

TRADE MARKS ACT 1994

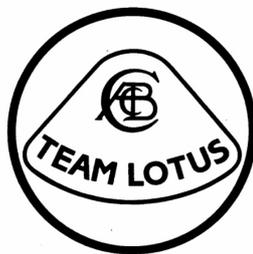
**IN THE MATTER OF CONSOLIDATED APPLICATIONS
Nos 80210 AND 80211 BY GROUP LOTUS PLC FOR
REVOCATION OF REGISTRATIONS Nos 1338435
AND 1337455 STANDING IN THE NAME OF
TEAM LOTUS VENTURES LIMITED**

TRADE MARKS ACT 1994

**IN THE MATTER OF Consolidated
Applications Nos. 80210 and 80211 by
Group Lotus Plc for Revocation of Registrations
Nos. 1338435 and 1337455 standing in the name
of Team Lotus Ventures Limited**

BACKGROUND

1. The following trade mark is registered in the name of Team Lotus Ventures Limited for “advertising services included in Class 35”:



It is numbered 1338435.

2. The following trade mark is also registered in the name of Team Lotus Ventures Limited for “advertising services included in Class 35 but not including any such services relating to pre-recorded tapes”:

TEAM LOTUS

It is numbered 1337455.

3. On 11 January 2002 Group Lotus Plc applied for each of these registrations to be revoked under the terms of Section 46(1)(b) of the Act. The applicants say that there has been no use of the marks for the services for which they are registered since 1994 and there are no proper reasons for non-use.

4. The registered proprietors filed a Form TM8 and evidence but no counterstatement. Correspondence on the Registry’s files indicate that, despite initial objections, a decision was taken to allow the matter to proceed in the absence of a counterstatement in exercise of the discretion provided by Rule 31(3). It is clear from the registered proprietors’ evidence that they concede the non-use position but rely on the defence of proper reasons for non-use.

5. Both sides filed evidence. The parties were reminded of their right to be heard. Neither side has requested a hearing. Written submissions have been filed on behalf of the applicants under cover of Boulton Wade Tennant's letter of 28 April 2003. I should just add that the two cases were consolidated at an early stage and lend themselves to a single decision. Acting on behalf of the Registrar and after a careful study of the papers I give this decision.

The law

6. The relevant statutory provisions are to be found in Section 46(1) of the Act which reads:

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

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

and Section 100

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

7. Although Section 100 is silent on the question of onus where proper reasons for non-use are claimed I consider that, consistent with the obligation placed on a proprietor to show use when challenged, it is also incumbent on a registered proprietor to show proper reasons for non-use where such a defence is relied on.

The relevant period

8. The applicants refer to non-use since 1994 and, by implication, no proper reasons for non-use from that time as well. No specific date is given. Accordingly, this being an attack under Section 46(1)(b) I propose to treat the relevant five year period as running from 11 January 1997 to 10 January 2002.

Evidence

9. The registered proprietors have filed a witness statement by David Hunt, their Managing Director. It is a lengthy document but it seeks to do two main things, firstly to set out the special circumstances prevailing in the world of Formula 1 (F1) motor racing and secondly to show the efforts the proprietors have made to prepare the way for using their marks. Mr Hunt explains

that for reasons of commercial sensitivity it is not always possible to refer to investors, sponsors etc by name. As the applicants' challenge is to the consequences in law of the registered proprietors' actions rather than the factual position this is not a significant drawback.

10. The Team Lotus motor racing team was a well known member of the F1 circuit from the late 1950s to the early 1980s. The team was founded by Colin Chapman and he continued to be involved with it until his death in 1982. The team continued winning Grand Prix until 1987 but thereafter diminishing success on the track led to the team being sold to a group of investors led by two former employees of Colin Chapman. Poor commercial and financial management is said to have resulted in the business being placed into administration in September 1994. The administrators sold the business of running the Team Lotus Formula 1 racing team to a Team Lotus group company in October of that year. Efforts have been made since that date to return to F1.

11. Group Lotus Plc is said to be a separate legal entity to Team Lotus although both were started by the late Colin Chapman. Group Lotus was responsible for building sporty road cars to help finance Mr Chapman's F1 racing ambitions. The development of commercial sponsorship arrangements as a primary means of financing F1 racing teams resulted in the road car business being sold off in the late 1960s. The racing and road car sides have been separate entities ever since.

12. Mr Hunt goes on to set this dispute in context within F1. The attractive power of F1 from a commercial advertising point can, I think, be readily accepted. Suffice to say that the leading teams are said to sell advertising space on their cars to a value in excess of US \$100 million per annum.

13. By virtue of what is referred to as the Concorde Agreement F1 is in effect a 'closed shop' limited to 12 teams (this particular revision of the Agreement dates from 1997). Mr Hunt describes the effect of this as follows:

“At the time the new Concorde Agreement was signed, however, there were only 11 teams competing in F1 and thus one vacant entry. The FIA and/or Mr Ecclestone announced that this vacancy was reserved for the Honda Motor Company which had previously been very successful in F1 and wanted to return with a new team. Thus there were suddenly no vacant entries in F1 which meant that Team Lotus had to change strategy. Instead of continuing down the path, as we had been doing, of building a 'new' Team Lotus operation from scratch (finding premises, employing staff, equipping workshops, designing and building the next Lotus F1 car etc.), we were facing a case of having to acquire or merge with an existing F1 team entrant and change the name to 'Team Lotus' if we were to re-enter F1 and be able to provide advertising services to companies wishing to promote themselves/their products on our Formula 1 cars (sponsors). We could thus no longer start modestly and grow organically. Instead we now found ourselves in the business of having to raise a significant amount of finance from third parties to enable us to operate in the mergers and acquisitions arena. And simultaneously we had to set about persuading the owners of an existing F1 team to sell

to us or execute some kind of merger which, regardless of any other terms and conditions, would include their team being re-named 'Team Lotus'."

14. It is against that background that Mr Hunt goes on to explain the approaches made to or received from third party investors. One of these is described in some detail and involved an approach to Group Lotus Plc whose controlling shareholders (at that time at least) were Malaysian companies including Proton cars which was effectively controlled by the Malaysian Government. The proposal, if successful, had the obvious attraction of re-uniting the separate Lotus businesses in a joint commercial venture. The basic proposition contained in a proposal document was that Team Lotus should become the National Team of Malaysia. Following a meeting with the Chairman of Proton cars, the proposal document itself was sent to a UK Director of Group Lotus under cover of a letter dated 14 June 1997 but little progress appears to have been made and the papers were returned to Mr Hunt in early September 1997. Exhibits DH1 and 2 (the latter being the proposal document) have been supplied in support of this aspect of the proprietors' case.

15. Reference is also made to two other attempted deals with F1 teams involving Candover Investments plc, a London-based venture capital company. It is not clear when the related negotiations took place but both proposals were discontinued when it was found that the F1 teams concerned had signed up with other sponsors. In one case due diligence enquiries had been instigated and are said to have resulted in significant wasted professional fees for Team Lotus.

16. Mr Hunt goes on to describe the difficulties inherent in getting F1 sponsorship arrangements in place and the efforts made to do so. The principal difficulty stems from the fact that to negotiate with existing F1 teams it is necessary to have both equity investors and sponsors in place but potential sponsors are generally unwilling to commit themselves until a confirmed F1 entry exists (bearing in mind the limited number of teams allowed). Mr Hunt says that:

"After a long search in this country and others I found a major multinational company who believed in the Team Lotus proposition and agreed to provide our full sponsorship revenue budget (minimum US \$90 million per annum), if needed (i.e. in the unlikely event that we were unable to secure any other sponsors), for three years subject of course to an acquisition/merger deal being completed, the team being renamed 'Team Lotus' and the final shape and structure of the team going forward. This success was crucial in getting both potential equity investors to finance a takeover/merger and existing F1 teams to take very much more seriously the concept of re-naming their team as 'Team Lotus'."

17. This occurred at the time a deal was being negotiated with an existing F1 entrant. However, the principal of that team did not want to be totally reliant on a single sponsor. Efforts were, therefore, made to get letters of intent from other potential sponsors. Examples of some of the letters obtained are exhibited (DH3). These tentative sponsorship commitments amounted to between \$124.5 million and \$164 million for the 2001 season (range figures are given by some of those interested). In the event nothing came of this proposal.

18. Returning to the Concorde Agreement Mr Hunt says that there were 11 teams in place with the twelfth slot reserved for Honda. In the event Honda indicated in the Summer of 1999 that they were no longer going to enter F1 as a new team. This had two consequences. Firstly it produced a vacant twelfth entry and secondly the F1 authorities introduced a deposit requirement (later set at US \$48 million) as a disincentive to such withdrawals in future. Mr Hunt describes the efforts made to secure the vacant slot for Team Lotus but says that on 9 December 1999 he was informed that the FIA had granted the twelfth entry to Toyota.

19. That meant that Team Lotus' efforts to enter F1 had to be by means of acquisition of, or merger with, an existing team. Mr Hunt describes the negotiations that Team Lotus entered into with various (unnamed) teams to secure Team Lotus involvement. For a variety of reasons these negotiations either foundered or have not yet been brought to a conclusion. Press cuttings illustrating media speculation about the return of Team Lotus to F1 are exhibited at DH5. I note for instance that Team Lotus was at one time (1999/2000) being linked with the Prost and Arrows teams.

20. The next section of Mr Hunt's witness statement deals with media and fan demand for Team Lotus to return to F1. Exhibits DH6 to 19 are provided in support. It is not necessary to record the detail. Suffice to say that the collective force of this material is to demonstrate the continuing reputation and attraction of the Team Lotus name despite the fact that it has not competed in F1 for some time. Indeed Mr Hunt suggests that Group Lotus (the applicants) utilise the commercial drawing power of the name for their own ends.

21. Mr Hunt then addresses the question of why efforts have been exclusively focussed on F1. He says that, apart from a brief foray into Formula 3 in 1992, Team Lotus has competed exclusively in F1. He adds that:

“To go through the process of entering another racing category simply to be able to provide advertising services to sponsors would be very costly and time-consuming (full time) and take us further away from our goal. Indeed, given our lack of human resources to enter another category would be the end of any aspirations towards F1 simply on a time commitment basis. Further, it would devalue the brand and send the wrong messages to potential sponsors and investors, the fans and the media. It would be insulting to place the great name in a lower category of racing in the absence of it being in F1. And if perchance a Team Lotus entry in a lower category were not instantly successful, we would be in great danger of losing credibility to the extent of making the step into F1 effectively impossible because the financial and sponsor support we currently enjoy through the unique status and image that our historical success over decades has created could be blown away by one poor season in a relatively meaningless category of racing.”

22. In conclusion Mr Hunt reiterates that extensive efforts have been made to return Team Lotus to F1. He denies that lack of sufficient money (capital or sponsorship revenues) is to blame for any of the schemes failing to come to fruition. He emphasises that there is a maximum of 12 entities with which Team Lotus could do a deal. Of these Ferrari, McLaren and BMW-Williams would not benefit from a change of name. Renault, Jaguar and Toyota own their own teams to

promote their own brands. The Prost team has recently gone into liquidation and a 'secretive' UK company has acquired some of the assets from the French liquidator in the hope of gaining the rights to compete in F1. Of the remaining five teams their appetite for doing a deal is driven by their own particular circumstances (mainly financial) at any given point in time. Thus at any particular time there are usually only two to three realistic targets but they are not public companies where a stake can be built up or a hostile bid made. For all these reasons it has not been possible to use the marks in issue in respect of the advertising services which would ride on the back of a deal whereby Team Lotus would re-enter F1.

23. The applicants filed a statutory declaration by Paul Edward Hicks, a Technical Assistant in the firm of Boulton Watt Tennant, their trade mark attorneys.

He exhibits:

- copies of articles relating to the formation of various F1 teams in the period 1997 to 2002 and their participation in Grand Prix;
- copies of the Accounts of Team Lotus Ventures Ltd and Companies House printouts relating to companies owned by Team Lotus Ventures Ltd.

24. The applicants' written submissions indicate that this evidence is intended to show that other F1 Teams were started during the period and, by implication, that there was nothing exceptional about the registered proprietors' position and that, further, the proprietors had not put in place the finance necessary to start a F1 team.

Submissions and authorities

25. There is as yet little in the way of judicial authority on the subject of what may constitute proper reasons for non-use of a trade mark. The written submissions supplied on behalf of the applicants is in large measure a review of the few cases that have come before Registry Hearing Officers. Two cases have been reported, one of these being on appeal to the High Court.

26. The first of the reported cases was *Glen Catrine Bonded Warehouse Ltd's* application for revocation (INVERMONT), [1996] ETMR 56. The Hearing Officer drew a comparison between the wording of the 1994 Act and its predecessor as follows:

"The 1994 Act (s. 46) does not employ the term "special circumstances in the trade" but uses instead the expression "proper reasons for non-use"; the 'trade' is not mentioned. So it seems that, in the matter of acceptable excuses for non-use at least, it may well be the 1994 Act is more liberal than the 1938 Act. The tribunal may, therefore perhaps be able to find that disruptive situations in which the registered proprietor's business alone is affected are, nonetheless proper."

He continued:

“Moreover, the word “proper” appears, rather than the slightly more restrictive word ‘special’. The reasons do not have to be ‘special’, it seems, merely “proper”. As can be seen in any English dictionary, ‘proper’ is a word with many meanings. But bearing in mind the need to judge these things in a business sense, and also bearing in mind the emphasis which is, and always has been, placed on the requirement to use a trade mark or lose it, I think the word proper, in the context of section 46 means: apt, acceptable, reasonable, justifiable in all the circumstances.

Viewed in this light, I think it is clear enough that the reasons given by Mr Denholm are not ‘proper’ in the sense required. He describes difficulties which by his own admission are normal in the industry concerned and in the relevant market place. I do not think the term ‘proper’ was intended to cover normal situations or routine difficulties. I think it much more likely that it is intended to cover abnormal situations in the industry or the market, or even perhaps some temporary but serious disruption affecting the registered proprietor’s business. Normal delays occasioned by some unavoidable regulatory requirement, such as the approval of a medicine, might be acceptable but not, I think, the normal delays found in the marketing function. These are matters within the businessman’s own control and I think he should plan accordingly”

27. In *Nestle UK Ltd v Zeta Espacial SA (Magic Ball)*, [2000] ETMR 226, Mr Justice Park cautioned against drawing comparisons with the preceding law but in other respects indicated that he had no disagreement with the general approach adopted by the Registry Hearing Officer in *Invermont*. On the facts of the case protracted difficulties in developing machinery to manufacture the product were held to be sufficient to constitute proper reasons for non-use.

28. The other cases that have been brought to my attention are *CERNIVET Trade Mark*, O/475/01, where the Appointed Person held that there were no proper reasons for non-use because competition from antibiotic growth promoters would by itself have been sufficient to prevent introduction of the registered proprietors’ feed additive products into the UK even if they had been covered by a proper EU regulatory approval. In *EL TORITO Trade Mark*, O/130/02 the registered proprietors’ failure to develop franchise arrangements for a proposed restaurant chain beyond the general enquiry stage was held to be an ineffective defence. In *PURE PLATINUM Trade Mark*, O/133/01, the difficulties involved in obtaining the necessary licenses and finance to open a night club were held by the Hearing Officer to be insufficient to constitute proper reasons for non-use. In *QUESTO Trade Mark*, O/127/99, the routine difficulties of establishing a business were not considered to be proper reasons for non-use.

29. I should also mention a further case, *Consolidated Cigar Corporation’s Trade Mark (Cabanas Habana)*, O/085/99, where a US embargo on trade with Cuba was said to prevent the proprietors from using the mark on goods of Cuban origin and, furthermore, they were unable to use the mark on goods of non-Cuban origin as this would have been deceptive having regard to the presence of Habana (Havana) in the mark. Whilst these circumstances might have been thought to provide the proprietors with a starting point for their proper reasons for non-use claim, the Hearing Officer also took into account the fact that there was no evidence that the proprietor had sought to obtain a license or authorisation which were technically provided for in the relevant Regulations. More importantly the embargo itself came into force some 26 years after

the registration of the mark and the proprietors had not pointed to any use in the period preceding it or given evidence as to their plans and intentions regarding use as and when circumstances permitted. In the event, therefore, the Hearing Officer was not persuaded that proper reasons for non-use existed.

30. Taken collectively these cases give some indication of the nature and severity of the problems that registered proprietors have faced and relied on in defence of their registrations. The factual circumstances, however, are so far removed from those of the present case that they can be of little assistance to me.

31. I do, however, find the following guidance from the *CERNIVET* case to be of general assistance in determining the scope of proper reasons for non-use. The Appointed Person noted as follows:

“The Directive does not attempt to define the circumstances in which “*proper reasons*” for non-use may be found to exist. However, Article 19(1) of the TRIPS Agreement deals with the requirement for use in the following terms:

“If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions or other government requirements for goods or services protected by the trademark, shall be recognised as valid reasons for non-use.”

It appears to follow from the fact that the TRIPS Agreement was concluded by the Community and the Member States acting jointly in the partially harmonised field of trade mark law that the judicial authorities of the Member States were, with effect from 1st January 1996, required by Community law to apply their national rules so far as possible in the light of the wording and purpose of the provisions of the Agreement in that partially harmonised field: see the Judgment of the European Court of Justice in Case C-89/99 *Schieving-Nijstad v Groenveld* (13 September 2001). The ‘Marleasing’ principle of interpretation (see Case 106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I-4135, paragraph 8) thus appears to apply as between the TRIPS Agreement and the parallel provisions of the harmonised Community law of trade marks.”

Decision

32. Team Lotus was a highly successful F1 motor racing team for a period of about 30 years and were the owners of numerous drivers’ and constructors’ championships. Mr Hunt’s evidence traces the decline of the team’s fortunes in the late 1980s/early 1990s, his company’s acquisition of the intellectual property rights in 1994 and the subsequent efforts to re-introduce Team Lotus to the top category of motor racing.

33. On the basis of Mr Hunt's uncontested evidence Formula 1 is something of a closed world. There is a limit on the number of teams that can take part, a state of affairs that arises by virtue of the Concorde Agreement entered into by all the relevant parties. Entry to the sport is limited to two methods – firstly successfully bidding for any new slot that becomes available as a result of the demise or departure of an existing team or secondly by merger with or takeover of an existing team. The barrier to entry is thus a formidable one and made harder still to surmount by the sheer cost of the entry deposit route for a new team (said to be US\$48 million following Honda's shock exit in 1999) or the cost of putting together a package to buy an existing team.

34. Mr Hunt describes in some detail the efforts made in relation to each of these potential entry points. The applicants do not challenge any of his claims but do, of course, point to the fact that none of the plans have been brought to fruition even though certain other teams have been formed and made their debut in the sport.

35. I have no hesitation in finding that Mr Hunt has made and is continuing to make every effort to achieve his ambition. Equally it is important to remember that the Directive and the Act provide for either use or proper reasons for non-use. A genuine intention to do something is not in and of itself enough.

36. Where do the reasons for non-use advanced by Mr Hunt sit in relation to the sort of considerations that arose in the earlier cases referred to above? The registered proprietors' reasons for non-use come down essentially to the unique difficulties of entering the world of F1 motor racing. It is a 'closed shop' as Mr Hunt calls it being limited to twelve teams and with opportunities to acquire vacant slots or to acquire/merge with existing teams very limited in number. There is also a barrier to entry in terms of the cost but Mr Hunt is quite clear on this point.

“The numerous deals we have negotiated with F1 teams to various levels of fruition have failed for a number of reasons, but our not having had sufficient money (capital or sponsorship venues) behind us is not one of them.”

37. The applicants, by submitting Team Lotus Ventures Ltd's report and accounts, seek to show that the company did not have finance in place. I do not consider the Team Lotus reports and accounts to be relevant in this respect. The evidence is that the proprietors have at various times secured commitments in respect of the necessary funds from third party investors or sponsors. It is neither necessary, nor to be expected, that sums committed in this way would appear in Team Lotus' own accounts.

38. What also emerges from Mr Hunt's evidence is that the organisation and individuals who control the sport exercise tight control over membership and have their own priorities when it comes to allowing newcomers into the sport. An example of this is the slot that was reserved for Honda (albeit that it was eventually not taken up) and later Toyota's acceptance as a new team entry. The FIA's letter of 9 December 1999 to Mr Hunt informing him that the Formula One Commission had accepted Toyota's entry is brief in the extreme and offers no explanation for the decision. Mr Hunt speculates that this may have been because Toyota is one of the world's biggest car manufacturers.

39. Can the registered proprietors' failure to use the marks be characterised as due to their own failings or can it be said that they arise from external circumstances? A number of the cases referred to above suggest that having a business proposition but simply being unable to find a taker is unlikely to be enough in itself to constitute proper reasons for non-use. But the factual circumstances here are very different to those pertaining in the cases relied on by applicants. The obstacles to market entry were not of the kind or order faced by the registered proprietors here. Mr Hunt has an asset that is capable of utilisation – namely the trade marks (the applicants' evidence contains Team Lotus Ventures Ltd's report and accounts which place a clear monetary value on the brand – see note 3 to the Accounts which records under Intangible Fixed Assets the trade mark value at cost). His continuing efforts to put those assets to use is clearly set out. The reasons for non-use are in my view wholly attributable to the unique circumstances that exist in F1 motor racing.

40. But that may not be enough in itself to preserve a registration. In the *Cernivet* case Mr Hobbs suggested that it seems to be necessary:

“... for the tribunal to be satisfied that in the absence of the suggested impediments to use there could and would have been genuine use of the relevant trade mark during the relevant 5 year period. The impediments in question will otherwise have been inoperative and I do not see how inoperative impediments can rightly be taken into account.”

41. The barriers to entry into F1 motor racing are barriers that any new entrant to the sport would face. It would not avail a proprietor who, faced with those obstacles, elected to do nothing for five years but placed reliance on proper reasons for non-use. In those circumstances the barriers would in effect be inoperative impediments.

42. It seems to me, therefore, to come down to a question of the nature and severity of the obstacles faced and the nature and extent of the registered proprietors' efforts to overcome them.

43. As I have said I do not think there can be any doubt about the difficulties of market entry in this field. Not only is there a small and finite number of places in F1 motor racing but also the number of places 'in play' at any particular time is smaller still. As regards the second point I would suggest that Mr Hunt has demonstrated a high degree of endeavour in seeking to overcome the obstacles before him and achieve his aim. He has a credible hand to play, his company being the owner of a mark which continues to enjoy a sizeable reputation. His efforts have embraced each of the (only) methods of entry to the sport (new team or merger/acquisition). He has demonstrated his company's ability to raise finance/sponsorship. He has received encouragement from those in positions of control within the sport and conducted discussions at the highest levels. Moreover it is a continuing process. In all the circumstances I find that there are proper reasons for non-use of the marks in relation to advertising services linked to F1 motor racing.

44. This decision, nevertheless, calls for further comment in two respects. Mr Hunt's evidence essentially details his company's efforts to get Team Lotus back into Formula 1. The registrations under attack cover advertising services. Does it necessarily follow that the proper

reasons for non-use hold good for these collateral services? In my view it does. The scope for advertising within F1 is clear. Mr Hunt says that “the leading teams sell the advertising space on their two cars for in excess of US \$100 million per annum in cash revenues. As a one-stop-shop for global year-round advertisers F1 has no peers”. Even allowing for the fact that there may be slightly less rich pickings for teams lower down the grid there must still be a very sizeable advertising market. More importantly the ability to offer advertising services must be inextricably linked to securing entry of a team. The team/cars act as the shop window for advertising and advertising services.

45. The second point is that, as the applicants have pointed out, the proprietors could have provided advertising services in a number of different ways but have chosen not to. Mr Hunt deals forthrightly with this point:

“My time is fully committed to managing the continual stream of possible F1 deals always in the pipeline and maintaining the support and goodwill of our financiers and other backers. To go through the process of entering another racing category simply to be able to provide advertising services to sponsors would be very costly and time-consuming (full time) and take us further away from our goal. Indeed, given our lack of human resources to enter another category would be the end of any aspirations towards F1 simply on a time commitment basis. Further, it would devalue the brand and send the wrong messages to potential sponsors and investors, the fans and the media.”

46. It is clear from these and further comments made by Mr Hunt that entry into Formula 3 or any of the other categories of motor racing is not within the registered proprietors’ plans. Still less is there any intention to offer advertising services more generally, that is to say outside the context of motor sport. In these circumstances it is appropriate that the specifications should be restricted to reflect the particular business area in relation to which I have accepted that there are proper reasons for non-use and be revoked in respect of the balance.

47. Having regard to Section 46(5), the revocation has been partially successful. The registrations will be revoked with effect from 11 January 2002 in respect of all services save as follows:

No. 1338435 - Advertising services included in Class 35, all relating to Formula One motor racing.

No. 1337455 – Advertising services included in Class 35, all relating to Formula One motor racing; but not including any such services relating to pre-recorded tapes.

Note The latter part of the specification of No. 1337455 preserves an existing exclusion.

48. As both sides have achieved a measure of success I make no order as to costs.

Dated this 29 day of May 2003

**M REYNOLDS
For the Registrar
the Comptroller-General**