

O-214-14

TRADE MARKS ACT 1994

CANCELLATION APPLICATION 84586

BY ALLARD MOTOR SPORT LIMITED

THAT TRADE MARK 1479761

CONSISTING OF THE WORD 'ALLARD'

IN THE NAME OF ALLARD MOTOR CARS LIMITED

SHOULD BE REVOKED FOR NON-USE

Background and pleadings

1. This is an application by Allard Motor Sport Limited (“Sport”) to revoke registered trade mark 1479761 for non-use. The trade mark is the word **ALLARD** and it is registered for:

Motor vehicles and parts and fittings therefor; all included in Class 12

2. The mark was registered on 24 March 1995 in the name of Allard Motorsport Limited (“the original proprietor”), but that company was dissolved on 8 October 1996 and its assets (including the registered trade mark) became the property of the Crown (“*bona vacantia*”). The registration was purchased from the Crown by Allard Motor Cars Limited (“Cars”) on 25 September 2012 and an application to record that assignment was filed on 14 December 2012. The assignment was recorded on 15 January 2013.

3. Sport’s application to revoke the trade mark was filed on 10 October 2012. Sport says that there was no valid use of the trade mark between 8 October 1996 and the date of the application for revocation. Therefore the trade mark should be revoked under section 46(1)(b) of the Act as from 8 October 2001, or from the first date after that date that the registrar determines that revocation is justified, but no later than 10 October 2012.

4. Cars filed a counterstatement defending the trade mark registration for all the goods for which the mark is registered. According to Cars’ defence, “*the mark is in use by us and has been for some time*”.

5. Both sides seek an award of costs.

The evidence

6. Cars’ evidence takes the form of two witness statements by Jason Wharton, who is the Director of Allard Motor Cars Limited. It is apparent from Mr Wharton’s evidence that ALLARD is an historic British sports car marque, most famous for finishing third in the 1950 Le Mans 24 hour race¹.

7. Mr Wharton says that in July 2011 he met Alan Allard and his son Lloyd at Silverstone and they discussed the idea of setting up a company to manufacture an ‘Allard continuation vehicle’. Cars was established for this purpose on 25 August 2011. All three of the above were Directors and shareholders. In February 2012, Alan and Lloyd Allard resigned as directors. In the same month, Mr Wharton contacted the Treasury Solicitor about purchasing the trade mark ALLARD from the

¹ See page 2 of exhibit JW6

Crown. The Treasury Solicitor accepted that the mark was vested in the Crown and agreed to sell it to Cars, despite objections from Alan and Lloyd Allard. The assignment was executed on 25 September 2012. It transferred to Cars any and all rights and interest as there may have been in the trade mark, but not the goodwill in the business conducted by the original proprietor. The purchase price was £1000².

8. Mr Wharton provides a schedule³ setting out the use of the mark by him and by Cars. The use described is in the nature of preparations to commence a business selling ALLARD cars. For reasons given below, it is not necessary to set out in any more detail the events relied upon prior to 25 September 2012 when Cars became the proprietor of the trade mark. Nor is it strictly necessary to set out the events after 10 October 2012 when the application for revocation was made. However, in order to provide a fair overview of what was going on during the relevant period of 25 September 2012 to 10 October 2012, I set out below the events listed in the schedule between 25 September and the end of October 2012. Mr Wharton breaks these down into 'above the line' (which I take to mean 'outward facing') and 'below the line' (which I take to mean 'within the business').

9. Apart from the assignment itself, the only outward facing activity listed in September 2012 is that Cars made a proposal to join the Allard Owners Club Committee. The internal events are that:

- i) Cars provided its "financial backer" Richard Hayward with an update on 27 September;
- ii) On 28 September Cars received a proposal to update its website from a company called Lamb and Crook and interviewed a firm called EPM Technology as a potential supplier (it is not clear of what).

10. The outward facing activities in October 2012 are listed like this:

- i) Attended Manufacturer Advisory Service Lean Manufacturer Workshop – 09/10/12
- ii) Attended Prescott Speed Hill Climb, Autumn Classic Event – 07/10/12
- iii) Allard Motor Cars Limited joins Brooklands Trust as a Member – 03/10/12
- iv) Allard Motor Cars sends proposal to lease showroom premises – 08/10/12
- v) Allard Motor Cars confirms viewing of office premises – 08/10/12
- vi) Received revised brand proposal from Factor 3 – 09/10/12
- vii) Met Richard Hayward – New purchaser and sales order – 09/10/12

² See exhibit JW3

³ As exhibit JW4

- viii) Mouse Design instructed to prepare a new Powerpoint presentation – 10/10/12
- ix) Received supplier quotation from Ian Pitney for new Allard J2 body shells - 24/10/12
- x) Sent sales order and letter to Richard Hayward – 26/10/12
- xi) Formal quotation for new Allard bonnet badges – 31/10/12

11. The internal events in October (all after 10 October) include:

- i) Signing off a business plan with Gloucester Enterprise;
- ii) Viewing and discussing terms for a new industrial unit at Aston Down;
- iii) Making a proposal for a new showroom property at Putney;
- iv) Meeting the owner of the Putney showroom in Gloucestershire.

12. Mr Wharton accepts that as at 6 August 2013 the proprietor had not sold an Allard car, but he says that there has been considerable advertising and promotion of the vehicle. In this connection, he relies on the following:

- i) He attended a number of events to promote the company and advertise its intentions to recreate an Allard sports car, including the Allard Owners Club;
- ii) Cars had business cards and letter headed paper printed in February 2012, and an internet site created in April 2012, all of which bear the ALLARD mark;
- iii) Classic and Sports Car (July 2012), Octane Magazine (August 2012) and Auto Express (July 2013) all published articles referring to the company's plans to sell ALLARD cars in future⁴;
- iv) Cars issued press releases on 12 April 2012, 12 May 2012, 4 July 2012, 20 July 2012 and 4 December 2012, all announcing that Cars was taking orders for new cars⁵;
- v) Cars entered into a number of non-disclosure agreements with Ford (April 2013), General Motors (actually Chevrolet Europe, August 2013), both of whom were considered as engine suppliers, and Frazer Nash (April 2013), a potential supplier for a chassis⁶.

13. I note that the articles in Classic and Sports Car and Octane Magazine, and the press releases up to and including July 2012, all described the prospective new car as a 'continuation' vehicle, i.e. a modern recreation of a classic sports car, whereas the press release from December 2012 and the article in Auto Express from 2013 both refer (and in the latter case, show a drawing of) a new design. This indicates

⁴ Exhibit JW6

⁵ According to the releases in Exhibit JW7, the original plan was to market up to 8 'continuation' vehicles based on classic designs.

⁶ Exhibit JW8

that sometime between July 2012 and December 2012, Cars abandoned its plans to bring a 'continuation' vehicle to market and planned instead to develop a brand new design for an Allard vehicle.

14. Mr Wharton says that in October 2012 he put together a sales presentation which he showed to Richard Hayward, who Mr Wharton describes as a potential investor in the company, but someone who was looking to purchase a vehicle. Mr Wharton exhibits⁷ a copy of an email to Mr Hayward dated 26 October 2012 (after the date of the application for revocation) with a letter and a draft order form. It appears that Mr Hayward was initially interested in buying a new Allard J2 (a recreation of an historic design) for £150k. The letter of 26 October sent to Mr Hayward refers to a meeting "this week" (i.e. after the application for revocation was filed on 10 October) at which Mr Hayward "kindly confirmed [his] decision to order a new Allard J2". The letter states that the car would be completed and delivered by quarter 2, 2013 (about 6 months later). 50% of the purchase price was payable in advance. The price included a "sales promotion and type approval discount" of £65k. However, the order form was never signed. Mr Wharton told me at the hearing described below that this was because Mr Hayward subsequently changed his mind.

15. Mr Wharton also filed evidence⁸ showing that Cars was still seeking funding for its business plans in June 2013, specifically a grant for £1800 from Manufacturing Advisory Services towards the development of a strategy for bulk vehicle production.

16. Sport's evidence takes the form of two witness statements, one from Lloyd Allard and one from Alan Allard. Most of these statements are concerned with the history of the Allard mark, the circumstances which led to the Allard's leaving Cars in 2012, and various other proceedings before the UK Office and at OHIM. None of this is relevant to the issue in these proceedings, which is whether the proprietor made genuine use of the trade mark prior to the application for revocation. The criteria for assessing whether there was 'genuine use' are set out below. It has nothing to do with whether any use made of the mark by Cars conflicted with any rights or interest that the Allards may have had in the mark. The only potentially relevant evidence from the Allards is therefore that:

- i) They left Cars because Mr Wharton did not come up with the funding he had promised to secure;
- ii) They confirm that after severing their connection to Cars, they objected to the Treasury Solicitor assigning the trade mark to Cars;
- iii) The nature of the business conducted by Cars is listed as 'non-trading company' in the records held at Companies House.

⁷ As JW10

⁸ As JW11

The Law

17. Section 46 of the Act (so far as relevant) is as follows:

“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;

(c).....
.....

(d).....

(2) For the purpose of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) -

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from –

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

18. Section 100 of the Act states that:

“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.”

The Hearing

19. A hearing was held on 17 April 2014 at which Mr Jason Wharton represented Cars, effectively as a litigant in person, and Sport was represented by its counsel, Mr Malcolm Chapple, instructed by Page Hargrave.

Decision

20. The relevant period under s.46(1)(b) is strictly the 5 years ending on 8 October 2001. However, under s.46(3) genuine use after that date but before 10 October 2012 will defeat the application.

21. It appears to be common ground that the original proprietor was dissolved on 8 October 1996 and no use was made of the mark between then and 8 October 2001. The real issue is therefore whether the use described in Mr Wharton's evidence constitutes genuine use of the mark prior to the application for revocation on 10 October 2012.

22. In *Stichting BDO v BDO Unibank, Inc.*, [2013] F.S.R. 35 (HC), Arnold J. stated as follows:

"51. Genuine use. In *Pasticceria e Confetteria Sant Ambroeo SRL v G & D Restaurant Associates Ltd* (SANT AMBROEUS Trade Mark) [2010] R.P.C. 28 at [42] Anna Carboni sitting as the Appointed Person set out the following helpful summary of the jurisprudence of the CJEU in *Ansul BV v Ajax Brandbeveiliging BV* (C-40/01) [2003] E.C.R. I-2439; [2003] R.P.C. 40 ; *La Mer Technology Inc v Laboratoires Goemar SA* (C-259/02) [2004] E.C.R. I-1159; [2004] F.S.R. 38 and *Silberquelle GmbH v Maselli-Strickmode GmbH* (C-495/07) [2009] E.C.R. I-2759; [2009] E.T.M.R. 28 (to which I have added references to *Sunrider v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) (C-416/04 P) [2006] E.C.R. I-4237):

(1) Genuine use means actual use of the mark by the proprietor or third party with authority to use the mark: *Ansul*, [35] and [37].

(2) The use must be more than merely token, which means in this context that it must not serve solely to preserve the rights conferred by the registration: *Ansul*, [36].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin: *Ansul*, [36]; *Sunrider* [70]; *Silberquelle*, [17].

(4) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, i.e. exploitation that is aimed at

maintaining or creating an outlet for the goods or services or a share in that market: *Ansul*, [37]-[38]; *Silberquelle*, [18].

(a) Example that meets this criterion: preparations to put goods or services on the market, such as advertising campaigns: *Ansul*, [37].

(b) Examples that do not meet this criterion: (i) internal use by the proprietor: *Ansul*, [37]; (ii) the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*, [20]-[21].

(5) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including in particular, the nature of the goods or services at issue, the characteristics of the market concerned, the scale and frequency of use of the mark, whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them, and the evidence that the proprietor is able to provide: *Ansul*, [38] and [39]; *La Mer*, [22] -[23]; *Sunrider*, [70]-[71].

(6) Use of the mark need not always be quantitatively significant for it to be deemed genuine. There is no de minimis rule. Even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor: *Ansul*, [39]; *La Mer*, [21], [24] and [25]; *Sunrider*, [72]”.

23. According to s.46(1), genuine use requires use of the mark by the proprietor or with his consent. It is common ground that the Crown did not use the mark during the period that it was *bona vacantia* (between 9 October 1996 and 24 September 2012). Mr Wharton appeared to suggest that the Treasury Solicitor has somehow consented, on behalf of the Crown, to Cars use of the mark during 2012 prior to the date of the assignment. However, there is no evidence to support this claim and it is inherently highly unlikely that the Treasury Solicitor would agree to a third party using property that was owned by the Crown. It follows that any use made of the mark prior to 25 September 2012 cannot constitute genuine use of the mark by the proprietor, or with his consent, for the purposes of s.46(1)(b).

24. Mr Chapple submitted that any use on or after 25 September 2012, but before Cars was recorded as the registered proprietor (in January 2013) was also irrelevant for the purposes of s.46(1). I see no basis for that submission. Section 46 refers to “the proprietor” not to “the registered proprietor”. There is nothing in the Act which requires the word ‘proprietor’ to be given the meaning ‘registered proprietor’. In fact the wording of s.25(4) of the Act makes it clear that ‘proprietor’ does not mean only ‘registered proprietor’. Cars became the proprietor on 25 September 2012. I

therefore find that genuine use of the mark by Cars, or with its consent, between that date and 9 October 2012 has the potential to defeat the application.

25. Was there any such use? There is no suggestion that Cars sold a vehicle under the mark during this period or since. The closest the evidence comes to establishing such a sale is the evidence that there was some sort of provisional verbal order from Richard Hayward in October 2012 for an Allard J2. It is not clear exactly when the verbal order was first made, but Mr Wharton's evidence lists a sales order on 9 October 2012 (the day before the application for revocation). The order was not "confirmed" (verbally) until shortly before 26 October 2012, i.e. after the application for revocation had been filed. In any event, despite the verbal "confirmation", it did not materialise into a contractually binding order. Mr Hayward was a potential investor in the business and was offered a large discount, partly to reflect the fact that this would be the first car to be built by Cars and would be a prototype. So whatever the true nature of the provisional 'sales order' placed by Mr Hayward on 9 October 2012, it was far removed from a concrete order for goods under the mark from ordinary members of the relevant public. Therefore even if a tentative verbal order or enquiry about purchasing an Allard car was made before 10 October 2012, an order/enquiry of that kind from a potential investor in the business for a prototype car was too far removed from creating a market share for the goods amongst the relevant public to constitute "real commercial exploitation of the mark on the market for the relevant goods or services". It did not therefore constitute genuine use of the mark.

26. Cars also rely on what Mr Wharton calls advertising and promotion under the mark. However, all of the press releases and press articles in evidence are either too late for the purposes of s.46(3), because they postdate the application for revocation, or they occurred before Cars became the proprietor of the trade mark and the use was not therefore by the proprietor or with its consent.

27. Mr Chapple also referred me to paragraphs 37, 56 and 57 of the judgment of the Court of Justice of the European Union ("CJEU") in *Ansul BV v Ajax Brandbeveiliging BV*, Case C-40/01, which state that:

"37 Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns

56. Preparations for the marketing of goods or services do not, therefore, constitute 'use', nor does getting them shop-ready or storing them where they do not leave the undertaking's premises

57 there will be genuine use not only where the goods are being sold or the services supplied, but also where the trade mark is being used for

advertising with a view to those goods or services being launched in the market. ”

28. On this basis Mr Chapple submitted that:

“there must be both (1) an immediacy in the exploitation of the trade mark as a ‘badge of origin’, to be judged in the context of the economic sector concerned, and (2) actual use experienced by customers and potential customers (ie customer facing use). Notably advertising campaigns must have taken or be taking place, and mere (expensive) preparations therefor are insufficient.”

29. Mr Chapple reminded me of my decision in *Healey Sports Cars Switzerland Limited v Jensen Cars Limited*, BL O/488/12, in essentially the exact same economic sector (the rejuvenation of classic sports/touring car brands) where I decided at paragraph 34 of my written decision that:

“If the requirement is for use of the marks to be in relation to goods ‘already marketed or about to be marketed’ then the use on the website and in the press release in relation to a car that did not exist at the time, and was at least a year away from being ‘unveiled’ does not appear to qualify Firstly neither the press release nor the website provided sufficient information about the specification for the new car to permit potential customers to decide whether to register a serious interest in buying one. The second point There is no evidence, despite the passage of time of anyone expressing any interest in purchasing the new car as a result of these events or otherwise”

And at paragraph 36:

“the use shown in this case, without more, would not be viewed as warranted in the economic sector concerned to create a market share for the goods amongst potential customers for motor cars”.

30. That decision was subsequently upheld on appeal by Mr H Carr QC sitting as a Deputy Judge of the High Court. Mr Carr found that:

“12. Healey submitted [from a summary of the case law of the CJEU] that genuine use was to be contrasted with token use. Use which was not token, in the sense that it was not done merely to preserve the rights conferred by the registration was genuine and satisfied the statutory test.

13. In my judgment, acts which were not done merely to preserve the rights conferred by the registration may nonetheless be insufficient to constitute use within the meaning of section 46(1)(a). This is clear from the requirement to take all relevant facts and circumstances into account. It is also clear from [37] of *Ansul*, which the Hearing Officer cited at [31] of his Decision:

“Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns.”

31. I agree with Mr Chapple that the advertising use relied on in this case suffers from the same defects as that in the *Healey Sports Cars* case. In particular:

- i) There were no cars in existence which were ‘about to be marketed’;
- ii) On Cars’ own evidence it was likely to take at least 6 months to develop a prototype vehicle, let alone offer cars for general sale to the (admittedly niche) public;
- iii) Although all but the last press release talks about the company “taking orders” the specification for the vehicle was not described in any real detail so no one could register a serious interest in buying one, and no one did;
- iv) No one bought a car after the date of the application for revocation either which, if it had happened, might have shown that the earlier use was really advertising goods under the mark and not just market testing.

32. Consequently, I would have held that the use of the ALLARD mark in press releases and in press articles did not constitute genuine use of the mark, even if the use had been by the proprietor of the mark, or with its consent.

33. For the same reasons, I find that the use of the mark on Cars’ website, which I accept probably continued during the key period of 25 September 2012 and 9 October 2012, was not genuine use of the mark in relation to any goods that were being marketed or were about to be marketed.

34. The other uses described in Mr Wharton’s evidence either do not involve use of the mark in relation to goods such as, for example, Cars joining Brooklands Trust on 3 October 2012, and/or they occurred too late to count for the purposes of s.46(3) such as, for example, signing off a business plan with Gloucester Enterprise on 15 October 2012, and/or they were merely preparations which might later have led to customer facing use of the mark such as, for example, the proposal made on 8 October to lease showroom premises. The last point is important: if the requirement is for use that creates or preserves market share for the goods then use of the mark with suppliers of premises, parts etc. cannot count.

35. Taking all the evidence together, I find that there was no genuine use of the mark in relation to goods before the date of the application for revocation.

36. There was some discussion at the hearing as to whether there were proper reasons for non-use of the mark. The counterstatement filed on behalf of the proprietor makes no reference to a defence based on proper reasons for non-use of the mark. Nevertheless, Mr Chapple was prepared to address that matter in his skeleton and at the hearing. I will therefore deal with the proprietor's argument under this heading.

37. As I understand it, the argument is that the Crown owned the mark during the 5 year period at issue and at all times up until 25 September 2012. The Crown is not capable of trading in goods, or at least goods of the kind at issue in this case, and therefore there was a proper reason for non-use throughout the period ending on 25 September 2012.

38. In *Armin Häupl v Lidl Stiftung & Co. KG*, Case C-246/05, the CJEU held that:

“52. In particular, as correctly stated by the Advocate General in [79] of his Opinion, it does not suffice that “bureaucratic obstacles”, such as those pleaded in the main proceedings, are beyond the control the trade mark proprietor, since those obstacles must, moreover, have a direct relationship with the mark, so much so that its use depends on the successful completion of the administrative action concerned.

53. It must be pointed out, however, that the obstacle concerned need not necessarily make the use of the trade mark impossible in order to be regarded as having a sufficiently direct relationship with the trade mark, since that may also be the case where it makes its use unreasonable. If an obstacle is such as to jeopardise seriously the appropriate use of the mark, its proprietor cannot reasonably be required to use it nonetheless. Thus, for example, the proprietor of a trade mark cannot reasonably be required to sell its goods in the sales outlets of its competitors. In such cases, it does not appear reasonable to require the proprietor of a trade mark to change its corporate strategy in order to make the use of that mark nonetheless possible.

54. It follows that only obstacles having a sufficiently direct relationship with a trade mark making its use impossible or unreasonable, and which arise independently of the will of the proprietor of that mark, may be described as “proper reasons for non-use” of that mark. It must be assessed on a case-by-case basis whether a change in the strategy of the undertaking to circumvent the obstacle under consideration would make the use of that mark unreasonable. It is the task of the national court or tribunal, before which the dispute in the main proceedings is brought and which alone is in a position to establish the relevant facts, to apply that assessment in the context of the present action.”

39. As Mr Chapple correctly pointed out, the proprietor's argument is that the obstacle to the use of the mark was the very identity of the proprietor of the mark. However, the characteristics of the proprietor of the mark does not have a "direct relationship" with the trade mark and nor is it a factor which arises "independently of the will of the proprietor of that mark". So it is not a proper reason for non-use. If it were otherwise every mark held by the Crown as *bona vacantia* property would be immune from revocation for non-use, even if that situation persisted for decades. That would be contrary to the clear policy behind s.46(1) of the Act, which is that:

"In order to reduce the total number of trade marks registered and protected in the Community and, consequently, the number of conflicts which arise between them, it is essential to require that registered trade marks must actually be used or, if not used, be subject to revocation for non-use"⁹.

40. It is true that after acquiring the mark on 25 September 2012, Cars only had 15 days in which to put the mark into genuine use before the application for revocation was filed. At most, that provides a proper reason why no use was made of the mark in that period, but it does nothing to justify non-use of the mark in the period between 8 October 1996 and 7 October 2001, or between then and 25 September 2012. Cars knew it was purchasing a mark that had not been used since at least 1996 and therefore had to accept that it was buying a mark that was liable to revocation for non-use. That risk was no doubt reflected in the purchase price.

Outcome

41. The mark will be revoked for non-use. I accept that the conditions for non-use existed as at 8 October 2001. The mark will therefore be revoked from that date.

Costs

42. The application having succeeded, Sport is entitled to a contribution towards its costs. I assess that contribution as £1450 made up as follows:

£400 for filing the application for revocation (including the official fee of £200) and considering Cars' counterstatement

£300 for considering Cars' evidence and filing Sports' relevant evidence;

£750 for preparing for and attending the hearing.

43. I have awarded only a minimum amount of £50 towards the cost of filing Sport's evidence. It is not unusual for some of the evidence to be irrelevant, but in this case it was almost entirely irrelevant. I have awarded Sport £250 towards the cost of considering Cars' evidence. The rest are scale costs.

⁹ See recital 9 to Directive 2008/95/EC explaining the purpose of articles 10 and 12 of the Directive, that are implemented in the UK through s.46(1)(a) and (b) of the Act.

44. I order Allard Motor Cars Limited to pay Allard Motor Sport Limited the sum of £1450 within 7 days of the end of the period allowed for appeal.

Dated this 16th Day of May 2014

**Allan James
For the Registrar**