

1 INTELLECTUAL PROPERTY OFFICE

2 Video Conference Room,  
3 21 Bloomsbury Street,  
4 London, WC1B 3HF.

5 Friday, 28th October 2011

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

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10 In the Matter of the Trade Marks Act 1994

11 -and-

12 In the Matter of Trade Mark Application No: 2315925  
13 in the name of  
14 MR. DONALD WALES

15 -and-

16 Opposition thereto under No. 93515 by  
17 NELSON JAMES KRUSCHANDL

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19 In the Matter of an Appeal to the Appointed Person  
20 from the decision of Ms. Judi Pike, acting on behalf of the  
21 Registrar, the Comptroller-General dated 15th November 2010.

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23 (Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.,  
24 1st Floor, Quality House, 6-9 Quality Court,  
25 Chancery Lane, London WC2A 1HP  
Telephone No: 020 7067 2900. Fax No: 020 7831 6864  
Email: Info@martenwalshcherer.com www.martenwalshcherer.com)

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27 MR. NELSON KRUSCHANDL, the Appellant/Opponent, appeared in person.

28 MR. DONALD WALES, the Respondent/Applicant, appeared in person.

29 R U L I N G  
30 (As approved by the Appointed Person)

1 THE APPOINTED PERSON: In an official letter dated 22nd September  
2 2009 the Registrar of Trade Marks notified  
3 Mr. Nelson Kruschandl that his opposition to the registration  
4 of trade mark number 2315925 in the name of Mr. Donald Wales  
5 was treated as withdrawn in accordance with the provisions of  
6 Rule 68(2) of the Trade Marks Rules 2008.

7 For the reasons given in a written decision subsequently  
8 issued by Ms. Judi Pike on behalf of the Registrar of Trade  
9 Marks on 15th November 2010, Mr. Kruschandl was ordered to pay  
10 £1,200 to Mr. Wales as a contribution towards his costs of the  
11 opposition.

12 On 14th December 2010, Mr. Kruschandl appealed to an  
13 Appointed Person against the making of that order for costs.  
14 The appeal was listed to be heard on 12th May 2011. However,  
15 it proved to be impossible to proceed with the hearing on that  
16 occasion as a result of unresolved technical difficulties in  
17 establishing a video conferencing link for the purpose of  
18 enabling Mr. Kruschandl to present his case. The hearing of  
19 the appeal was rescheduled to take place on 16th June 2011.

20 On that occasion, having regard to the matters raised by  
21 the parties and the responses that I received to the questions  
22 I raised with them, I adjourned the hearing to allow Mr. Wales  
23 a period of 14 days within which to consider whether he wished  
24 to waive his entitlement to costs under the Hearing Officer's  
25 decision, in which case all further proceedings in the appeal

1 would be stayed, or maintain his entitlement to costs under  
2 the Hearing Officer's decision, in which case I would give  
3 directions for the further conduct of the appeal.

4 By letter dated 29th June 2011, Mr. Wales confirmed that  
5 he wished to maintain his entitlement to costs and therefore  
6 requested a date for the further hearing of the appeal. I  
7 then directed that the further hearing of the appeal should be  
8 scheduled to take place on the first occasion after  
9 18th September 2011 for which a hearing, with an estimated  
10 duration of up to half a day, could be accommodated with due  
11 regard for the availability of the parties, the tribunal and  
12 the provision of the technical facilities required. I also  
13 gave directions for the production of documents which had been  
14 discussed in the course of oral submissions at the hearing  
15 which had taken place before me in June.

16 Subsequently, on 23rd August 2011 I received a letter  
17 from Mr. Kruschandl indicating that he was being denied access  
18 to photocopying facilities within HM Prison Bure. On receipt  
19 of that letter, I caused the Treasury Solicitor's Department  
20 to contact the authorities at HM Prison Bure with a view to  
21 ensuring that photocopying facilities were restored for  
22 Mr. Kruschandl's assistance so that my directions for the  
23 production of documents could be complied with.

24 Under cover of a letter dated 19th September 2011,  
25 Mr. Kruschandl produced the documents that he wished to bring

1 before the tribunal in connection with his appeal, and these  
2 were circulated to myself and to Mr. Wales.

3 I then gave directions for the further hearing of the  
4 appeal to be rescheduled to take place on 27th October. Due  
5 to diary difficulties that date was subsequently replaced with  
6 today's date, 28th October 2011.

7 A considerable degree of effort went into the making of  
8 the arrangements for this resumed hearing. I was therefore  
9 dismayed to receive a letter dated 10th October 2011 from  
10 Mr. Kruschandl indicating that three prison officers had  
11 entered his cell on that day and removed his documents, in the  
12 files in which he had collated them, relating not only to this  
13 appeal, but numerous other pieces of litigation he is involved  
14 in.

15 I then caused enquires to be made of HM Prison Bure as  
16 to why this had happened and sought confirmation that  
17 Mr. Kruschandl would be allowed access to the papers he  
18 required for the purposes of presenting his appeal at today's  
19 hearing.

20 In response to my enquiries, a letter was sent by  
21 Mr. Colin Kerr of HM Prison Bure on 26th October 2011 in which  
22 he stated, having confirmed with staff at the prison as to  
23 what had happened with regard to the removal of the papers  
24 from Mr. Kruschandl's cell, that, "Mr. Kruschandl had his ring  
25 binders removed by staff as he is on basic regime. The staff

1 offered him the choice to remove the papers contained within  
2 the binders. He refused this very reasonable offer. On  
3 receipt of your letter, I asked the staff to take  
4 Mr. Kruschandl to reception and provide him with manila  
5 folders so that he could remove his papers from the ring  
6 binders and then locate them into the folders on a like for  
7 like basis. This he refused stating the following; that he is  
8 entitled to the correct facilities in order to store his  
9 paperwork; that putting them into the folders will not allow  
10 him to access the information quick enough. He was given at  
11 least three chances to ensure that he would be provided access  
12 to his paperwork, but he refused all offers. In answer to  
13 your letter dated 19th October 2011, the papers were taken to  
14 reception and stored as he did not wish to remove them from  
15 the binders. He has also not been denied access to the papers  
16 and indeed staff have tried to ensure that he has all  
17 reasonable access under prison rule, but he has refused all  
18 offers."

19 The hearing has commenced before me today, using a video  
20 conferencing link to HM Prison Norwich. The position is that  
21 Mr. Kruschandl has had an opportunity to equip himself with  
22 the papers that he wished to have for the purposes of this  
23 appeal, provided that he equipped himself with those papers in  
24 manila files rather than ring binders. He has declined that  
25 opportunity. In the circumstances, I think that this appeal

1 hearing should proceed.

2 The tribunal has a very full set of papers. These have  
3 been read and considered in detail. I do not think that it is  
4 necessary or appropriate to adjourn this hearing and I think  
5 it would be unfair to the respondent if I were to do so. I  
6 have been informed for the first time this morning by  
7 Mr. Kruschandl that on 21st October 2011 he made an  
8 application of some kind to the Administrative Court. I  
9 understand that to be directed to the restoration of his files  
10 in ring binders as opposed to manila folders. That  
11 application, which, as I say, was filed on 21st October 2011,  
12 has resulted in no interim emergency order, as apparently  
13 requested by Mr. Kruschandl, and it is, in any event, directed  
14 to the Governor of HM Prison Bure and the Secretary of State  
15 for Justice. It is not directed to this tribunal and I do not  
16 understand it to raise any request for an order that this  
17 tribunal should do or refrain from doing anything in relation  
18 to the present appeal. It is my ruling that the appeal  
19 hearing should proceed.

20 For proceedings; see separate transcript.

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