

1 THE PATENT OFFICE

Tribunal Room 1,
Harmsworth House,
13-15 Bouverie Street,
London EC4Y 8DP.

4 Wednesday, 8th November 2006

5 Before:

6 MR. GEOFFREY HOBBS QC
7 (Sitting as the Appointed Person)

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9 In the Matter of the Trade Marks Act 1994

10 -and-

11 In the Matter of Trade Mark No: 2305250 in the name of
12 ATOTA COMMUNICATIONS LIMITED

13 -and-

14 In the Matter of a Rectification Application No: 82181 by
15 MR. MICHAEL CHARLES WHITE

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17 Appeal of the Registered Proprietor from the decision of
18 Mrs. A. Corbett dated 28th April 2006 on behalf of the
19 Registrar.

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21 (Transcript of the Shorthand Notes of Marten Walsh Cherer
22 Ltd., Midway House, 27/29 Cursitor Street,
23 London EC4A 1LT.
24 Telephone No: 020 7405 5010. Fax No: 020 7405 5026.)

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MR. GAVIN JAMIESON (the Registered Proprietor/Appellant)
appeared in person.

MR. MICHAEL WHITE (the Opponent) appeared in person.

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24 D E C I S I O N
25 (As Approved)

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1 THE APPOINTED PERSON: Atota Limited is a company which appears
2 to have been incorporated in 2001. The issued share capital
3 of the company was and, I believe, remains held by
4 Mr. Michael White as to 50% and Mr. Gavin Jamieson as to the
5 remaining 50% with each of them being, at all relevant times,
6 co-directors of the company.

7 On 13th July 2002, the company applied under number
8 2305250 to register the word ATOTA as a trade mark for a wide
9 range of goods and services in
10 Classes 3, 6, 9, 14, 16, 20, 24, 25, 28, 35, 37, 38, 41 and
11 42. The application proceeded to registration on
12 20th June 2003.

13 After some years of trading, it appears that
14 Mr. White and Mr. Jamieson found themselves in the position
15 of being unable to work together going forward.

16 I understand that on 11th April 2005 there was a meeting
17 between them at which they agreed to go their separate ways.

18 On 14th April 2005, according to the papers before me,
19 Mr. Michael White formed a company called Saratota Limited,
20 as the vehicle through which he intended to go his own
21 separate way. Mr. Jamieson on the same day changed the name
22 of a company called Heathergrove Limited to Atota
23 Communications Limited and that company was, as I understand
24 it, the vehicle through which he intended to go his own
25 separate way.

1 I also understand from the papers before me that on
2 27th April 2005 there was a further meeting at which
3 Mr. Michael White, Mr. Gavin Jamieson and the Company
4 Secretary, Mrs. June White, were present. At that meeting a
5 decision was taken in principle to wind down the affairs of
6 the company. It was envisaged that the company would cease
7 trading on or about the 30th April 2005 with a subsequent
8 winding down over a period of six months or so. It appears
9 to me from what I have heard at this hearing and also from
10 what I have read in the papers, that the winding down process
11 has not yet been completed, if indeed it has in fact been
12 commenced in earnest.

13 Soon after the meeting on 27th April 2005, that is to
14 say on 28th April 2005, Mr. Jamieson signed and sent to the
15 Trade Marks Registry a Form TM16 for the purpose of
16 transferring registered trade mark number 2305250 from Atota
17 Limited to his company Atota Communications Limited. He
18 signed the form both on behalf of the transferor, Atota
19 Limited, and on behalf of the transferee, Atota
20 Communications Limited. The document was lodged at the
21 Registry on 29th April 2005.

22 This in due course led to an application by
23 Mr. Michael White, acting in the name of Atota Limited, for
24 rectification of the trade marks register under section 64 of
25 the Trade Marks Act 1994. He applied for the purpose of

1 having the Form TM16 rescinded and restoring the registered
2 trade mark in question to the ownership of Atota Limited.

3 The proceedings culminated in a decision issued by
4 Mrs. Anne Corbett on behalf of the Registrar under the
5 reference number 0-121-06 on 28th April 2006. In her
6 decision, the hearing officer found on consideration of the
7 evidence before her that there was no proper basis for the
8 assignment of the company's registered trade mark into the
9 name of Atota Communications Limited. In particular she held
10 that the Form TM16 had been presented by Mr. Jamieson without
11 the knowledge of Atota Limited as represented by Mr. White
12 and the Company Secretary, Mrs. June White. In those
13 circumstances, she determined that the Form TM16 should be
14 set aside, with the result that the trade mark registration
15 reverted to Atota Limited.

16 An appeal was filed on 22nd May 2006 by
17 Mr. Jamieson acting on behalf of Atota Communications
18 Limited. I have examined the grounds for appeal set out in
19 that document. They do not put forward any proposition to
20 the effect that the hearing officer either misunderstood the
21 facts or made an error in her decision taking reasoning.

22 In the circumstances, there is no pleaded basis for
23 reversing the decision below. It has also become apparent
24 from the discussions which have taken place at the hearing
25 before me today that there are no grounds which might be said

1 to have escaped attention in the drafting of the grounds of
2 appeal. In fact it appears to me not only that the hearing
3 officer was entitled to reach the decision she did, but also
4 that it is a decision I would reach if I had been required to
5 make an independent assessment of my own on the basis of the
6 papers on file. For these reasons, the appeal will be
7 dismissed.

8 Does that conclude matters for today?

9 MR. JAMIESON: Yes.

10 THE APPOINTED PERSON: Yes, I think it does. I wish you both
11 well and I hope you can sort out your differences.

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