

**O-1049-24**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK REGISTRATION 2537778  
IN THE NAME OF SHARD FINANCIAL MEDIA LIMITED  
IN RESPECT OF THE TRADE MARK:**

**CREDIT TODAY**

**IN CLASSES 9, 16 AND 41**

**AND**

**AN APPLICATION TO RECTIFY THE REGISTER (UNDER NO. 84916) BY  
GERARD DUGDILL**

## BACKGROUND, PLEADINGS AND RELEVANT EVIDENCE

1. Registration 2537778 (“the contested mark”) is for the trade mark CREDIT TODAY in respect of certain goods in Class 9 and 16 and certain services in Class 41. It currently stands in the name of Shard Financial Media Limited (“the current proprietor”).

2. This registration has been the subject of a long history regarding an ownership dispute between the parties, notably:

(i) The Intellectual Property Enterprise Court (“IPEC”) issued a judgment dated 19 September 2018<sup>1</sup> that led to an Order dated 29 October 2018<sup>2</sup> stating the following “*IT IS DECLARED THAT the [current proprietor] is the sole owner of UK registered trade mark no. 25377778 in equity*”;

(ii) The IPEC issued a further Order on 20 December 2018<sup>3</sup> stating that the current proprietor’s solicitor may “*execute an assignment of legal title to the [contested mark]*” from Blue Moon Group Limited to the current proprietor. An assignment document was duly drafted and signed on 21 December 2018, by the current proprietor’s representative. On 24 December 2018 the current proprietor filed a Form TM16 (together with a copy of the assignment) to record the transfer of the contested mark into its name;

(iii) An application for leave to appeal the decision of the IPEC to the Court of Appeal was refused on 2 May 2019 by Order made by the Rt. Hon. Lord Justice Floyd where it was stated “*[t]here is no conceivable basis on which the court could have given permission to appeal let alone re-open an appeal for which permission has already been refused*”<sup>4</sup>. Consequently, the Orders of IPEC remain extant and are valid Orders of the High Court. Numerous reasons are given by Floyd LJ but I note, in particular, his 14<sup>th</sup> reason stated “*The position in relation to goodwill does not, as the judge explained at [17] make any difference.*”

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<sup>1</sup> [Shard Financial Media Ltd v Blue Moon Group Ltd & Anor \[2018\] EWHC 2859 \(IPEC\) \(19 September 2018\) \(bailii.org\)](https://www.bailii.org/uk/ew/cas/2018/2859.html)

<sup>2</sup> See Annex 1

<sup>3</sup> See Annex 2

<sup>4</sup> See Annex 3

(iv) In accordance with the IPEC Order of 20 December 2018, the recordal of the assignment of the contested mark to the current proprietor was actioned with effect from 21 December 2018.

3. There was a series of letters between Mr Gerard Dugdill (on behalf of Blue Moon Group Limited) and the IPO, sporadically from July 2019, where he demanded that the IPO suspend the assignment of the contested mark to the current proprietor despite the Orders of the IPEC to transfer ownership to the current proprietor. This was rebutted by the IPO's Deputy CEO at the time (David Holdsworth) in his letter of 28 August 2019 and again by the current Deputy CEO, Andy Bartlett (when the issue was raised again by Mr Dugdill) on 25 August 2023 where it was pointed out that the IPO would require a valid Order of the Court of Appeal overturning the Order of the IPEC of 21 December 2018. Mr Dugdill was informed that the IPO would not correspond further until or unless the IPEC Order was overturned.

4. Having failed to reopen his complaint in 2023, Mr Dugdill changed tack and, on 5 October 2023, his company, Blue Moon Group Limited ("the rectification applicant") filed a Form TM26R, Application to Rectify the Register. It was signed by Mr Dugdill, in his capacity as director of the rectification applicant. The reasons provided were:

**The name of the recorded owner of the trademark, which should be Blue Moon Group Limited. The registration is recorded under the name of Shard Financial Media Limited in error.**

**An assignment, forced by the court, using the current registrant's solicitor, against whom we have a number of complaints, as signatory, was sent to the registry on or around 21 December 2018. This decision continues to be appealed.**

**However, the assignment did not include a transfer of the goodwill, necessary for any such assignment to have true force. Therefore, regardless of any court hierarchy, the assignment document sent to the registry should have been rejected, with the mark remaining under the name of BMG.**

**I send this form with a short witness statement and exhibits. We look forward to the rectification of this register.**

**We are happy for this to be transferred to another court of appropriate jurisdiction.**

5. In his witness statement accompanying the Form TM26R, Mr Dugdill stated:

(i) Following a hearing at the Intellectual Property Enterprise Court (“IPEC”) on 20 December 2018, an “assignment” form was sent by the current proprietor’s representative;<sup>5</sup>

(ii) the rectification applicant continues “to appeal any court decision giving the current registrant scope to send in this form, as signed by its solicitor”;<sup>6</sup>

(iii) He points out that the assignment form supplied by the current proprietor did not include a reference to the goodwill in the mark.<sup>7</sup> Further, “no agreement to assign the goodwill to the mark was ever made”<sup>8</sup> and it is claimed that no assignment of the mark can carry force without an attendant assignment of goodwill;<sup>9</sup>

(iv) The Registry is “not in the habit of accepting assignments which do not simultaneously assign the goodwill along with the application or registration mark *per se*.”<sup>10</sup> This argument is supported by documents relating to other proceedings where the Registry would not allow substitution of the opponent in those proceedings “unless there was clear evidence of ‘legal transfer of assets...showing that the IP rights...and associated goodwill were part of that transfer of assets’.”<sup>11</sup> The goodwill was never assigned in the current dispute<sup>12</sup> and it is asserted that because of this there was no effective assignment of the mark and the Registry was wrong to accept it and the owner should remain in the name of the rectification applicant;<sup>13</sup>

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<sup>5</sup> At [1] of Mr Dugdill’s witness statement of 5 October 2023

<sup>6</sup> Ditto

<sup>7</sup> Ditto, at [2]

<sup>8</sup> Ditto, at [3]

<sup>9</sup> Ditto

<sup>10</sup> Ditto at [4]

<sup>11</sup> Ditto at [4] and Exhibit GD2A-D that consists of a letter from the Registry dated 23 November 2005 where the comment was made

<sup>12</sup> Ditto at [5]

<sup>13</sup> Ditto at [6]

(v) It is asserted that irrespective of the precedence of the Court making an order, the Registry is perfectly entitled, “as is its practice” to disallow any change in the recorded owner name where there is no transfer of the goodwill on the assignment document;<sup>14</sup>

(vi) At no point did Mr Dugdill agree to transfer any rights to the current proprietor. The claim made by the barrister for the current proprietor, apparently endorsed by the court, forms the basis of a separate complaint against the barrister as well as any appeal.<sup>15</sup>

6. The final IPO letter dismissing Mr Dugdill’s original complaint was issued on 25 August 2023 (see paragraph 3, above) and the application for rectification was received on 5 October 2023. The IPO’s view was that the complaint was closed and in light of the position of the IPO that the ownership of the contested mark is governed by the Order from IPEC, the Form TM26R was not initially admitted. However, the Registry reluctantly accepted that the rectification applicant had a right to a determination of its application. Therefore, the Registry agreed to consider the application. With this in mind, the Registry wrote to both the current proprietor and the rectification applicant on 14 May 2024 and 20 May 2024, informing them that the Registry would, in due course, issue a preliminary view on whether to admit the Form TM26R and invited the parties to make submissions by 4 June 2024.

7. Following receipt of written submissions from both sides, the Registry issued its preliminary view on 27 June 2024 (“the first preliminary view”) to refuse the application for rectification, giving the following reasons:

“(i) In the IPEC judgment, Hacon J specifically considered the impact of goodwill in circumstances where it was assumed that the current rectification applicant owned the goodwill identified by the mark CREDIT TODAY. Nevertheless, at [17]

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<sup>14</sup> Ditto at [7]

<sup>15</sup> Ditto at [8]

of his judgement, Hacon J stated "...I cannot see how the position in relation to the goodwill makes any difference" to whether there was an implied term in the oral agreement between the parties that the rectification applicant would "take all necessary steps to give effect to the assignment". It appears that Hacon J had goodwill firmly in mind when giving his judgment and the IPEC Order must have been made in this context. Therefore. Issue estoppel applies.

(ii) In the absence of a valid Order from the Court of Appeal to set aside the IPEC Order, the Registry has no authority to (a) ignore or reverse the Order or (b) the implementation of that Order by way of an assignment document that complies with that Order. The IPEC Order did not make specific reference to goodwill and, therefore, the assignment document could not be in breach of that Order by not making reference to it either. In such circumstances, it would not be a requirement of the Registry that goodwill was mentioned in the assignment document.

(iii) The Trade Mark Act 1994, section 24(1) states:

**"24 Assignment, &c. of registered trade mark**

(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. [my emphasis]"**

It is clear from the language used in this section of the Act that there is no legal requirement for goodwill to be assigned with a trade mark.

Mr Dugdill asserts that "the registry is not in the habit of accepting assignments

that do not simultaneously assign the goodwill along with the application or registration mark per se". This statement is wrong and such a practice would be incompatible with section 24(1). The letter provided to support this claim, dated 23 November 2005, is in respect of a party attempting to record an assignment of trade mark 2337786A. It appears, from the content of that letter, that there were issues regarding understanding the scope of the assignment agreement because its scope was qualified by the term "only in so far as defined in the original Sale and Purchase Agreement relating the purchase of certain of the business assets..." but that agreement was not in evidence. Any reference to goodwill in that case must be considered in the context of the Registry attempting to ascertain the scope of the agreement.

Even if the Registry considered that the transfer of the goodwill was a relevant consideration in that case, it is not evidence that this must be so in recording all assignments. In the current case, taking into account the content of section 24(1) and the requirements of the IPEC Order (that made no specific mention of goodwill), the Registry was not in error when recording the assignment to the current proprietor.

(iv) An application to file an appeal to the IPEC judgment was refused by the Order of the Court of Appeal. Floyd LJ provided 17 reasons for refusing leave to appeal including at [14] that "[t]he position in relation to goodwill does not, as the judge explained at [17] make any difference." This Order brought the proceedings commenced in the IPEC to an end and, therefore, it is an endorsement of the IPEC Order."

8. In its written submissions, the current proprietor asserted that the application was an abuse of process in light of the previous Court outcomes. In order to allow the rectification applicant to comment on this claim, it was permitted to file further written submissions, after which (on 5 July 2024) the Registry issued a further preliminary view

(“the second preliminary view”) (and together with the first preliminary view are, hereafter, referred to as “the preliminary views”) on the issue. This stated:

“... you provide submissions in response to the current proprietor’s claim that the rectification application amounts to an “abuse of process”. Having considered these submissions, it is the preliminary view of the Registry that the application is an abuse of process. Despite the detailed history provided, the primary facts that (i) an Order was issued by IPEC, (ii) the subsequent assignment document complied with that Order. (iii) the attempt to appeal the judgment of the IPEC failed, all points to the Registry NOT being in error when it recorded the current proprietor as owner of the mark.

You refer to the IPEC judgment as “entirely erroneous” and such a perceived error is not a matter for the Registry. An attempt to re-open the issues before IPEC amounts to an abuse of process.”

9. The purpose of providing an opportunity for both sides to provide written submissions was to create the legal mechanism for the Registry to consider its position on whether the Form TM26R could be admitted or actioned in the face of the IPEC order and to have the views of both parties in doing so.

10. The parties both provided written submissions to be taken into account prior to issuing the preliminary views.

11. After the preliminary views were issued, the Registry set a deadline for final written submissions (in lieu of a hearing) of 30 July 2024. Written submissions were provided on behalf of the registered proprietor on that date. Mr Dugdill continued to argue his case in a stream of emails and letters filed both before and after the deadline. Ultimately, Mr Dugdill did not request to be heard but, rather, continued to demand that the Registry explain its position in respect of the arguments he repeated numerous times in his letters and emails and demanded that a number of complaints related to the

proceedings were considered first. He explained that the rectification applicant could not consider whether to request a hearing until this had been done. It is important to note that the rectification applicant's assertions relate to the process used by the Registry to progress the application and to its historical assertion that the assignment of the contested mark away from the rectification applicant as ordered by the IPEC was not correct. It also made assertions regarding actions of the registered proprietor's representatives and its belief that the findings of the IPEC are still "under appeal". Many of the assertions are not relevant to my considerations, however, whilst I keep in mind Mr Dugdill's repeated claims and strongly held beliefs that they are relevant, I will consider them only insofar as I consider that they are relevant to this application for rectification.

12. As I have said, the rectification applicant continued to write the Registry both before and after the deadline set for submissions. Eventually, on my behalf, the case worker informed the rectification applicant that I would take all its written arguments into account that were received up to the official deadline of 30 July 2024 but not later arguments (which were, in the main, a re-assertion of earlier arguments).

13. This decision considers the preliminary views to reject the application for rectification taking into account the parties' submissions.

## **DECISION**

### **Preliminary Issues**

14. The rectification applicant repeatedly challenged the procedure of a) issuing a preliminary view on the merits of the rectification applicant's case (as set out in its Form TM26R) and b) inviting the parties to file written submissions. It also repeated other demands that I comment on below.

## **Complaints to the IPO**

15. Mr Dugdill has made a number of complaints to the IPO about the progress/conduct of these proceedings, namely:

- (i) There was an undue delay in the Registry considering the application for rectification and lack of clarity that proceedings were under way;
- (ii) The issuing of the Registry's preliminary views was *ultra vires* and should be withdrawn, and;
- (iii) A claim that the Registry is "continuingly refusing to acknowledge the substance of our complaint..."<sup>16</sup>

16. On 10 July 2024, it complained about the way the Registry initially dealt with its application for rectification. The rectification applicant has been informed that the IPO has suspended the progress of this complaint until such time as these proceedings have reached a conclusion. The primary issue of the complaint is the delay in dealing with the application and confusion about the status of the application. The rectification applicant requested that the complaint was dealt with before the application for rectification but was informed by the IPO that the complaint would be suspended. I note that, even if the complaint process were to find that there is some force to the complaint, it is still difficult to see how this would have any impact upon the outcome of the proceedings. Consequently, I see no reason why this decision should be delayed until after the complaint is dealt with.

17. The preliminary views of the Registry were issued on 27 June 2024 and the parties were given 14 days to request a hearing. On 2 July 2024 the rectification applicant wrote to the Registry asserting that the preliminary views were *ultra vires* and should be withdrawn (a claim repeated in his letter of 5 July) but it did not request to be heard. On 5 July 2024, the Registry wrote to the rectification applicant pointing out that it had not requested a hearing in its letter of 2 July but that it still had until 11 July to do so (this

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<sup>16</sup> Mr Dugdill's email of 18 July 20024

was later extended until 19 July because of the issuing of the second preliminary view). In the same letter, it was further informed that if no request for a hearing was received, its letter would be taken as written submissions in lieu of a hearing. Upon being informed that the preliminary views were not *ultra vires* (discussed further below), the rectification applicant attempted to pursue the point by way of a further complaint. This complaint is also suspended but I consider this to be a legal point that should correctly be dealt with as part of this decision. The complaint process cannot be used as a substitute to proper legal process that includes an opportunity to appeal. To consider this issue through the IPO's complaint process would undermine my authority as the hearing officer to make a finding on the issue and would circumnavigate the appeal process and deprive the current proprietor of an opportunity to put its views on appeal. The rectification applicant will have the opportunity to appeal this issue and all others dealt with in this decision.

18. In addition, the complaint is an example of how the rectification applicant attempted to continually assert its own process and timetable on the proceedings whilst ignoring the directions and timetable set by the Registry. The rectification applicant's desire for the complaints to be considered first do not absolve it of its responsibility to comply with Registry directions and timetable that were made with the view of being impartial and not favouring one party over the other.

19. The third complaint relates to whether the Registry is in error for not addressing, what the rectification applicant perceives to be, the substance of its case. The reasons were explained to it in a number of letters from the Registry and also will be addressed by this decision and are a matter for the proceedings and any subsequent appeal rather than the complaint process (for the same reasons as specified in paragraph 17, above).

20. Finally, in light of the copious written submissions already received from the rectification applicant I do not consider its case is in any way weakened by it not making oral submissions. Therefore, even if its intention was to request a hearing after the

complaints were resolved (it remains unclear if it would), I consider it unlikely that it could further its case.

### ***Transfer to the court***

21. The rectification applicant repeatedly requested that the case should be transferred to the court.<sup>17</sup> This request was declined because the reasons set out in the Form TM26R were all issues that the Registry has competence to decide or had already been decided by the IPEC. The rectification applicant clearly holds strongly held beliefs that that Order issued by the IPEC and subsequent assignment document are wrong and the rectification applicant's arguments are founded upon a desire for that to be recognised and corrected. It argues that:

- (i) firstly, the written arguments attached to the Form TM26R are based upon a claim that the assignment ordered by the IPEC is faulty because it does not also include assignment of goodwill;
- (ii) secondly, there is still an outstanding appeal to the IPEC judgment

22. These are both issues that the Registry is able to dispose of and consequently I consider that there is no need to transfer the proceedings to the court.

23. The rectification applicant's underlying issue is that the IPEC erred in finding that the current proprietor of the contested mark was not the rectification applicant. In the original complaint to the IPO, Mr Dugdill was informed on a number of occasions that the Registry has no power to consider the correctness or otherwise of a court order. In bringing this rectification, the applicant appears to be coalescing two distinct issues, namely, a claim to change the legal ownership of the contested mark (already decided by the IPEC and outside the scope of the Registry's powers) and a claim that the Registry was wrong to record the registered proprietor as the owner of the mark (that

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<sup>17</sup> See, for example, page 11 of the rectification applicant's letter dated 2 July 2024

the Registry has both the power and, in this particular case, has the competence to decide).

24. Transfer to the court may be desirable in circumstances where there are proceedings pending before a competent court (the County Court, for example, is not competent in deciding trade mark matters). It is the position of the rectification applicant that the proceedings before the IPEC are not exhausted and that an appeal remains outstanding. I discuss this in more detail later, but accept that, in principle, where an appeal is outstanding in the courts, this application for rectification could be stayed pending final determination or potentially (for example, in the circumstances that the case was remitted to the IPEC) transferred to the court. However, I keep in mind that the Registry's provisional view was that the appeal route in the UK courts has been exhausted.

### ***The preliminary views were ultra vires***

25. The rectification applicant claims that the issuing of the preliminary views was *ultra vires* and that they should be withdrawn. The Registry's position was explained to Mr Dugdill in its letter of 16 July 2024 where it stated:

“The Registry routinely takes decisions regarding applications for rectification of the Trade Mark register and consequently, it is not acting *ultra vires* when it issued its preliminary views.”

26. Following further written comments from Mr Dugdill, on behalf of the rectification applicant, where he refused to accept the position, the Registry wrote again on 23 July 2024 explaining the legal basis for providing preliminary view as follows:

“Section 76(1), Trade Marks Act 1994/Rule 70, Trade Marks Rules 2008 require that an appeal lies from any decision of the registrar.

Rule 63 requires parties to be heard before taking such a “decision”. As part of this process of “being heard”, the position of the Registry is set out in a provisional view, providing the parties with an opportunity to be heard (the parties may choose a hearing or to be heard by way of filing written submissions). Therefore, the issuing of preliminary views implements the procedures to give effect to the requirements of s.76 of the Act.”

27. Mr Dugdill still refused to accept this and in his email of 18 July raised the second complaint relating to these proceedings (discussed earlier). However, it is appropriate that I deal with the issue here as it goes to the correctness of the procedures of the Registry that would fall to be decided (subject to appeal) as part of this decision.

28. Mr Dugdill appears to be seeking that the Registry conducts a full investigation into the factual background regarding the ownership of the mark with a view that the Registry would direct that the contested mark be assigned to the rectification applicant. This is despite the most contemporaneous document, identifying the owner, being an assignment document produced in line with an Order of the IPEC that transferred ownership away from the rectification applicant to the current proprietor. As I have already commented, the Registry has no powers to make the direction sought by the rectification applicant. A change of ownership is the domain of the courts and not the Registry and has already been considered by the IPEC. The Registry is limited to assessing whether the trade mark register records the correct proprietor based upon the documents available, the most contemporaneous of which is the assignment document dated 21 December 2018. Further, the preliminary views were issued in this context, having given due consideration to the reasons provided in the Form TM26R (set out at paragraph 3 above) that address legal points. The preliminary views are, therefore, not beyond the legal powers (i.e. not *ultra vires*) of the Registry but rather they are a way of expressing its preliminary assessment and providing the parties an opportunity to challenge these views either in writing or by way of a hearing so that these views can be taken into account during the Registry’s consideration of whether to confirm, vary or dismiss the preliminary views. For these reasons, I find that the Registry’s preliminary

views are not *ultra vires*. On the contrary, they were issued to give effect to section 76(1) and rule 63 and using the Registry's broad powers afforded to it under rule 62 to "give such directions as to the management of any proceedings as the registrar thinks fit" and the preliminary views were focussed on the legal issues that stand as an obstacle to the possible success to the application for rectification.

## **The rectification**

29. Section 64 of the Act reads:

**"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) [...]

(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) [...]."

30. Rule 44 states:

"44.—(1) An application for rectification of an error or omission in the register under section 64(1) shall be made on Form TM26(R) together with: (a) a

statement of the grounds on which the application is made; and (b) any evidence to support those grounds.

(2) Where any application is made under paragraph (1) by a person other than the proprietor of the registered trade mark the registrar—

(a) shall send a copy of the application and the statement, together with any evidence filed, to the proprietor; and

(b) may give such direction with regard to the filing of subsequent evidence and upon such terms as the registrar thinks fit.”

### *Sufficient interest*

31. The rectification applicant must have a sufficient interest to apply for rectification. The rectification applicant was the former proprietor of the trade marks before the transfer of ownership was recorded. I therefore accept that it has sufficient interest to bring the proceedings.

### *Is it an error capable of correction?*

32. Where an application is filed to record the assignment, the information provided on the Form TM26R is taken at face value. The registrar does not investigate or otherwise seek to establish the legality of the claim to change of ownership unless the recordal of change of ownership is challenged. In this case, the current proprietor has challenged the application and has been given an opportunity to provide its views. It is relevant in this case that the Form TM16 (Application to record a change of ownership) indicated that the method of transfer was by “assignment” and “Court Order” and that a copy of the Court Order and assignment document were provided. The relevance of this is discussed later in this decision.

33. I will consider each of the preliminary views, as set out in the Registry's letters of 27 June 2024 and 5 July 2024. There is, necessarily, some overlap between the issues that has required that I refer to particular points in more than one part of the decision.

***The first and fifth reasons in support of the first and second preliminary views***

34. I will consider the first and fifth reasons together. These stated:

*In the IPEC judgment, Hacon J specifically considered the impact of goodwill in circumstances where it was assumed that the current rectification applicant owned the goodwill identified by the mark CREDIT TODAY. Nevertheless, at [17] of his judgement, Hacon J stated "...I cannot see how the position in relation to the goodwill makes any difference" to whether there was an implied term in the oral agreement between the parties that the rectification applicant would "take all necessary steps to give effect to the assignment". It appears that Hacon J had goodwill firmly in mind when giving his judgment and the IPEC Order must have been made in this context. Therefore issue estoppel applies.*

and:

*[I]t is the preliminary view of the Registry that the application is an abuse of process. Despite the detailed history provided, the primary facts that (i) an Order was issued by IPEC, (ii) the subsequent assignment document complied with that Order. (iii) the attempt to appeal the judgment of the IPEC failed, all points to the Registry NOT being in error when it recorded the current proprietor as owner of the mark.*

*You [the rectification applicant] refer to the IPEC judgment as "entirely erroneous" and such a perceived error is not a matter for the Registry. An attempt to re-open the issues before IPEC amounts to an abuse of process.*

35. A fundamental point that I keep in mind is that an application for rectification cannot be used to bring about a change of ownership of a trade mark but rather, a successful application only corrects an error on the register (such as the proprietor's name being wrongly recorded). A change of ownership can only be directed by the Court and is outside the powers of the Registry and, in the current case, would require that the IPEC Order to be set aside or varied. I will discuss the implications of this later but insofar as it is relevant to the issue here, it is an abuse of process to attempt to obtain an outcome to a case that is contrary to that already decided by a higher authority. The rectification applicant's defence is that the IPEC did not consider goodwill in its judgment in respect of a claim brought by the current proprietor that it was the rightful owner of the contested trade mark registration. In his judgment, Hacon J stated:

"17. ... It seems to me that necessarily, in order to implement an oral agreement that the [rectification applicant] should assign the contested trade mark registration to [the current proprietor] was required to take all steps to effect such an assignment, in particular to effect a legal assignment in compliance with section 24(3) of the Trade Marks Act 1994. Ms McFarland [acting for the rectification applicant] argued that this made no sense because it conflicted with the position between the parties regarding goodwill which subsisted in relation to the name Credit Today. **I was asked to assume that at the trial the court would conclude (a) that goodwill subsisted in that name, (b) that it had been owned by [the rectification applicant] and (c) that [the current proprietor] had been operating under a licence from [the rectification applicant] in relation to that goodwill. I am prepared to make those assumptions for today's purposes** [my emphasis]. Ms McFarland said it would make no sense to assign the application in circumstances in which [the rectification applicant] retained the goodwill. There are two findings with this argument. One, that the issue in relation to the implied term rests on a finding which I have made that there was agreement to assign the trade mark. Secondly, Mr Hill [for the current proprietor] pointed out that it is part of [the rectification applicant's] pleaded case that the licence, if it existed, was terminated before the

alleged oral agreement. Therefore, I cannot see how the position in relation to the goodwill makes any difference. ...”

36. Therefore, contrary to the rectification applicant’s assertion, Hacon J’s judgment is predicated upon an assumption that the goodwill was owned by the rectification applicant. It challenged this on a number of occasions. It is not necessary that I detail its submissions here but it is of the view that the summary judgment made by the IPEC “was totally wrong in all respects”<sup>18</sup>. It also asserts that the points in the Court of Appeal’s Order “*are clearly arguable. It is nonsense to suggest otherwise, a simple attempt to try to bury the matter rather than execute real justice*”.<sup>19</sup> This position ignores the authority of the Courts and the status of the IPEC Orders and the Court of Appeal’s Order rejecting the rectification applicant’s request for leave to appeal the IPEC judgments. The IPEC’s Order has not been set aside. In light of the request to record the assignment that flowed from these Orders, the Registry correctly updated the register. It was not in error to record a change of proprietor following a valid assignment flowing from a Court Order. It is plainly clear to me that to attempt to reopen these issues before the Registry is prohibited by the doctrine of issue estoppel.

37. I discuss this further later, but even if the rectification applicant had an arguable case, the appropriate recourse would be through the Court. The issue of ownership of the trade mark has been settled by the IPEC and its subsequent Orders. The rectification applicant cannot reopen the issues before the Registry, which is (i) a lower authority than IPEC, and (ii) has no powers to force a change in ownership. This combined with the motive of the rectification applicant to try and bring about a change of ownership of the contested mark contrary to the IPEC Order amounts to an abuse of process.

38. In summary, I confirm the first and fifth reasons support both preliminary views.

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<sup>18</sup> Mr Dugdill’s written submissions of 4 June 2024, page 2, in response to paragraph 7 of the current proprietor’s submissions.

<sup>19</sup> Ditto, page 2

## ***The second reason in support of the first preliminary view***

39. The second reason states:

*In the absence of a valid Order from the Court of Appeal to set aside the IPEC Order, the Registry has no authority to (a) ignore or reverse the Order or (b) the implementation of that Order by way of an assignment document that complies with that Order. The IPEC Order did not make specific reference to goodwill and, therefore, the assignment document could not be in breach of that Order by not making reference to it either. In such circumstances, it would not be a requirement of the Registry that goodwill was mentioned in the assignment document.*

40. There is much overlap with my previous comments but at the time the Registry recorded the current proprietor on the register, the most contemporaneous document establishing ownership was the assignment document dated 21 December 2018. There is no claim that this assignment document has been superseded, replaced or amended in any way since then. The assignment document is consistent with the IPEC Orders, the latter of which ordered that the assignment could be signed by the Claimant's (the current proprietor's) solicitor in place of the Defendants (the rectification applicant). The assignment document was, therefore, valid and complied with the IPEC Orders. It is the rectification applicant's case that the IPEC was wrong in deciding the case the way that it did. However, as already stated, the Registry has no power to revisit the IPEC decision and neither does it have the power to direct an assignment of a mark.

41. There is nothing in the rectification applicant's submissions on this point that expose an error in the Registry's action of recording the current proprietor as the owner in line with the IPEC Orders and the assignment document that flowed from these.

42. In summary, I confirm the second reason supports the first preliminary view.

### ***The third reason in support of the first preliminary view***

43. The Registry set out the third reason and commented as follows:

*The Trade Mark Act 1994, section 24(1) states:*

*“24 Assignment, &c. of registered trade mark*

*(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. [my emphasis]”*

*It is clear from the language used in this section of the Act that there is no legal requirement for goodwill to be assigned with a trade mark.*

*Mr Dugdill asserts that “the registry is not in the habit of accepting assignments that do not simultaneously assign the goodwill along with the application or registration mark per se”. This statement is wrong and such a practice would be incompatible with section 24(1). The letter provided to support this claim, dated 23 November 2005, is in respect of a party attempting to record an assignment of trade mark 2337786A. It appears, from the content of that letter, that there were issues regarding understanding the scope of the assignment agreement because its scope was qualified by the term “only in so far as defined in the original Sale and Purchase Agreement relating the purchase of certain of the business assets...” but that agreement was not in evidence. Any reference to goodwill in that case must be considered in the context of the Registry attempting to ascertain the scope of the agreement.*

*Even if the Registry considered that the transfer of the goodwill was a relevant consideration in that case, it is not evidence that this must be so in recording all assignments. In the current case, taking into account the content of section 24(1) and the requirements of the IPEC Order (that made no specific mention of goodwill), the Registry was not in error when recording the assignment to the current proprietor.*

44. Part 4.1 of the “Register Maintenance” section of the Registry’s Work Manual is silent regarding whether goodwill must be transferred with a trade mark. This is unsurprising in light of section 24(1) of the Act that specifically states that “*a registered trade mark is transmissible by assignment ... either in connection with the goodwill of a business or independently.*”

45. When it was pointed out by the Registry to Mr Dugdill in correspondence, that section 24(1) made specific provision for the assignment of a registered trade mark independently of goodwill, he criticised the approach by asserting that:

*(i) the Registry was wrong to focus on only part of the provision and that this point was taken by the Registry on its own volition<sup>20</sup>*

46. I reject these assertions. The Registry was merely drawing his attention to the part of the Act that permitted assignment of registered trade marks, separate to that of goodwill and clearly refutes the fundamental error in the rectification applicant’s arguments.

47. An application to rectify the register is a request for the Registry to correct its error. Therefore, it is for the Registry to consider whether the application should be accepted and, if not, to set out the reasons why not. In cases where the application for rectification is someone other than the registered proprietor, the Registry will offer the

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<sup>20</sup> See Mr Dugdill’s email/letter of 30 July 2024

registered proprietor an opportunity to comment on the application, but this does not prevent or limit the Registry from relying upon its own reasons to support its position, regarding whether or not it acted in error, that are not raised by the registered proprietor. Rectification is a procedural issue and the Registry has a duty to consider the validity of any application to rectify the register. Therefore, the criticism that the Registry acted on its own volition is rejected. The Registry is able to present its own reasons why an application for rectification is acceptable or not.

*(ii) It is Registry practice to require a registered trade mark to be assigned with any goodwill. In this respect he relied upon a letter from the Registry dated 23 November 2005 in respect of an opposition decided in 2007<sup>21</sup>*

48. Mr Dugdill submitted that this letter supports the claim that the Registry requires that the assignment of a registered trade mark must also include an assignment of the goodwill.

49. The last two paragraphs of the third reason (reproduced in paragraph 43, above) was incorrect insofar that it is assumed that a party was attempting to assign a trade mark. Having now had sight of the case file it is evident that the letter was issued in the context of an application for the opponent to be substituted in opposition proceedings. The proceedings involved a claim of passing off based upon the original opponent's claim to goodwill. The registry's letter of 20 September 2005 stated:

“An opponent may be substituted in opposition proceedings where there is a transfer of interest in a mark on which the opposition is based. If the registered or unregistered rights are Assigned, the new owner may ask for their name to be substituted.”

50. In that case, the opponent did not rely upon a registered mark, but rather it relied upon an un-registered mark and the goodwill attached to it in order to pursue an

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<sup>21</sup> Opposition O-93217A

opposition based upon section 5(4)(a) of the Trade Marks Act. An un-registered mark is not recognised as a form of property in its own right but rather the right to property vests in the goodwill in connection with which the un-registered mark is being used.<sup>22</sup> In the case referred to by Mr Dugdill there was no request for a registered trade mark to be transferred with goodwill and, consequently, it lends no support to his contention that the assignment of a registered mark is only valid if transferred with the goodwill. The original opponent did not rely on a registered mark but rather, it relied upon passing off based upon goodwill attached to an un-registered mark. The Registry indicated that the substitution would only be allowed where the proposed new opponent could demonstrate that it owned the goodwill being relied upon. Therefore, the case generally, or the Registry letter of 23 November 2005 specifically, in no way supports a claim that a registered trade mark can only be assigned with goodwill.

51. The factual background of that case therefore demonstrates, contrary to Mr Dugdill's assertion, that:

(a) The Registry was seeking to establish if the current rectification applicant could be substituted as the opponent in proceedings where the earlier right was goodwill in a business identified by an unregistered mark. It was not required to assess (nor did it assess) whether any assignment was consistent with section 24(1) of the Act that deals specifically with assignment of registered trade marks;

(b) the Registry did not ask for, or require that assignment of the goodwill must also include the assignment of a registered trade mark. In fact, the opponent did not rely on any earlier registered trade mark (but rather, an un-registered mark);

(c) ultimately, the Registry accepted an assignment of goodwill (that did not include the assignment of a registered trade mark) as evidence that the rectification applicant was entitled to be substituted as the opponent in those proceedings.

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<sup>22</sup> See Wadlow on the Law of Passing Off, 6<sup>th</sup> Ed at 3-15 and 3-16

52. Therefore, whilst I recognise that the basis of the reason has been varied from what was stated in the Registry letter of 27 June 2024, the true position shown in the case papers (a) conclusively defeats the claim that it is evidence that a registered trade mark must be assigned with goodwill, and (b) even if I am wrong, on a plain reading of the Act, it is not evidence that registered trade marks must always be assigned with goodwill. I have, therefore, not sought further submissions on this specific point.

53. In light of the above, the case referred to by Mr Dugdill does NOT support his assertion that a registered trade mark can only be assigned if the goodwill is also assigned.

54. Mr Dugdill further submitted that section 24(1) “does not cover the case where the *goodwill actually exists...*”.<sup>23</sup> This is no more than an assertion and is not supported by any case law. Further, it is contrary to an ordinary reading of section 24(1) that is silent on this point. It is difficult to understand how goodwill can be assigned independently of a trade mark when that goodwill does not exist. It must exist in order for it to be assigned independently. I dismiss this argument and confirm the third reason supports the first preliminary view.

#### ***The fourth reason in support of the first preliminary view***

55. The fourth reason states:

*An application to file an appeal to the IPEC judgment was refused by the Order of the Court of Appeal. Floyd LJ provided 17 reasons for refusing leave to appeal including at [14] that “[t]he position in relation to goodwill does not, as the judge explained at [17] make any difference.” This Order brought the proceedings commenced in the IPEC to an end and, therefore, it is an endorsement of the IPEC Order.*

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<sup>23</sup> Mr Dugdill’s letter of 2 July 2024, last paragraph on page 4

56. As I have noted earlier, the Registry has no power to disregard the IPEC Orders or the assignment made in compliance with those Orders. As explained in letters to Mr Dugdill prior to the rectification application being made, the Registry may only disregard an Order of the Court if the Order has been set aside. The Order remains valid as does the assignment document executed in compliance with that Order.

57. The IPEC Orders refused permission to appeal but this was challenged by the rectification applicant when it sought permission to appeal from the Court of Appeal. This was rejected on 2 May 2019 by Order made by the Rt. Hon. Lord Justice Floyd where it was stated “[t]here is no conceivable basis on which the court could have given permission to appeal let alone re-open an appeal for which permission has already been refused”. The assignment document that implemented the IPEC Orders is the latest document defining ownership and the rectification applicant’s case is not based on any claim that this assignment has been superseded. Consequently, the Registry must be deemed as acting correctly when it rectified the register to take account of the valid assignment to record the current proprietor as owner of the registered trade mark in issue.

58. The rectification applicant concedes that its application for rectification is “a bid to *“potentially” expediate matters while [it] await[s] the conclusion of [its] appeal*”.<sup>24</sup> I understand the reference to “appeal” to relate to an outstanding action before the European Court of Human Rights (“the ECtHR”). This is not an appeal court and in circumstances where Mr Dugdill’s case was ultimately successful it would still not require the UK court to automatically set aside its Order that resulted in the assignment of the mark to the current proprietor. It is within the range of outcomes of a successful case before the ECtHR that the UK court would review its judgment but deem that it still stands. Consequently, there is nothing in this argument that suggests that the Registry was in error when recording the current registered proprietor on the basis of the assignment document that flowed from the IPEC Order. Of course, if the ECtHR judgment ultimately resulted in a change of ownership of the mark, then Mr Dugdill

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<sup>24</sup> Ditto, page 4

would be able to file the appropriate change of ownership documents to the Registry who could then update the proprietor's name on the trade mark register.

59. Mr Dugdill, has also submitted<sup>25</sup> that the rectification applicant's appeal is not exhausted because the Court of Appeal Order that set out 17 reasons why leave to appeal was refused was responded to by Mr Dugdill. He states that "*we provided 17 reasons back*". This appears to reflect either a refusal to accept, or a misunderstanding of the status of the Court of Appeal Order. The Order ended the appeal process in the UK courts, regardless of whether Mr Dugdill considers it to be wrong. I need say no more.

60. In summary, I confirm the fourth reason supports the first preliminary view.

## **Conclusion**

61. All five reasons for the preliminary views have been found to be correct and the preliminary views are confirmed. Confirmation of any one of these would have been fatal to the application for rectification. The Registry was not in error when it amended the register to record the current proprietor as the owner of the contested mark. The registration stands in the correct name and the application for rectification fails.

62. In recent communications from Mr Dugdill he makes reference to commencing fresh proceedings at the IPEC. If such proceedings were ultimately successful and resulted in a change of ownership of the contested registered trade mark, the new proprietor would be free to make a fresh application to the Registry to record its name as the new owner.

## **Costs**

63. The current proprietor, having been successful, is entitled to a contribution towards its costs.

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<sup>25</sup> In his letter of 2 July 2024

64. In considering the issue of costs, I keep in mind that the rectification applicant willfully and constantly ignored directions and procedures set out by the Registry and even when told that the Registry would no longer respond to his regular and unsolicited written contacts, the rectification applicant continued to file email submissions. Many of these were attempts to assert its own timetable and agenda upon the Registry such as a) continuing to demand that the Registry consider the implications of the claimed ownership of the rectification applicant's goodwill, stating that he rejects the Registry's views and directions and then continuing to argue the points, b) demanding that his complaints being dealt with before the rectification proceedings and c) refusing to comply with deadlines for requesting a hearing.

65. Many of the rectification applicant's submissions appeared to be made in the belief that the Registry was mistaken or had not fully explained itself, or that it did not fully understand his points. The Registry fully grasped Mr Dugdill's position but it chose to focus on the legal issues that could be determinative. This was in an attempt to save time and costs for both parties, to focus on the determinative issues and to exclude irrelevant background issues that would not decide the proceedings. Therefore, the Registry resisted Mr Dugdill's repeated demands to allow extensive evidence rounds ostensibly for him to attempt to prove that the rectification applicant owns the relevant goodwill and that the Court Order was made in error.

66. In respect of the Registry's explanations to Mr Dugdill, with the exception of some unclear language when moving the issues raised in the Form TM26R from being a continuation of the complaint process to transferring it to the judicial process within the Registry's tribunal, the communications from the Registry have always sought to explain the Registry's position to Mr Dugdill in terms that were clear and focused on the issues that the Registry considered to be relevant.

67. To its credit, the current proprietor restricted its participation in the proceedings to the filing of submissions prior to the Registry issuing its preliminary views and again in lieu of attending a hearing. It has not otherwise responded to the very many written

communications from the rectification applicant. However, I keep in mind that each and every communication would need to have been considered by the other side and I make an enhanced award to reflect this.

68. Therefore, I take account of the fact that the current proprietor filed written submissions and that the rectification applicant filed very many written submissions and assertions but that no hearing has taken place. I award costs on the following basis:

Considering the Form TM26R and attachments:	£400
Considering other sides many submissions	£1050
Providing written submissions	£400
<b>TOTAL</b>	<b>£1850</b>

69. I order Blue Moon Group Limited to pay Shard Financial Media Limited the sum of £1850. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 7<sup>th</sup> day of November 2024**

**Mark Bryant**  
**For the Registrar**  
**The Comptroller-General**

ANNEX 1

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
INTELLECTUAL PROPERTY ENTERPRISE COURT (ChD)  
HIS HONOUR JUDGE HACON  
19 SEPTEMBER 2018  
BETWEEN:



IP-2017-000199

SHARD FINANCIAL MEDIA LIMITED

Claimant

-and-

(1) BLUE MOON GROUP LIMITED  
(2) GERARD DUGDILL

Defendants

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ORDER

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UPON the Claimant's application by notice dated 31 May 2018 ("**Claimant's Application**")

AND UPON hearing Jonathan Hill, Counsel for the Claimant, and Denise McFarland, Counsel for the Defendants

AND UPON entering summary judgment in the Claimant's favour under CPR Part 24, except in respect of the Claimant's claim for unjust threats of trade mark infringement proceedings ("**the Threats Claim**")

IT IS DECLARED THAT the Claimant is the sole owner of UK registered trade mark no. 2537778 ('the Trade Mark') in equity

IT IS ORDERED THAT:

1. The Defendants shall within 21 days take all steps necessary to assign legal title to the Trade Mark to the Claimant, including, without limitation, by signing an assignment transferring legal title to the Trade Mark.
2. Paragraph 1 shall be stayed, with the 21 day period provided starting to run when the 21 day period for filing an application for permission to appeal referred to in paragraph 7 below has expired, or, if such an application is filed, when that application and any appeal following on from that application have been dismissed.
3. The Defendants and each of them are forbidden from carrying out any of the following acts (whether by acting directly or indirectly, through officers, servants, agents or subcontractors, or by procuring or encouraging others to act, or by acting in any other way howsoever):

- a. threatening the Claimant with infringement proceedings;
  - b. representing that it has any interest in the Trade Mark;
  - c. assigning, transferring, licensing, encumbering or otherwise dealing with or in the Trade Mark (except so as to comply with paragraph 1 above).
4. The Second Defendant within 28 days of the expiry of the period for compliance with paragraph 1 above swear and serve an affidavit confirming full compliance by the Defendants with paragraphs 1 and 3 of this Order.
  5. The issues of whether summary judgment should be granted on the Threats Claim and (if the Court determines that it should not be) any directions to be ordered to bring that claim to trial be listed for a further hearing or, if the parties agree or Court so orders, for determination on the papers.
  6. Costs reserved to be dealt with at the further hearing referred to in paragraph 5 (if summary judgment on the Threats Claim is then granted or the Threats Claim does not proceed) or to trial (if the Threats Claim proceeds to trial).
  7. The Defendants are refused permission to appeal. Any further application for permission to appeal must be filed with the Court of Appeal within 21 days of the date of this Order.

**Service**

8. This order shall be served by the Claimant upon the Defendants.

The court has provided a sealed copy of this order to: Blake Morgan LLP, 6 New Street Square, London EC4A 3DJ, DX 445 LDE (Ref: CDW/557062/3), solicitors for the Claimant.

**ANNEX 2**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INTELLECTUAL PROPERTY ENTERPRISE COURT (ChD)**  
**HIS HONOUR JUDGE HACON**  
**20 DECEMBER 2018**  
**BETWEEN:**



IP-2017-000199

**SHARD FINANCIAL MEDIA LIMITED**

**Claimant**

-and-

**(1) BLUE MOON GROUP LIMITED**

**(2) GERARD DUGDILL**

**Defendants**

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**ORDER**

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**UPON** the Claimant's application by notice dated 5 December 2018 ("**Claimant's Application**")

**AND UPON** the Court having ordered the Defendants to assign legal title to UK Trade Mark No. 2537778 ('the Trade Mark') to the Claimant under paragraph 1 of its order dated 19 September 2018 ('the Order') and the Defendants having failed to execute the assignment as ordered

**AND UPON** hearing Jonathan Hill, Counsel for the Claimant, and Gerard Dugdill on behalf of both Defendants

**AND UPON** the Second Defendant stating to the Court that the Defendants intend to file an Appellants' Notice out of time in relation to the Order of 19 September 2018 ('the Appellants' Notice of Order of 19 September 2018')

**IT IS ORDERED THAT:**

1. The Claimant's solicitor, Christopher Williams, may, in place of the Defendants, execute an assignment of legal title to the Trade Mark from the Defendants to the Claimant, in the form annexed to this Order or such other form as is appropriate.

2. The Claimant shall give the Defendants at least 28 days' notice of any intention to assign the Trade Mark to another person.
3. Paragraph 2 shall cease to apply in the event that:
  - (i) no Appellants' Notice of Order of 19 September 2018 is filed by 17 January 2019;
  - (ii) the Court of Appeal refuses permission to appeal in relation to the Appellants' Notice of Order of 19 September 2018;
  - (iii) in the event that permission is given, the appeal process is completed.
4. Permission to appeal this order is refused.
5. The period in which the Defendants are entitled to file an Appellants' Notice in relation to this order is extended until 17 January 2019.
6. The Defendants shall pay the Claimant's costs of this application and expenses incurred in securing the assignment of the Trade Mark, the said costs and expenses being summarily assessed on the indemnity basis in the sum of £5000.

**Service**

7. This order shall be served by the Claimant upon the Defendants.

The court has provided a sealed copy of this order to: Blake Morgan LLP, 6 New Street Square, London EC4A 3DJ, DX 445 LDE (Ref: CDW/557062/3), solicitors for the Claimant.

# ANNEX 3

PTA Template 269C1 - OCT16 - First Appeal



## IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A3/2019/0136/PTA  
A3/2019/0137/PTA



Shard Financial Media Limited -v- Blue Moon Group and another

### ORDER made by the Rt. Hon. Lord Justice Floyd

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal and an extension of time.

**Decision:** Refused

#### Reasons

1. The judge gave himself a clear direction at [2] as to the law applying to striking out/summary judgment applications, and applied it.
2. It is not clear in what relevant respect it is said that the judge did not understand the case.
3. There obviously was an agreement evidenced by the part performance of it, the signature of the TM16 and also the contemporaneous documentation. The circumstances do not bear any possible alternative interpretation.
4. It makes no business sense that there should be an agreement to alter the proprietorship on the register without an assignment. There clearly was an implied term to the effect that all necessary steps to vest the ownership in SFM would be taken.
5. The argument based on duress was not pursued below.
6. The judge dealt with each of the arguments on which he was addressed.
7. The emails evidencing the agreement were properly before the judge.
8. There is no requirement for money to change hands for a valid agreement to assign or assignment.
9. No argument based on limitation or acquiescence or delay was advanced below.
10. See (7).
11. Mr Dugdill's subjective impressions as to whether there was a binding agreement are irrelevant, and in any event are countered by the contemporary correspondence. As to duress, see 5.
12. The only coherent reason for agreeing to sign a TM16 is that a change of ownership has been agreed. A necessary implied term is that the change of ownership should be given effect to.
13. Section 24(3) of the act was not relied on by the judge as a reason to assign.
14. The position in relation to goodwill does not, as the judge explained at [17] make any difference.
15. The judge considered the argument referred to at [18]. It is not clear on what basis it is said that Shard was out of time to call for an assignment.
16. See 16.
17. The findings/abandonment of these other proceedings do not defeat the present claim. The IPO did not consider whether Shard were beneficial owners of the mark as a result of the agreement to assign.
18. There was no basis for any allegation of "unclean hands".

Even allowing for the fact that this is a summary judgment, an appeal would not have a real prospect of success, and there is no compelling reason for the court to hear it.

The extension of time does not therefore arise.





Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

*By the Court*

Signed: *Am S Ford*  
Date: 1 May 2019

**Notes**

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **A3/2019/0136/PTA**  
**A3/2019/0137/PTA**