject the submission that the Company ought to be treated as solvent on a balance sheet basis by reference to those other alleged assets."

66. This is some distance away from laying down a requirement that "proprietary rights must be 'specifically identified and disclosed' to be transferrable in insolvency", as claimed.

67. In relation to the validity of the transfer to HLVL, as I have already said, the requirements for the valid transfer of a trade mark are contained in the TMA and only require that the assignment be in writing. The passage from the Insolvency Act quoted above does relate to a statement of affairs but does not indicate that there is a prescribed form for a transfer of a registered trade mark to be valid. Rule 1.17 of the Insolvency Rules 2016 is obviously inapplicable to transactions involving a registered trade mark. *Re Idessa* does not contain the proposition attributed to it. The professional guidance referenced to is not in evidence. Given the inaccuracies in Mr Mainprize's characterisation of the other evidence, I have doubts about the accuracy of Mr Mainprize's comments about this guidance but even if it is correct, it is only guidance. I note that there is an email in evidence from JPS in which it is said that, "There has been no list of intellectual property distributed to any party and a sale would be for whatever right, title or interest the Company has in such assets, with no warrantee provided or implied to title, as ins [sic] the normal practice in a sale on behalf

of a liquidator".[16] This indicates that it is normal in liquidation for intellectual property rights to be sold *en bloc* without being individually identified (e.g., by number). MDL's assertion that other criteria are required is not established. Provided that an assignment is in writing, it is not a requirement that a trade mark be identified in a particular manner (e.g., number, representation or any other details) in order to be validly assigned.

68. It is also said that "pursuant to section 103 of the Insolvency Act 1986, Mr Reynolds [sic] had no authority to act on behalf of LDS post-liquidation without the liquidator's sanction […]. Accordingly, the TM16 correspondence was not executed with lawful authority and cannot constitute a valid assignment of the Contested Trade Mark".[17] As I said above, a form TM16 records an assignment of a trade mark; the form is not itself an assignment. The assignment in this case is the sale of the trade mark as part of Lungfish's assets evidenced in the invoice from JPS to HLVL (and the Schedule of Assets). Dr Reynolds has provided an email dated 12 December 2024 which he sent to an individual, "M", at the liquidator, in which he says, "Thanks for your call just now. To confirm: as the sale is completed, I am now OK to transfer any physical items and intangible items such as intellectual properties and certifications, directly from [Lungfish] to [HLVL] and I do not need to transfer them first to JPS".[18] Mr Mainprize relies on an email from another individual, "J", also of the liquidator. This email is dated 5 August 2025 and states: "no specific authority was given to Mr Daniel Reynolds to act on behalf of [Lungfish] on either 18 December 2024 or 03 July 2025".[19]

69. In my judgement, Dr Reynolds' email of 12 December 2024 is email confirmation of what had been discussed with the liquidator over the telephone, namely that the transfers should be recorded. It is implicit that Dr Reynolds had the liquidator's consent to do this. The later evidence of J that Dr Reynolds was given "no specific authority […] to act on behalf of Lungfish" is a slightly different point. I would, however, have preferred the contemporaneous evidence. Regardless of this, Dr Reynolds did not transfer the trade mark by filing the TM16: the assignment of the trade mark had already happened in the asset sale, under a contract between JPS as liquidator and

[16] Exhibit B to Mainprize 1.
[17] Mainprize 2, §113. See also *idem*, §128.
[18] HLV10 to Reynolds.
[19] Exhibit F to Mainprize 2.

HLVL. Further, the form TM16 only stipulates that if it is not signed by both the old and the new owner, documentary evidence must be provided. Such evidence, in the form of the JPS invoice, appears to have been provided when the transaction was queried by the IPO, and accepted.[20] I am doubtful that Dr Reynolds was "acting for" Lungfish by filing the TM16, because by that point Lungfish assets had been passed to the liquidator and sold to HLVL: Lungfish appears by then to have been the registered but not the legal owner of the trade mark. I reject Mr Mainprize's submission that the TM16 and/or recordal of the transfer is defective for want of sanction.

70. In any event, the evidence before me establishes to the civil standard (i.e., on the balance of probabilities) that HLVL is the legal owner of the trade mark. Even if, contrary to my finding above, the TM16 and/or the recordal of the transaction were somehow defective because Dr Reynolds should not have signed the form, first, HLVL as a person qualifying under s. 25(1)(a) of the TMA was and is entitled to request that a registrable transaction, which includes assignment of a registered trade mark (s. 25(2)(a)), be entered on the register. Secondly, MDL's application is that the owner's name be amended to MDL. It would not be appropriate for the trade mark owner to be changed to MDL (or Mr Mainprize) when HLVL is the legal owner of the trade mark. The application for rectification would have been rejected even if this claim had been pleaded.

71. MDL also submits that there has been acquiescence. Mr Mainprize says that "under UK company law, a director who is aware of a transaction, has the opportunity to object, and fails to do so may be deemed to have accepted its validity".[21] No statutory or other legal basis is provided for the claim, which was not pleaded, and there has been no request to amend the pleadings. In the absence of any authority, statutory or otherwise, to support this proposition, I reject it. The legal basis of the claim is unclear to me and to attempt to determine it would require guesswork on my part and would be unfair to HLVL. Statutory acquiescence under s. 48 of the TMA is clearly inapplicable to these proceedings, because those provisions are aimed at acquiescence in the use of a trade mark for five years or more.

[20] HLV13 to Reynolds.
[21] Mainprize 2, §64. See also *idem*, §126.

Conclusion

72. The application for rectification is rejected. HLVL will remain recorded as the registered proprietor of trade mark number 3741868.

Costs

73. HLVL has been successful. The usual position is that the successful party would receive an award of costs in its favour. However, both parties have requested costs off the scale on the grounds of the other side's unreasonable behaviour.

74. The unreasonable behaviour alleged by MDL is said to include "reliance on void authority, misuse of confidential documents, repeated non-compliance with directions, and defective filings". I have dealt with these points in the course of this decision. HLVL has not behaved unreasonably in respect of the evidence it has filed or the TM16. Nor do I consider that there are any "defective filings" or repeated non-compliance with directions on the part of HLVL which should be sanctioned. No other basis for the request is presented. I do not think that anything which MDL has identified in HLVL's conduct warrants either an off-scale award against it or a deviation from the usual position where the losing party is ordered to pay costs. I should add that the hours claimed (1,705) are unreasonable, in my view, particularly as the active part of this case was between 17 February 2025 (the application) and 7 October 2025 (MDL's submissions in lieu). There is very little evidence in this case and what there is has been substantially inflated by the significant amount of repetition in MDL's evidence, which mixes, improperly, evidence of fact and submission. Over 200 standard (7.5 hour) days is far beyond what is reasonably necessary to prosecute a case of this nature.

75. HLVL refers to MDL's "arguably abusive behaviour to hinder sales and bad faith actions", indicating that there have been certification problems and loss to HLVL. These submissions are, however, misconceived. The tribunal has a wide discretion under rule 67 of the Trade Marks Rules 2008 to award the costs it considers reasonable but those costs must be for the proceedings; the tribunal has no power to award damages. In order to award off-scale costs, I must be satisfied that MDL's

behaviour has been unreasonable in the context of the proceedings. HLVL has not identified any other behaviour which would justify off-scale costs.

76. That is not, however, the end of the matter. I have identified, above, instances where MDL has provided fabricated authorities. In *Pro Health Solutions TM*, BL O/0559/25, at [23]-[24], the Appointed Person said that "[if] a party cannot provide the authorities they rely upon, their conduct is unreasonable within the meaning of Tribunal Practice Notice 1/2023 and "off-scale" costs are usually appropriate".[22] MDL has relied on a quotation from the Insolvency Rules which does not exist and on a quotation in *Re Idessa* that also does not exist. These are fabricated authorities, however they were arrived at. The provisions of CPR Part 32 offer no authority for the proposition stated. This, too, is a fabricated authority. MDL's behaviour has been unreasonable. MDL has not resiled from its reliance on those false authorities, nor has it offered any apology. The only mitigation is that Mr Mainprize is not a legal professional but the inaccuracies are substantial and his explanations inadequate. I see no reason why MDL's behaviour would be exempt from off-scale costs. I would add that if, as seems likely, generative AI was used to produce the submissions, the result is repetitive and, in large part, irrelevant submissions. MDL/Mr Mainprize may have been better served by writing their submissions and evidence in their own words, albeit I accept that artificial intelligence can be a useful tool for litigants in person trying to identify relevant statute and case law.

77. Ordinarily, this would mean that I would award costs off the scale to HLVL. However, at the same time as seeking clarification from MDL about some of its authorities, I also wrote to HLVL asking for clarification about a case which it had relied upon in its submissions in lieu. It had stated:

> "The Applicant has argued that they were not a party to the Shareholders' Agreement. However, *EIC Services Ltd v Phipps* [2004] EWCA Civ 1069 states that while third parties may not be privy to internal documents and must be protected, such protection does not apply where such third party is aware that the directors are exceeding their authority."

[22] See also *Enrich LEARNING TM*, BL O/1141/25.

78. HLVL’s explanation was:

> “HLV relies on paragraphs 13, 14 and 35 of EIC Services, read together.
>
> • Paragraph 13: ‘In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company... shall be deemed to be free of any limitation under the company's constitution.’. This is the text of section 35A(1) (now section 40, Companies Act 2006) as quoted by the Court of Appeal. It shows that the protection only ever operates ‘in favour of a person dealing with a company in good faith" and is not an unqualified protection.
>
> • Paragraph 14: ‘...did not know that the issue and allotment of the bonus shares were beyond the power of the directors for the purposes of s.35A(2)(b). He expressed his strong inclination to conclude that the directors acted in good faith for the purposes of s.35A(2)(c).’. This shows knowledge of a limitation [s.35A(2)(b)] and good faith [s.35A(2)(c)] being treated as two separate questions, not one. Knowledge of a limitation does not, by itself, settle whether someone acted in good faith.
>
> • Paragraph 35: ‘...it will not apply if the person deals with the company other than in good faith.’. This states that the statutory protection has no application at all where good faith is absent.
>
> Taken together, paragraphs 13, 14 and 35 of EIC Services support the following proposition: statutory protection under section 40 of the Companies Act 2006 (formerly section 35A of the Companies Act 1985) is conditional on the third party dealing with the company in good faith, and good faith is a separate matter from merely knowing that the directors' powers were subject to some internal limitation.”

79. I cannot accept HLVL’s explanation. First, HLVL initially presented the proposition as one clearly established by the case. There was no indication that the conclusion to which HLVL had come was an iterative one. Secondly, HLVL’s initial submission was that any protection to third parties unaware of internal documents “does not apply where such third party is aware that the directors are exceeding their authority”. Its

explanation states that “knowledge of a limitation [on directors’ powers] does not, by itself, settle whether someone acted in good faith”. Those two statements are not congruous. HLVL has not said that it misunderstood the judgment or that on further reflection the proposition the judgment stands for is not as originally stated: the explanation quoted above is said to support the original statement. Thirdly, whilst the judgment does refer to good faith dealings with third parties, its focus is on whether shareholders are “a person dealing with the company” and within reach of s. 35A of the Companies Act 1985. I cannot see anything which would, without stretching its meaning beyond reasonable limits, support the bald statement that “while third parties may not be privy to internal documents and must be protected, such protection does not apply where such third party is aware that the directors are exceeding their authority”. The judgment does not stand for the proposition cited.

80. Both parties have placed before the tribunal authorities which do not contain the words or the proposition attributed to them. The tribunal advised MDL on 9 July 2025 that it appeared that some of its authorities were substantially misrepresented and advised it of the possible consequences of relying on fabricated authorities. The letter was copied to HLVL. It is true that MDL’s submissions contain more examples than those of HLVL but that is not the point. There is no excuse for placing false authorities before the tribunal, particularly after the parties had been warned. I direct that the parties bear their own costs.

Dated this 31st day of July 2026

Heather Harrison

For the Registrar