

O-489-15

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK 2575691 IN THE NAME OF AGILITISE LIMITED AND AN APPLICATION FOR INVALIDATION THEREOF UNDER NUMBER 500015 IN THE NAME OF PREMIER EVENTS AND LEISURE COMPANY

AND IN THE MATTER OF UK TRADE MARK APPLICATION 2640199 IN THE NAME OF PREMIER EVENTS AND LEISURE COMPANY AND OPPOSITION THERETO UNDER NUMBER 400221 IN THE NAME OF AGILITISE LIMITED

AND

UK TRADE MARK APPLICATION 3008660 IN THE NAME OF PREMIER EVENTS AND LEISURE COMPANY AND OPPOSITION THERETO UNDER NUMBER 400934 IN THE NAME OF AGILITISE LIMITED

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF MR GEORGE SALTHOUSE DATED 2 DECEMBER 2014 AND HIS SUPPLEMENTAL DECISION ON COSTS DATED 27 JANUARY 2015

DECISION

1. This is an appeal from a decision of Mr George Salthouse, the Hearing Officer for the Registrar, in consolidated proceedings under the Trade Marks Act 1994. The proceedings included an application by Premier Events and Leisure Company Limited (“Premier”) for a declaration of invalidity of a mark belonging to Agilitise Limited (“AL”) and oppositions by AL to two trade mark applications made by Premier, which were based upon AL’s earlier (challenged) mark. Mr Salthouse decided that AL’s mark was wholly invalid and, as a result, its oppositions to Premier’s applications failed. AL appeals against those findings and against the consequential costs order made by Mr Salthouse.

Background

2. On 17 March 2011, AL applied to register a series of two marks (identical save that one was in a purple/light green colourway, and the other in black and white) as set out below:



O-489-15

AL had provided services under the mark(s) since January 2011. The specification was for "Business consultancy and management services; business advisory services; business administration; electronic data storage; and provision of business information" in Class 35 and "Provision of business related training and presentations" in Class 41 ("the Agilitise Mark"). The Agilitise Mark was registered under No. 2575691 on 24 June 2011.

3. On 15 April 2013 Premier applied for a declaration of invalidity of the Agilitise Mark on the basis that Premier had earlier rights in this logo:



4. On 30 October 2012 Premier applied under application No. 2640199 to register a trade mark consisting of its logo for "team building (personnel management); business management; organisation of Annual General Meetings" in Class 35, "Providing of training; team building (education); providing and organising team games for personnel training and entertainment; arranging and conducting of workshops; interactive entertainment services; organising corporate events; corporate hospitality" in Class 41 and "Arranging hotel venues and catering for business and corporate events" in Class 43. On 5 June 2013, it applied under application No. 3008660 to register a series of two marks in relation to an identical specification. Those marks consisted of the same logo with the words "Team Challenge Company" added beneath them. One of the marks was in a blue/teal colourway, and the other in black-and-white. I shall refer to the marks together as Premier's Marks.
5. Premier claimed that at the time of AL's trade mark application it had goodwill in the logo contained in its Marks, established through use of the logo since 2001, and in relation to the same services as those covered by its trade mark applications.
6. AL opposed Premier's two trade mark applications on the basis of sub-sections 5(2)(b) and 5(4)(a) of the 1994 Act, relying upon its Agilitise Mark.

O-489-15

7. The opposition and invalidation proceedings were consolidated. Both parties filed evidence. At a hearing on 1 October 2014 both parties were professionally represented as they were before me, and Mr Crowley, a director of Premier, and Ms Smith, the managing director of AL, were both cross-examined.
8. In his main decision, Mr Salthouse set out the salient elements of the evidence, both in terms of the documents exhibited to the witness statements, and the answers given to various questions in cross-examination. In particular, he commented at paragraph 10 of the decision that the exhibits to Mr Crowley's witness statement corroborated his evidence in his witness statement that Premier had provided the services of team building, organisation of meetings and presentations, providing of training, arranging and conducting workshops, organisation of company events and entertainment since 2001 under the logo and the name "Team Challenge Company." The Hearing Officer said that Mr Crowley and Ms Smith were both credible and truthful witnesses, who did their best to answer the questions put to them in a straightforward and helpful manner.
9. The most significant parts of his decision for the purposes of the appeal are to be found at paragraphs 34 onwards:

"34) Considering the evidence it is clear that [Premier] began using their mark in 2001 and have made substantial use of it in respect of team building, organisation of meetings and presentations, providing of training, arranging and conducting workshops, organisation of company events and corporate entertainment. I also take into account the substantial sales figures provided. [Premier] have shown that they have goodwill in these services. Whilst AL attempted, particularly during cross examination, to distance its activities from those of [Premier], it is clear that AL delivers training in respect of best practice which would have the effect of altering the way in which teams within a particular discipline, such as sales, work. It is difficult to draw a line between this and general training/development and team training/building. Even if I were to accept the contention I have to take into account that AL acknowledged that within corporations it was highly likely for staff to move from one department to another and therefore the chances of the same person coming across both parties is increased.

35) However, it is accepted that a common field of activity is not required as stated in *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA). **In the instant case with both parties offering, broadly speaking, training and development services and both using highly similar devices there is no doubt in my mind that there will be misrepresentation.** I take into account in reaching this decision the views expressed by AL at various points in this case where it has held that the marks and services were at least similar. At other times they have argued the converse, but these denials have seemed driven by strategic thinking and attempting to face both ways at the same time for tactical reasons.

O-489-15

36) Having shown misrepresentation [Premier] must show that there is a likelihood of damage.

...

38) Consequently in the instant case if the applicant has established a goodwill and shown deception then damage can be considered as the automatic sequitur and the three elements of the classic trinity of passing-off will have been established. Taking into account all of the above there is clear danger of damage. The ground of opposition under section 5(4)(a) therefore succeeds and Trade Mark 2575691 is deemed never to have been made.

39) Because of the finding above AL does not have an earlier right and its oppositions to applications 2640199 and 3008660 under sections 5(2)(b) must fail. It[s] opposition to 3008660 under section 5(4)(a) also fails as [Premier] is the senior user. Turning to consider the ground of opposition under section 5(4)(a) in respect of application 2640199, it is my opinion that use of mark 3008660, which has the same device element as 2640199 but also includes the words "Team Challenge Company" would provide [Premier] with goodwill in the independent and distinctive device element. As such [Premier] would be considered to have used the device element since 2001 and thus be regarded as the senior user. Therefore the opposition under 5(4)(a) in respect of application 2640199 must fail."

Standard of review

10. It was common ground before me that this appeal is by way of a review not a rehearing. *Reef Trade Mark* [2003] RPC 5 ("*Reef*") and *BUD Trade Mark* [2003] RPC 25 ("*BUD*") show that neither surprise at a Hearing Officer's conclusion, nor a belief that he has reached the wrong decision, suffice to justify interference in this sort of appeal. Instead, I need to be satisfied that there is a distinct and material error of principle in the decision in question or that the Hearing Officer was clearly wrong; as Robert Walker LJ (as he then was) said at [28] in *Reef*:

"...an appellate court should in my view show a real reluctance, but not the very highest degree of reluctance to interfere in the absence of a distinct and material error of principle."

11. Those principles have since been affirmed by the House of Lords in *Datec Electronics Holdings Ltd & Ors v. United Parcels Services Ltd* [2007] UKHL 23, [2007] 1 WLR 1325. Mr Daniel Alexander QC sitting as the Appointed Person in case BL O/471/11, *Petmeds*, 14 December 2011, summarised the position:

"Datec and other cases since REEF and BUD all reinforce the need for caution before overturning a finding of the tribunal below of the kind in issue in this case. Difference of view is plainly not enough and, to that extent, the applicant's submissions are correct."

O-489-15

However, those cases and the practice of appellate tribunals specifically to trade mark registration disputes show that the degree of caution should not be so great as to permit decisions based on genuine errors of approach to go uncorrected.”

This appeal

12. AL’s lengthy Grounds of Appeal raised numerous issues about the main decision, with subsidiary issues about the costs award. Mr Wood, who appeared on AL's behalf, submitted that the Hearing Officer had fallen into error in numerous ways, not just in terms of his conclusions but also in terms of the manner in which he conducted the hearing. To summarise the points pursued before me, AL complained that the Hearing Officer had erred in his appreciation of the nature and scope of Premier’s goodwill, and especially the range of services for which it had goodwill, as a result of a variety of errors, including in particular
 - i. procedural errors, such as curtailing cross-examination, putting leading questions to the witness and/or feeding answers to the witness or inviting him to speculate;
 - ii. wrongly taking judicial notice of facts which should have been supported by evidence; and
 - iii. a lack of proper analysis of the totality of the evidence about Premier’s business.
13. AL also alleged that the Hearing Officer had carried out an inappropriate comparison of Premier's services with the services that he found had been provided by AL, rather than comparing Premier's services with the services in AL's specification. It submitted that its mark should have survived the invalidation proceedings to a greater or lesser extent, such that the merits of the oppositions should have been considered by the Hearing Officer.

Assessment of Premier’s goodwill

14. A central plank of the appeal was that the Hearing Officer had failed properly to assess Premier's evidence as to its goodwill. AL submitted that the Hearing Officer ought to have treated Mr Crowley's evidence with circumspection. It was submitted that he was an unreliable (though not dishonest) witness, who had had to correct some errors in his witness statements at the hearing, and that his oral evidence highlighted the inadequacies of the

O-489-15

evidence given as to Premier's goodwill. AL submitted that, as a result, the evidence did not support the Hearing Officer's conclusions.

15. In the light of the serious criticisms made of the Hearing Officer's conduct of the hearing, I have read the transcript with care, and have sought to assess the passages and questions to which my attention was drawn in the light of the whole transcript. I have also taken into account the guidance of the Court of Appeal in *Hadi Jemaldeen v A-Z Law Solicitors* [2013] [2012] EWCA Civ 1431, [2013] C.P. Rep. 8, especially at [22] to [28] as to the balance to be maintained between appropriate and inappropriate judicial intervention, most particularly whilst a witness is giving evidence.
16. There were a number of exchanges during Mr Crowley's cross-examination to which Mr Wood drew my attention. As to the complaints made by AL:
 - a. I do not consider that the transcript shows that Mr Wood's cross-examination of Mr Crowley was guillotined or that he was prevented from putting documents to the witness, but only that the Hearing Officer made unexceptional comments about the need to keep an eye on the time, given that only half a day had been allocated for the hearing. Mr Wood did not object during the hearing that he had not been able to take the witness to particular points and indeed carried on with a line of questioning after one such comment by the Hearing Officer, without further intervention by the Hearing Officer. I do not consider that there is any force in the complaints on this score.
 - b. The Hearing Officer intervened quite often during the cross-examination of Mr Crowley. He put questions to Mr Crowley at various points during the course of the cross-examination, and interposed questions to Mr Wood as to the impact or relevance of various lines of questioning, broadly seeking clarification of how the case was being put. Complaint is made about some of the questions to Mr Crowley but not of the interruption of cross-examination by the discussion with Mr Wood. The transcript does not give the impression that any of this prevented Mr Wood from completing his cross-examination or otherwise hampered his conduct of the case, nor, in my judgment, does the Hearing Officer appear to have made the error of "descending into the arena." The transcript gives an impression of a rather

O-489-15

informal hearing, but not one which, as far as one can see from the transcript, appears to have been conducted unfairly or improperly overall.

- c. AL submitted that Mr Crowley was an unreliable witness and that the Hearing Officer would have come to that conclusion had he not asked his own questions of him. For instance, Mr Wood had asked Mr Crowley to explain a discrepancy in his evidence as to the date of some postcards he had exhibited. He gave a short explanation and accepted that there was a discrepancy between his two witness statements. The Hearing Officer intervened and asked Mr Crowley for further clarification of the point. AL complains that he asked a leading question or suggested an answer to Mr Crowley, but I do not consider that the Hearing Officer did either of those things; it seems to me that he asked an open question hoping to clarify the rather unclear answer given by Mr Crowley. This did, however, give Mr Crowley an opportunity to give a better explanation for points challenged by AL. Even if the Hearing Officer went too far in that regard, which it seems to me that he did in relation to that one discrepancy, it does not seem to me that this would have had any material impact on the decision.

None of the Hearing Officer's other questions seem to me to have been leading questions or to have been improper in any way. Mr Wood wanted to rely upon a few (perhaps three) factual discrepancies to say that Mr Crowley was an unreliable witness, but the number and nature of the discrepancies relied upon, mainly going to the dates of various documents, do not seem to me to be of real significance.

I do not think that the result would have changed even if the Hearing Officer had not asked the questions about which AL complained, and it had proved impossible to give an accurate date for one document or even a few documents amongst the numerous documents exhibited by Mr Crowley. I do not think it at all likely that this would have affected the Hearing Officer's view that Mr Crowley was a credible and truthful witness, and that his witness statements were supported by the numerous documentary exhibits.

- d. Nor, in my view, did the Hearing Officer improperly put words into the witness's mouth. At one point, the Hearing Officer apologised if that was what he had done, but the apology seems to me to have been unnecessary, and was prompted only

O-489-15

because the Hearing Officer had not surprisingly used the word “training” when seeking to summarise some evidence which Mr Crowley had given, to which Mr Crowley responded that Premier preferred the term “development” to “training.”

- e. AL also complained that the Hearing Officer had assessed the amount of training being carried out by Premier by reference to his own experience of informal training, and had wrongly taken judicial notice of the existence of training of that type. Certainly, the Hearing Officer referred to having had experience of such training (Mr Wood did too) but it does not seem to me that he was improperly supplementing the witness’s evidence from his own experience, or taking judicial notice of the possibility of training being delivered informally without any evidential basis for so doing. On the contrary, those comments at the hearing, and his findings about training, were squarely based upon Mr Crowley’s prior evidence about team development events which provided training in an informal manner.

- 17. For all these reasons, I reject the appeal in so far as it is based upon alleged procedural errors.
- 18. A further major criticism of the decision pursued by AL on the appeal was that the Hearing Officer had failed to analyse the scope or extent of Premier’s business with sufficient rigour. For instance, AL said that the Hearing Officer should have found that Premier’s business did not include the provision of business training or development, but only amounted to the provision of business entertainment. AL suggested that the Hearing Officer had relied heavily upon his own experience of training in the absence of detailed written evidence from Premier. As I have said above, I do not accept this, nor do I consider that the Hearing Officer erred in this regard.
- 19. A number of the exhibits to Mr Crowley’s witness statements show that Premier offered events designed for training and development, business simulation exercises, skill development, leadership etc., as well as corporate entertainment events of many kinds. It seems to me that the Hearing Officer was fully entitled to conclude (as he did) that the narrative of the witness statements as to the nature of Premier’s business was supported by the exhibits. None of the evidence elicited in cross-examination of Mr Crowley was such that the Hearing Officer ought, in my judgment, to have rejected his witness statements. Mr Crowley confirmed the broad thrust of the witness statements on this point and the Hearing

O-489-15

Officer had the benefit of seeing Mr Crowley and formed the view that he was a reliable witness. It seems to me that the Hearing Officer was fully entitled to conclude that Premier had offered and supplied training or development services over a number of years.

20. AL also criticised the Hearing Officer for not having analysed with sufficient care what Mr Wood described as the 'shape' of Premier's business. He submitted that the evidence was insufficiently detailed to enable the Hearing Officer to make findings as to what proportion of the business related to training and development, as opposed to corporate events or hospitality or just the provision of accommodation for clients. It is fair to say that Mr Crowley's witness statements did not specify what part of the company's substantial turnover related to each such element of their overall services. This was, however, explored in cross-examination. Mr Crowley was asked about the relative proportions of training/development services to corporate entertainment services. Unfortunately, neither the questions nor the answers on this point are easy to follow from the transcript, as Mr Wood accepted before me, but certainly Mr Crowley suggested that there was a 65/35 or 64/40 split of some kind, and the Hearing Officer commented at the time that Mr Crowley had said the split was 60/40. In the circumstances, I do not accept Mr Wood's submission that the Hearing Officer's findings at paragraph [20] of the decision were wrong and susceptible to appeal. Mr Crowley's evidence about the amount of turnover from accommodation services was much clearer and again the Hearing Officer's findings on that point in paragraph [20] of the decision cannot in my view be criticised.
21. For those reasons, I reject the appeal against the findings as to the scope of Premier's goodwill.

Comparison of the parties' services for the invalidity proceedings

22. It was common ground before the Hearing Officer that for the purposes of the invalidity proceedings he should have considered whether in the light of the services for which Premier's goodwill was established, Premier could, at the relevant date, have prevented AL from making use of the Agilitise Mark in relation to the services in AL's specification. AL submitted that the Hearing Officer had not analysed the position correctly, but that in paragraph [35] he found a likelihood of passing off in relation to the services which he found both parties had made of their marks, as he said: "with both parties offering, broadly speaking, training and development services and both using highly similar devices there is no

O-489-15

doubt in my mind that there will be misrepresentation.” AL submitted that even if Premier had the goodwill attributed to it by the Hearing Officer, on a proper analysis there were differences between the marks and between the relevant services which meant that there would have been no danger of passing off at the relevant date. In the circumstances, the invalidity application should, it argued, have failed altogether. Alternatively, it was submitted that there should have been a finding only of partial invalidity of AL’s mark.

23. It seems to me that there is some force in AL’s complaint about the Hearing Officer’s reasoning in paragraphs 34 and 35 of the main decision. The essential question for the invalidity proceedings was whether Premier would have been in a position at the relevant date to bring passing off proceedings to prevent AL using its mark in relation to the services in its trade mark specification. That point was expressly made on Premier’s behalf below. However, the relevant part of paragraph 35 of the decision is phrased in such a way as to suggest that the Hearing Officer considered the potential for conflict (and for passing off proceedings) between the services for which Premier had established its goodwill and the services which he had found to have been offered by AL. It was submitted on Premier’s behalf that this made sense because the use made of its mark by AL could be taken as illustrative of normal and fair use of the Agilitise Mark. That may be right in terms of the manner in which that Mark had been used, but does not seem to me to prove that whatever use AL had made of its mark fell within or covered its specification, so that this point does not get around the difficulty that the Hearing Officer should have considered the question of invalidity in relation to the range of services within AL’s specification. It is possible that the last two sentences of paragraph 35 may show that the Hearing Officer was considering the whole of AL’s specification, as he should have done, but if that was the case he failed to set out any detailed reasoning for treating all of the services within the specification as relating to training and development and as close enough to the services for which Premier had goodwill to be likely to lead to passing off.
24. I conclude, therefore, that the Hearing Officer made a material error in concluding as he did in paragraph 35 of his decision that the invalidity proceedings succeeded across the board.
25. For the reasons set out above, it seems to me that the Hearing Officer’s findings on the scope of Premier’s goodwill in must stand. In the circumstances, it is necessary for me to assess whether use of the Agilitise Mark upon the services within its specification could have been prevented by proceedings for passing off brought by Premier at the relevant date.

O-489-15

26. There was no dispute between the parties as to the relevant law on passing off or as to the application of s 5(4)(a). The principles applicable to a s 5(4)(a) objections were set out in Mr Hobbs QC's decision sitting as the Appointed Person in *Wild Child Trade Mark* [1998] RPC 455 especially at pp 460-461. The two central elements are:

“(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.”

Regard will also be had to these factors:

“(a) the nature and extent of the reputation relied upon;

b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.”

27. The Hearing Officer's view was that as far as Premier's earlier sign was concerned, the logo was more distinctive than the descriptive phrase “Team Challenge Company” with which it had generally been used and as such the logo was “unquestionably the dominant and distinctive element” of the sign. His analysis of the dominant element of the Agilitise Mark in paragraph 30 of the decision is a little difficult to follow, but it seems clear that he considered that the logo which formed part of that device was at least an independent element of the Agilitise Mark, if not its dominant and distinctive element. He concluded at paragraph 35 that the parties had been using highly similar devices. Realistically, in my view, in particular given its stance on the oppositions, AL did not seek to challenge that finding at the appeal.

O-489-15

28. The question which I need to consider is whether, given the high level of similarity between the devices, use of the Agilitise Mark in relation to some or all of the services within its specification would have been liable, at the relevant date, to amount to passing off. I note that Ms Smith gave evidence on AL's behalf to the effect that her view was that the visual similarities of the marks and the similarity of the respective specifications led to "a risk that the services offered by [Premier] will be confused with Agilitise's services."
29. In paragraph 34 of the decision the Hearing Officer identified the range of services for which Premier had goodwill as team building, organisation of meetings and presentations, providing of training, arranging and conducting workshops, organisation of company events and corporate entertainment. The Hearing Officer accepted Mr Crowley's oral evidence that the split between those two main parts of Premier's business (training/entertainment) was in the region of 60/40, which in the light of Premier's substantial turnover means, it seems to me, that it had substantial goodwill in relation to both sides of the business.
30. There is an overlap between the services in which Premier has goodwill and AL's services in Class 41 ("Provision of business related training and presentations"). In my view this would have entitled Premier to object to that part of the registration of the Agilitise Mark at the relevant date pursuant to subsection 5(4)(a).
31. AL's case on the appeal was that its Class 35 "business consultancy services" are quite distinct from training and development services and the organisation of corporate events. I accept that they are not identical services but that does not mean that they are so distinct as to preclude any possibility that a misrepresentation could arise, and I think there was some (albeit limited) force in Premier's submission that AL's business consultancy services included an element of training. In any event, the Hearing Officer had not found Premier's goodwill to be so limited, but to include a broader range of services, such as the organisation of presentations and meetings. Mr Wood accepted that if Premier was found to have goodwill in relation to training, the result would have been different to the result if it had goodwill only for events. It seems to me that Premier's services, or some of them, are sufficiently similar to business consultancy services that use of the Agilitise Mark in relation to in relation to such services might, at the relevant date, have led to an actionable misrepresentation that they were provided by or were connected in the course of trade with Premier.
32. There is less similarity between Premier's services and AL's "business management services," "business advisory services" and "business administration", although as Mr St Quintin

O-489-15

pointed out, some of the training services offered by Premier related to activities which could be described as management or business administration. However, a common field of activity is not needed if a misrepresentation might still arise by reason of the use of the junior mark. In my judgment, services of all these kinds might be expected to be provided by the same or connected parties. In the circumstances, there was a risk of a misrepresentation for these services too.

33. On the other hand, it seems to me that use of the Agilitise Mark in relation to “electronic data storage” and “provision of business information” would be sufficiently remote from Premier’s services as not to have been likely to lead to an actionable misrepresentation at the relevant date.
34. In the circumstances, I conclude that the application for a declaration of invalidity should succeed in relation to the following services in AL’s specification: business consultancy management services; business advisory services; and business administration in Class 35 and provision of business related training presentations in Class 41. The Agilitise Mark therefore may remain on the Register for a specification consisting of "Electronic data storage; provision of business information" in Class 35.

The oppositions

35. The Hearing Officer did not find it necessary to consider the merits of the oppositions but it may now be necessary to do that, if AL wishes to pursue the oppositions in the light of the reduced specification of its Mark. If it does, then the question arises as to whether I should decide the oppositions or whether the matter should be remitted to the Registry. This was a point which was discussed briefly at the hearing before me but in the light of the decision which I have reached in relation to the invalidity of the Agilitise Mark, I think it would only be fair for the parties to have an opportunity to make additional submissions to me on this point should they wish to do so.
36. I will therefore direct as follows:
 - a. AL shall by 5 PM on 30 October state whether it intends to pursue its oppositions to Premier's Applications, and, if so,
 - i. specify which of the services within those Applications are opposed and

O-489-15

- ii. state whether it wishes me to decide the oppositions or whether it wishes the matter to be remitted to the Registry, giving its reasons for that choice.
- b. If AL wishes to pursue the oppositions, Premier shall by 5 PM on 13 November state whether it agrees with AL's choice in (a) (ii) above, and if not, shall give its reasons for disagreeing.
- c. If the Oppositions are to continue and the parties agree that I should hear them and should not remit them to the Registry, then the parties may provide me with written submissions on the merits of the oppositions by 5 PM on 27 November.
- d. Failing such agreement as to the procedure, I will issue further directions.

The parties shall copy each of the communications above to each other's representatives, to the Treasury Solicitors and to my clerks.

37. I shall reserve all questions as to costs until the issues relating to the oppositions are resolved.

Amanda Michaels
The Appointed Person
15 October 2015

Mr Aaron Wood of Swindell & Pearson Limited appeared for the Appellant, Agilitise Limited

Mr Thomas St Quintin of counsel instructed by Alistair Hindle Associates appeared for the Respondent, Premier Events & Leisure Company Limited