

O/294/17

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK REGISTRATION 2550825 OWNED BY FIONA  
GABRIELLE DODDS AND SKY GRACEY FOR A SERIES OF TWO MARKS**

**ADRENALIN  
ADRENALINE**

**AND THE APPLICATIONS FOR A DECLARATION OF INVALIDITY AND FOR  
REVOCATION FOR NON-USE THERETO BY OAKMEAD ASSOCIATES LTD  
UNDER NUMBERS 500964 AND 501303**

**AND**

**IN THE MATTER OF TRADE MARK APPLICATION 3028625 OWNED BY FIONA  
GABRIELLE DODDS AND SKY GRACEY FOR A SERIES OF TWO MARKS**

**ADRENALIN  
ADRENALINE**

**AND THE OPPOSITION THERETO UNDER NUMBER 405034 BY  
OAKMEAD ASSOCIATES LTD**

## **Background and pleadings**

1. Fiona Gabrielle Dodds and Sky Gracey (hereafter “Dodds Gracey”) are the owners of trade mark registration 2550825 for a series of two marks: ADRENALIN and ADRENALINE. The trade mark application was filed on 17 June 2010 and completed its registration procedure on 8 July 2011. The series of marks is registered for a variety of goods and services in classes 3, 5, 9, 12, 14, 16, 18, 24, 25, 28, 29, 30, 32, 33, 35, 36, 38, 39, 41, 42, 43, 44 and 45.

2. On 30 October 2013, Dodds Gracey applied for ADRENALIN and ADRENALINE as a series of two trade marks (application number 3028625) in classes 3, 28 and 32. For convenience, and as nothing turns on the differences between the two marks, I will refer to the sets of series of marks in these proceedings in the singular: “the mark”.

3. Oakmead Associates Ltd (hereafter “Oakmead”) has filed three sets of proceedings against the registration and the application, as follows:

- An application, filed on 19 August 2015, to have 2550825 declared invalid under sections 47(1)/3(6) of the Trade Marks Act 1994 (“the Act”).
- An application, filed on 15 August 2016, to have 2550825 revoked under section 46(1)(a) of the Act on the grounds that there was no genuine use of the mark between 9 July 2011 and 8 July 2016, with an effective date of revocation of 9 July 2016.
- An opposition under section 3(6) of the Act, filed on 8 September 2015, to the registration of 3028625.

4. The invalidation claim is expressed as follows on the statutory form TM26(I):

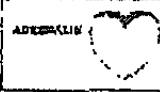
“1. The applicants had no genuine intention to put the mark into use in relation to the goods and services claimed at the date of application.

2. The proprietors are the owners of earlier trade marks consisting of or containing the trade mark ADRENALIN(E) dating back to 1996. The belief is these trade marks have not been used for a majority of or all of the goods and services for which they are registered.
3. The subsequent registration of Trade Mark No. 2550825 should not therefore be permitted to extend the proprietor's rights indefinitely.
4. Investigations undertaken have not shown any genuine use of the ADRENALIN(E) mark by the proprietors.
5. It is alleged that the application was filed in bad faith and the existence of the registration potentially provides the proprietors with rights to which they are not and/or should not be legally entitled.
6. From the attachment which is a printout from your website it is clear that the applicants for this mark also own other trade marks consisting of or containing the word ADRENALIN(E) which date back to, may be as far as 1984. For some reason this printout on your website does not appear to make reference to UK Registration No. 2061071B which is also in the name of Fiona Dodds and Sky Gracey. In addition, there are other registrations which we assume have similar links given the owners [sic] surname also being Gracey.
7. I understand that after registration the proprietor of the mark has five years in which to put the mark into use, failing which the registration may be open to challenge on the grounds of non-use. On the basis that the applicants already have earlier registrations for the identical mark where there does not appear to have been any use in relation to the relevant goods for years and years [sic]. It seems inequitable and unjust for the applicants to be able to perpetuate a right which cannot be challenged. I regard this as bad faith and not in accordance with "honest commercial practices".
8. Based upon the *Royal Enfield* Case it should be noted that Section 3(6) bad faith is the only ground on which this application is being opposed."

The printout referred to is shown below:

Trade Marks owned by Fiona Gabrielle Dodds & Sky Gracey

Your search found 4 results. Page 1 of 1 is shown.

Trade Mark No.	Mark Text	File Date	Status	Nice Classes	Image
UK00001229825	ADRENALIN	09/11/1984	Registered	25	
UK00001272104	ADRENALIN	16/07/1986	Registered	25	
UK00001524250	• ADRENALIN • ADRENALINE	19/01/1993	Registered	25	
UK00002550825	• ADRENALIN • ADRENALINE	17/05/2010	Registered	03 05 09 12 14 16 18 24 25 28 29 30 32 33 35 36 38 39 41 42 43 44 45	

5. The opposition to 3028625 is couched in almost identical terms. The non-use claim is set out in paragraph 3 of this decision.

6. Dodds Gracey filed notices of defence and counterstatements for all three actions. These were compiled by Fiona Dodds. Her counterstatements are reproduced here, verbatim:

(i) In relation to the invalidation and opposition claims:

“The trade mark was filed for the use or continued use by Sky Gracey and or Fiona Gabrielle Dodds, or with the consent of either or both, in relation to the goods or services specified, or there was a bona fide intention that the trade mark would be used in that way and the Oakmead Associates Limited created

on SAT.08.AUG.2015 is put to proof as to its knowledge of the workings of the mind of the man Sky Gracey or the [wo]man Fiona Gabrielle Dodds as both of man have zero knowledge of having received any communications from the Oakmead Associates Limited in relation to consent to its use of the trade mark or at all in relation to the trade mark since SAT.08.AUG.2015 and the Oakmead Associates Limited is put to proof that if consent to its use of the trade mark had been reasonably requested on behalf of the Oakmead Associates Limited or any third party – that consent, as perceived within the mind of Sky Gracey, and or the mind Fiona Gabrielle Dodds, at the time of filing of the trade mark, would have been consent that would have been other than reasonably provided.”

(ii) In relation to the non-use claim:

“Evidence of “proper reasons for non-use” including materially relevant wrongdoing [including fraud & oppression].”

7. I held a hearing on 12 May 2017, by which time all three sets of proceedings had been consolidated. This was the second scheduled date for the parties to be heard on substantive matters, for reasons which I will go on to explain. At the hearing, Oakmead was represented by Mr Jeremy Pennant of D Young & Co LLP, its professional representatives, by telephone conference. Nobody appeared for Dodds Gracey and no written submissions in lieu of attendance were received prior to the hearing. During the proceedings, Fiona Dodds stated that all her correspondence was to be treated as evidence. Oakmead filed formal evidence to support its pleadings, at the same time as filing written submissions.

### **Procedural matters**

8. I set out here a chronology of the proceedings following the filing of the defences in the invalidation and opposition proceedings, relevant correspondence and the case management decisions that have been taken. Both parties were self-represented until late in the proceedings, when Oakmead appointed D Young & Co LLP.

(i) In a letter dated 21 December 2015, the Registry consolidated the invalidation and opposition proceedings. A timetable was set for the consolidated proceedings, which entailed Oakmead filing evidence by 22 February 2016, and Dodds Gracey filing evidence two months later, with an opportunity for Oakmead to reply.

(ii) On 19 February 2016, Oakmead requested a one month extension of time saying that the consolidation had impacted on its preparation of evidence. This request was not filed on a Form TM9, which carries a £100 fee. The Registry replied on 6 April 2016, apologising for the delay, which had been due to technical difficulties connected with the processing of the case. The letter recognised that the time requested had, by now, elapsed and assumed that the evidence was ready. The letter permitted two more weeks “in the circumstances” for the consolidated evidence to be filed.

(iii) Oakmead filed evidence and written submissions on 19 April 2016. The Registry wrote to Oakmead on 22 April 2016, pointing out that certain exhibits required pagination by 6 May 2016. Dodds Gracey were given until 20 June 2016 to file evidence and/or written submissions (as per the timetable set on 21 December 2015).

(iv) On 20 June 2016, Fiona Dodds emailed the Registry requesting an extension of time of two months for the filing of evidence/submissions. No reasons were given for the request. Fiona Dodds referred to a wish to have witnesses attend the hearing for cross-examination. The Registry replied on 30 June 2016 to say that the request for an extension of time must be filed on a Form TM9R by 14 July 2016, with the £100 fee and full reasons in support of the request before it would be considered.

(v) Fiona Dodds sent an email to the Registry on 30 June 2016. Fiona Dodds drew attention to the fact that Oakmead had been allowed an extension of time “by means of different, ‘other than equal-footing’, criteria”. A Form TM9R was filed on 15 July 2016 (but was not paid for until 2 August 2016). The form stated that materially defective evidence had been filed by Oakmead and that Oakmead’s extension request had not been copied to Dodds Gracey and should not, therefore, have been

permitted. The form also referred to a request made in the letter of 1 July in which the Registry was asked by Fiona Dodds to provide a chronology in relation to Fiona Dodds being required to file a Form TM9R. There were no reasons which could be said to relate directly as to why Dodds Gracey had not filed their evidence by the due date of 20 June 2016.

(vi) On 22 August 2016, Fiona Dodds emailed the Registry to complain that matters raised in previous correspondence had been ignored; requesting disclosure of the reasons for the technical difficulties in processing the case; complaining that Oakmead's extension request had been made in secret; and requesting that Dodds Gracey's extension of time request for two months be allowed. A holding response was sent from the Registry, dated 23 August 2016.

(vii) On 29 August 2016, Fiona Dodds emailed the Registry requesting that she not be referred to as Ms, Miss or Mrs, but only as [wo]man, Fiona or Fiona Dodds.

(viii) The Registry wrote to Dodds Gracey on 7 September 2016 explaining that an extension of time request required reasons to support the request. Further time until 19 September 2016 was allowed for this purpose, with the proviso that if nothing was heard by that time, the evidence rounds would be closed.

(ix) Fiona Dodds emailed the Registry on 19 September 2016 to complain about lack of response to points raised in correspondence and the unfair treatment of the Dodds Gracey's extension request in comparison with Oakmead's extension request. Fiona Dodds also referred to another case between the two parties, 501303, which is the revocation case. This had not, at this point, been consolidated with the invalidation and opposition because the Form TM8(N) (defence and counterstatement) had not, as of the date of Fiona Dodds' letter, been filed (the form was filed on 25 October 2016). Proceedings are not consolidated until they are 'joined' (i.e. a defence is filed). Fiona Dodds also requested that a written itemised reply be given by the Registry to all outstanding matters for the purposes of appeal.

(x) The Registry's letter of 30 September 2016 stated that the evidence rounds were now concluded and, in a further letter of 4 October 2016, gave the parties the option

of a substantive decision being made from the papers or following a hearing. Oakmead replied on 17 October 2016 to request a hearing.

(xi) The Registry's letter of 21 October 2016 set a date and time for the substantive hearing as Tuesday 6 December 2016, with the Hearing Officer appearing via video conference from the IPO's office in Newport. The letter requested that the parties inform the Registry within 14 days as to who would represent them at the hearing.

(xii) Fiona Dodds filed a Form TM5 (request for a statement of reasons for registrar's decision) on 1 November 2016. This was acknowledged by the Registry on 9 November 2016, which noted that a hearing was scheduled and therefore the Registry did not intend to take any further action with regard to the Form TM5 as it was not understood why it had been filed. Fiona Dodds emailed the Registry on 25 November 2016 with a list of complaints regarding the extension, the consolidation, a request for disclosure, lack of explanation, lack of a refund, and that she had been addressed as 'Madam' in correspondence. A further email was sent on 27 November 2016 repeating the complaints, adding the lack of processing of the Form TM5, and requesting that the main hearing scheduled for 6 December 2016 be adjourned, that 501303 be consolidated, and that a case management conference, via telephone, be appointed for an agreeable time.


(xiii) The Registry replied on 28 November 2016, stating that in view of the proximity of the main hearing date (6 December 2016), the Hearing Officer would deal with Fiona Dodds' concerns as a preliminary issue and, if necessary, adjourn the hearing, depending on the outcome of the preliminary issues. The letter stated that both parties had the option to attend the hearing via video conference from London (the previous letter dated 21 October 2016 had referred to the option of attending in Newport), or via the telephone. The letter asked for confirmation as to how Fiona Dodds wished to attend the hearing and that if she chose to attend by telephone, a contact telephone number should be provided. Unfortunately, the letter addressed Fiona Dodds as Madam (Sir and Madam are the default modes of address on the Registry's electronic case processing system).



(xiv) Later that day (28 November 2016), Fiona Dodds emailed the Registry, reiterating her complaints, and requesting the name of the Hearing Officer be supplied. Ms Dodds specifically asked for the main hearing (scheduled for 6 December 2016) to be adjourned and to be replaced with a case management conference to focus exclusively on case management matters.


(xv) Fiona Dodds sent a further email the following day (29 November 2016), reproduced here:

[CA000500964] **Notice** [DODDS-GRACEY ('A') & OAKMEAD ('Q')] **TUE.29.NOV.2016** at 2337.PDF @ Page 1 to 3  
[re. FRI.19.FEB.2016 at 0957 Email, by DavidJB \*man, oppressively covertly processed fee&form-less eot, in secret, by Registr

- (1) To. Raoul Colombo \*man [\*by the Grace of God in God's image] acting via [Raoul.Colombo@ipo.gov.uk](mailto:Raoul.Colombo@ipo.gov.uk) as responsible for the Registrar / Sean Dennehey \*man
  - (1.1) To. Sean Dennehey \*man acting via [sean.dennehey@ipo.gov.uk](mailto:sean.dennehey@ipo.gov.uk)
  - (1.2) Cc. \*man / \*[wo]man fulfilling TM5 acting via [TribunalSection@ipo.gov.uk](mailto:TribunalSection@ipo.gov.uk)
  - (1.3) Cc. Allan James \*man acting via [allan.james@ipo.gov.uk](mailto:allan.james@ipo.gov.uk)
  - (1.4) Cc. Jeremy B Pennant \*man acting via [jbp@dyoung.com](mailto:jbp@dyoung.com)
  - (1.5) Cc. David J Beckman \*man acting for 'CAOponent', the "Q", via email.
- (2) re. 3-page **MON.28.NOV.2016 Notice** emailed **TUE.29.NOV.2016** at 0314 - We should agree, please re. peaceable respect for my **MON.19.SEP.2016 Notice**, that -
  - (2.1) i wish for Raoul Colombo \*man [RaoulC \*man] or Sean Dennehey \*man [SeanD \*man] to acknowledge the **28.NOV Notice** has been received by SeanD \*man;
  - (2.2) a \*man is a materially different capacity to a registered legal person [reg.lp] and a \*man has legal and God given rights to be called by a \*man's Christian name;
  - (2.3) i wish for RaoulC \*man, or the reg.lp-Registrar [Registrar], to acknowledge that the **28.NOV Notice**, requiring the **MON.31.OCT.2016 TM5** to be properly processed by the Registrar before **THU.01.DEC.2016**, includes a copy of 2-page **MON.29.AUG.2016 Notice** of my right to be recognised in the capacity of \*man rather than in the capacity of reg.lp; and
  - (2.4) irrespective of **29.AUG Notice** & **19.SEP Notice** - the "Q", reg.lp-9722810, together with 'D YOUNG', reg.lp-OC352154, acting via David J Beckman \*man [DavidJB \*man] & Jeremy B Pennant \*man [JeremyBP \*man], either willfully, or via apparent reckless indifference to the truth [malice / misconduct / negligence], appear engaged in fraud upon primary legislation including the **Confirmation of the Charters** [1297] Section 1 e.g. by violation of the **Great Charter of Liberties** [1224/1225] Chapter 29 & 37/38 and, by way of DavidJB \*man & JeremyBP \*man, such apparent wrongdoing apparently includes indictable offence(s) including violation of the rule-of-law requiring reg.lp, and \*man, to act without engaging to in any way 'destroy' God's peace, \*man's peace, my peace, or the peace of \*man of my family as promised, before & on behalf of God, by the Grace of God, by Edgar on **WHIT.973**, Edward I on **TUE.05.NOV.1297**, and Elizabeth II on **TUE.02.JUN.1953**;
  - (2.5) i wish for RaoulC \*man to please, before **01.DEC**, provide the name of the \*man / [wo]man, acting as Hearing Officer, who was engaged in the process of the oppressive covert **FRI.19.FEB.2016** application for 1 month extension of time '**MON.22.FEB.2016** to **TUE.22.MAR.2016**' during which period zero **Q** evidence was filed or served;
  - (2.6) i wish for the **19.SEP** related **31.OCT TM5** to be processed before **01.DEC**; or
  - (2.7) i wish for JeremyBP \*man to help protect SeanD \*man from further apparent misconduct in public office by way of providing, before **01.DEC**, written evidence that DavidJB \*man has been advised to consent to - (a) the **TUE.06.DEC.2016 nullity** 'main hearing' being formally declared annulled and (b) consolidation [re. #CA000501303] - at least because -
  - (2.8) i wish to arrange an agreeable peaceable private resolution, via JeremyBP \*man, during a peacefull Christmas period.
- (3) re. Capacity - Warm thanks i \*[wo]man x fiona  acting for **A**.

(xvi) The Registry replied on 30 November 2016, stating that all the issues raised in correspondence would be dealt with at the hearing before me on 6 December 2016, at 2pm. Fiona Dodds sent an email to the Registry later that day asking for the names of all those, other than me, who had been involved in the process of Oakmead's application for an extension of time, and for the proper processing of the Form TM5. The Registry replied, appearing to misinterpret the question, saying that I was the only hearing officer who had dealt with these proceedings. The following day (1 December 2017), Fiona Dodds emailed the Registry:

[CA000500964] **Notice** [DODDS-GRACEY ('A') & OAKMEAD ('Q')] **THU.01.DEC.2016** at 2355.PDF @ Page 1 to 2 .  
[re. FRI.19.FEB.2016 at 0957 Email, by DavidJB \*man, oppressively covertly processed fee&form-less eot, in secret, by Registrar]

- (1) To. Raoul Colombo \*man [\*by the Grace of God in God's image] acting via [Raoul.Colombo@ipo.gov.uk](mailto:Raoul.Colombo@ipo.gov.uk) as responsible for the Registrar / Sean Dennehey \*man
  - (1.1) To. Sean Dennehey \*man acting via [sean.dennehey@ipo.gov.uk](mailto:sean.dennehey@ipo.gov.uk)
  - (1.2) Cc. \*man / \*[wo]man fulfilling TM5 acting via [TribunalSection@ipo.gov.uk](mailto:TribunalSection@ipo.gov.uk)
  - (1.3) Cc. Allan James \*man acting via [allan.james@ipo.gov.uk](mailto:allan.james@ipo.gov.uk)
  - (1.4) Cc. Jeremy B Pennant \*man acting via [jbp@dyoung.com](mailto:jbp@dyoung.com)
  - (1.5) Cc. David J Beckman \*man acting for 'CAOpponent', the "Q", via email.
- (2) re. 1-page WED.30.NOV.2016 Notice emailed THU.01.DEC.2016 at 0519 - We should agree in God's peace, please re. peaceable respect for the MON.19.SEP.2016 Notice, that before FRI.02.DEC.2016 at 1130, via return email, i wish Raoul Colombo \*man [RaoulC \*man], on behalf of the Registrar, to -
  - (2.1) please acknowledge receipt of the 30.NOV Notice;
  - (2.2) please provide the name of each \*man / \*[wo]man acting as Hearing Officer, other than Judi Pike \*[wo]man, who has been involved [with Carl White \*man acting as an 'Examiner Officer'], in the process of the Q FRI.19.FEB.2016 application for a 1 [one] month extension of time - from 'MON.22.FEB.2016 to TUE.22.MAR.2016' [during which period zero Q evidence was filed or served];
  - (2.3) please acknowledge that the 'complaint' outlined by the THU.19.JUL.2016 Notice, as *per* exhibit page #2, remains outstanding e.g. as updated by 19.SEP Notice;
  - (2.4) please acknowledge RaoulC \*man is co-ordinating resolution of the 'complaint';
  - (2.5) please acknowledge that the Registrar is required, including by mandatory primary legislation, to disclose 'information' at least according to obligations *per* Common Law and the **Freedom Of Information Act 2000** [FOIA];
  - (2.6) please say when to expect receipt of relevant information re. (a) lack of any Registrar "procedural hearing" in NOV.2016, as compared to NOV.2015; and (b) the number of procedural, main, and appeal hearings - including detail of the fees charged - in the 13 months, NOV.2014 to NOV.2015, and NOV.2015 to NOV.2016; and
  - (2.7) please confirm that any "main hearing" appointment published, re. present case, on any public web page has been withdrawn from publication pending a "procedural hearing" appointment organised upon an agreeable date in JAN.2017 'not before 2pm';  
- at least because -
  - (2.8) given notice re. (a) the 19.SEP Notice; and (b) the knowingly withheld process of the MON.31.OCT.2016 TM5; any subsequent endorsing of a "main hearing", seeking to rely upon *nullity* 'filed' Q evidence, is apparent indictable offence "wrongdoing", including war against God, at least because the Q [aka 9722810] violates primary legislation including the **Confirmation of the Charters** [1297] and violates God's peace, the Kingdom's peace, \*man's peace, my peace, and the peace of \*man of my family.
- (3) re. Capacity - Warm thanks i \*[wo]man x fiona  acting for A of \*man

This email attached an email date 19 July 2016, which does not appear in the electronic database of correspondence received for these proceedings. The 19 July 2016 email refers to a request for the Registrar to provide a copy of all of the documents for the invalidation and opposition proceedings, for a chronology to be provided; that there should be no charge for photocopying costs; and, for the email to be treated as a formal complaint to the Registrar. It seems as though this email was either not received by the Registry, or went astray and was never uploaded to the electronic case file (in relation to which there had been technical processing difficulties).

(xvii) On 2 December 2016, D Young & Co LLP was appointed as Oakmead's representative and address for service, via the filing of Form TM33P. As I have already explained, the hearing before me was scheduled for 2pm on Tuesday 6 December 2016. Mr Jeremy Pennant, the attorney at D Young & Co LLP now acting for Oakmead, filed his skeleton argument on 2 December 2016, copied to Dodds Gracey at 1.50pm that day. No contact was made by Dodds Gracey in relation to the hearing; that is, whether or not they would attend.

(xviii) On 8 December 2016, I sent this letter (to both parties), giving case management decisions relating to seven issues which I had been able to extract from the correspondence filed by Fiona Dodds set out above. The seven issues were: copies of all the file papers; disclosure; Oakmead's allegedly defective evidence; the form TM5; consolidation; the extension(s) of time; and cross-examination. It is fair to say that the written style of Fiona Dodds' correspondence, as can be seen from the reproductions above, has meant that the contents and their meaning are not easily understood.

"Dear Fiona Dodds,

This letter is a record of the outcome of Tuesday's hearing. It also stands as a statement of grounds for the directions I gave at the hearing and which are set out in this letter. A transcript of the hearing will be available in the next few days and a copy of that will be sent to you, as requested in your letter of 6 December 2016.

In your letter dated 27 November 2016, at point 2.4, you asked for the main hearing which was scheduled for 6 December 2016 to be adjourned and for a telephone case management conference to be appointed. Since a hearing was already scheduled for 2pm on 6 December 2016 and, therefore, Tribunal resources (including my time as a Hearing Officer) had already been allocated to this case, the Tribunal wrote to you on 28 November 2016, saying:

“In view of the proximity of the main hearing date, 6 December 2016, the hearing officer will deal with your concerns as a preliminary issue and if necessary adjourn the hearing, depending on the outcome of the preliminary issues.

Please note, both parties have the option to attend the hearing, via video conference facilities in the London Office or via telephone. It is feasible to have one party via video conference and the other party participating via telephone. Please will you provide confirmation of how you wish to attend the hearing. If you choose to participate via the telephone a contact number should be provided.”

No reply was received. The other party had already indicated it would attend the hearing by video conference and Mr Jeremy Pennant, of D. Young & Co, appeared for the opponent/applicant for cancellation (“Oakmead”).

Consequently, at 2pm on Tuesday, Mr Pennant was present in the IPO’s London office, ready to attend the hearing. You did not appear by video conference. The Hearings Clerk made two attempts to contact you on the telephone number which you gave in your form TM8s (defences), but without success (straight to voicemail).

Having given you the opportunity to be heard on the procedural concerns you raised in correspondence, you chose not to attend the hearing. The consequence of this is that you have exhausted your right to be heard on the

matters you have raised. I dealt with your concerns as a series of case management directions, all under rule 62(1) of the Trade Marks Rules 2008 (as amended). I now list these directions as numbered paragraphs.

(i) Copies of all correspondence on the files: I will arrange for this to be sent along with this letter, by both recorded mail and by ordinary mail. This letter will also be sent to you via email. Oakmead's letter of 19 February 2016 should have been copied to you by Oakmead when it was sent to the Tribunal. There is no indication on Oakmead's letter that it was.

(ii) Disclosure: there appear to be two requests for disclosure. The first is in respect of the aspects of Oakmead's evidence which deal with a property (house) dispute. This is entirely irrelevant to the matters in this case and I will take no notice of this particular evidence. Consequently, the evidence is not material and there is no point in ordering disclosure in relation to this evidence. The second request for disclosure relates to the technical difficulties referred to in the Tribunal's letter of 6 April 2016. There is nothing sinister or covert about this: the Tribunal's electronic case processing system, for some reason, had difficulty joining the two cases. In fact, for a time, it was not possible to locate or to view the cases on the system. This glitch was eventually resolved and case processing resumed with the issuing of the Tribunal's letter dated 6 April 2016.

(iii) Defective evidence: there are no material defects in Oakmead's evidence. The witnesses have stated that the contents of their witness statements are from their own knowledge and that they are authorised to make their statements. It is unnecessary for them to identify which parts are opinion: that is a matter for me to decide. The wording of the statement of truth comes down to semantics. It makes no material difference whether the wording is "I believe the facts stated within this statement are true" or "I believe the facts contained within this statement are true". I note that your letter of 6 December 2016 ends with a statement of truth which is different again.

(iv) The form TM5: the Tribunal, having already appointed a hearing, did not understand why you filed a form TM5. It seems to me that you filed a TM5 to request a written statement of what decisions had been taken thus far and why. The hearing I held on Tuesday and this letter both supersede the case management decisions taken thus far.

(v) A third case between the same parties: during the course of my preparation for the hearing, it came to my attention that there is a third case. This is an application for revocation on the grounds of non-use made by Oakmead against your registration number 2550825, which is also the registration the subject of Oakmead's invalidation application. In the third case (501303), your defence is that you have proper reasons for non-use, thereby admitting that there has been no use. In the two cases which have already been consolidated, the section 3(6) ground (in both) has been pleaded on the basis that you had no intention to use the trade marks when they were filed. The issues are, therefore, very closely related and it is likely that the evidence for all three cases will cover essentially the same matters. I have, therefore, decided to consolidate all three cases. This is in the interests of efficiency for the parties and for the Tribunal, in accordance with the Overriding Objective in the Civil Procedure Rules, in particular parts 1.1(b), (d) and (e) and 1.4 (i). Rule 62(1)(g) of the Trade Marks Rules 2008 allows for consolidation of proceedings before the Registrar. **The period for you to file evidence is therefore re-set so that you may file evidence for all three consolidated cases on or before 9 February 2017<sup>1</sup>.**

(vi) The refusal of your request for an extension of time and the form TM9R to file evidence: in view of the consolidation of all three cases, this has now become moot. I understand the points you make about Oakmead having had an extension without having had to file a form TM9. The reason which Oakmead gave was that consolidation of the first two cases meant extra time was needed. Having now consolidated all three cases, I am placing the parties on an equal footing by allowing you a further two months to file

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<sup>1</sup> Although I said 6 February 2017 to Mr Pennant, in view of the fact that this letter is dated 8 December 2016, the two month period will commence tomorrow, 9 December 2016.

evidence, even though you are already halfway through the period for filing evidence in the revocation case. I will also arrange for the TM9 fee to be refunded to you since your request has been superseded by my decision to consolidate all the cases.

(vii) Request for cross-examination: if a properly constituted request is made in accordance with Tribunal Practice Notice 3/2010, it will be considered.

<http://webarchive.nationalarchives.gov.uk/tna/20140603093547/http://www.ipo.gov.uk/pro-types/pro-patent/p-law/p-tpn/p-tpn-2010/p-tpn-32010.htm>

### **Next steps**

**You have until 9 February 2017 to file evidence for all three cases which are now consolidated.** All evidence from now onwards should be headed up for all three cases, and should be paginated where exhibits run to more than four pages. There is no need to reply to the evidence from Oakmead about the property (house) dispute because it is irrelevant.

Both parties should bear in mind the need to assist the Tribunal (and me) by proportionate behaviour so that the proceedings can be dealt with expeditiously, fairly and with due regard for an appropriate share of the Tribunal's resources which also need to be allotted to other cases.

### **Status of this decision**

My decision is an interim one in that it does not terminate the proceedings and I have not made an award of costs. Thus, in line with Rule 70 of the Trade Marks Rules 2008, an appeal against my decision can only be made independently of any appeal against the final, substantive decision, with the leave of the Registrar.

Any request for leave to appeal this decision independently of the final decision in these proceedings should be provided in writing **within 7 days of the date of this letter** and should be supported by full reasons for the

request. The request should, at the same time, be copied to the other side, who are allowed a further **7 days from the date the request for leave to appeal is received by them, to file any comments they might wish to make**; a decision on leave would then be made. If leave were granted, the period for actually giving notice of appeal under rule 71 would run from the date leave was granted.

Yours sincerely,

*Judi Pike*

**Principal Hearing Officer  
Trade Marks Registry**

(xix) As will be seen from my letter, I consolidated all three cases and re-set the timetable for Dodds Gracey to file evidence; thereby superseding the extension of time request and refunding to Dodds Gracey the £100 which they had paid to file the extension of time request on form TM9R. This placed the parties on an equal footing as concerned the extension of time, it being within my discretion under rules 20(4), 38(8) and 42(5) of the Trade Mark Rules 2008 (as amended) (“the Rules”) to give leave to either party to file evidence upon such terms as I thought fit, and under rule 62(1) to manage the proceedings. The due date for Dodds Gracey to file evidence was now set at 9 February 2017. A copy of the transcript of the hearing was sent to the parties on 21 December 2016.

(xx) No evidence was filed by 9 February 2017 and no request for further time was made. In the circumstances, on 16 March 2017, the Registry wrote to the parties to inform them that the evidence rounds had concluded and that the only evidence in the proceedings was that filed by Oakmead on 19 April 2016. Bearing in mind that Oakmead had originally asked for a hearing on the substantive grounds, another hearing was set by way of a letter to the parties dated 21 March 2017. The date set was Friday 12 May at 9.30am. As before, it was stated that I would be located in Newport and linked to the IPO’s London office by video conference. The parties were given the option of attending in London or Newport and were asked to provide,



within 14 days, details of who would represent them at the hearing. On 28 March 2017, the Hearings Clerk sent the parties a list of the indices to be used by me in the hearing when referring to the papers.

(xxi) On 4 April 2017, D Young & Co LLP wrote to the Registry to say that Mr Pennant would represent Oakmead at the hearing. No contact was received from Dodds Gracey. Mr Pennant's skeleton argument was filed on 10 May 2017 and a request was received from D Young & Co LLP for Mr Pennant to be able to attend by telephone, contact numbers being provided. This was agreed, together with a request for Mr Pennant's assistant to attend by video conference. Dodds Gracey were kept informed of these altered arrangements by copy email dated 10 May 2017. In that email, the Hearings Clerk specifically asked Fiona Dodds to advise whether she would be attending the hearing on Friday 12 May 2017 at 9.30am. The letter advised that she could attend by telephone if she wished and that, if that was the case, then she would need to provide a contact telephone number to the Registry.

(xxii) No contact was received from Dodds Gracey. At 9.30am on Friday 12 May 2012, I was located in the video conference hearing room in Newport, with Mr Pennant present on the telephone and his assistant attending in the London office via video conference, together with the stenographer. I asked the Hearings Clerk to attempt to contact Fiona Dodds on the telephone number on the defence forms, since no other telephone number had been made available. The call went straight to voicemail. I was satisfied that all reasonable attempts had been made to contact Dodds Gracey and that plenty of notice had been given that the hearing would be taking place at that date and time, by way of various items of correspondence as listed above in paragraphs (xx) and (xxi). The hearing therefore went ahead without Dodds Gracey represented or in attendance.

9. After the hearing had concluded, my attention was drawn to an email which had been received from Fiona Dodds on the day of the hearing. The email was received in the email inboxes of the various people in the IPO to whom it was sent (including mine and the IPO Tribunal Section's inbox) at 10.03am, 33 minutes after the hearing was scheduled to begin, and did begin. It is reproduced below:

(1) Evidence by Fiona Gabrielle Dodds \*[wo]man (\*by the Grace of God in God's image) re. 12.MAY at 0930 scheduled hearing on notice of **Gospel Law** Matthew ch.23 v.10 **KJV (1611)** {'... do not let yourself be called by title ...'} and violation of primary legislation including the **Confirmation of the Charters (1297)** s.1 {**Great Charter of Liberties** 1224/1225 ch.29 & ch.37/38}, **Observance of Due Process of Law (1368)** s.3, **Bill of Rights (1688)** {'... zero power to suspend/dispense law except by the express authority of Parliament ...'}, **Act of Settlement (1701)** ch.4, and c.f. **Trade Marks Act (1994)** [TMA] s.79(1) {'... There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed ...'}.

(1.1) To. Sean Dennehey \*man (\*by the Grace of God in God's image) who is mandated to never, without lawfull excuse, violate primary legislation including the **Treason Act (1351)** s.2 c.f. the **Coronation Oath Act (1688)** s.4 {'... solemnly promise ... to govern ... according to ... laws and customs ... in Mercy ... to the utmost ... maintain the Laws of God and the true profession of the Gospel ... I will perform and keep ... So help me God ...'} and c.f. the **Fraud Act (2006)** section 2(3) {'... fraud upon the facts / law ...'}; i.e. Sean promises to uphold the promises made by Elizabeth II \*[wo]man (temporall) / acting as Her Majesty the Queen [HM] (spirituall/perpetual) public servant office-title "Registrar" via [Sean.Dennehey@ipo.gov.uk](mailto:Sean.Dennehey@ipo.gov.uk)

(1.2) re. 9722810 [OAKMEAD ASSOCIATES LIMITED] 'O' FRI.19.FEB.2016 covert fee-less eot application re. O nullity 'evidence' - we should agree that **O** 'evidence' is null & void, and that prescribed fee needs to be paid, and that **A** must then have the right to challenge any eot appn, on paper, or via a hearing, at least because -

(1.2.1) 9722810/**O** is a spirituall/perpetual entity rather than temporall \*man protected by the **Great Charter of Liberties** ch.29 {'... to no man-folk shall we sell justice ...'}.

(1.2.2) Sean has ignored evidence, on behalf of **A**, inc. 06.DEC & 07.DEC evidence.

(1.2.3) **O**, in violation of TMA s.79(1), has yet to pay the prescribed fee.

(1.2.4) The prescribed fee is mandatory.

(1.2.5) Sean has zero discretion re. fee c.f. **Kerly** 14ed # 5-132 '... Pharmedica's Appn [2000] R.P.C. 536; **Langley -v- North West Water Authority** [1991] 3 All ER 610 ...'.

(1.2.6) By waiving fee Sean lost iurisdiction *per Anisminic -v- FCC* (1968) UKHL 6.

(1.2.7) Waiving TMA s.79(1) fee violates the constitution *per Auckland-Harbour -v- The-King* (1923) [1924] AC 318-327 (PC) Viscount Haldane {'... unlawfull use of finances/fees relating to the Consolidated Fund is *ultra vires* ...'}.

Statement of Truth ... i beleve that all the facts recorded via this Notice are true ...

(2) re. Capacity - Warm thanks i \*[wo]man x fiona  acting for **A** of \*man

(2.1) Cc. Allan James \*man who sometimes acts as HM public servant office-title "Head of Trade Marks" via [Allan.James@ipo.gov.uk](mailto:Allan.James@ipo.gov.uk) {re. Barrell Jurisdiction}

(2.2) Cc. Raoul Colombo \*man acting via [Raoul.Colombo@ipo.gov.uk](mailto:Raoul.Colombo@ipo.gov.uk)

(2.3) Cc. Jeremy B Pennant \*man acting via [JPB@dyoung.com](mailto:JPB@dyoung.com)

(2.4) Cc. David J Beckman \*man acting for 'CA**O**pponent', the "**O**", via email.

10. This email appears to be contesting the admission of the applicant's evidence because it was not filed on the correct form and the fee was not paid. If so, it is far

too late in the day for such a complaint. This is for several reasons. Firstly, this email was not received, and presumably therefore not sent, until after the hearing had started. There was ample notice of the hearing and therefore ample time to have made this point prior to the hearing.

11. Secondly, the registry accepted Oakmead's request for more time on 6 April 2006 and the evidence was received on 19 April 2006. No objection was received from Dodds Gracey. The registry set the period for Dodds Gracey to file evidence as 20 June 2016. Nothing was received from Dodds Gracey until their request for a further two months to file evidence, by way of Fiona Dodds' email of 20 June 2016. That email stated that Oakmead's evidence was defective as to the form of the statement of truth, whether the contents were within the witness' own knowledge, whether opinion or whether derived from other sources. At no point in this email did Fiona Dodds take issue with the allowance of extra time for Oakmead to file its evidence or that it was not filed on a form TM9 with the fee.

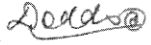
12. Thirdly, neither Fiona Dodds or anyone else representing Dodds Gracey attended the hearing/case management conference on 6 December 2016. Part of my case management directions were that I placed Dodds Gracey on an equal footing with Oakmead by allowing further time (on top of the time allowed in the hitherto unconsolidated revocation) for Dodds Gracey's evidence in the now 3-case consolidated proceedings and I refunded the fee that they had paid for the form TM9R to be filed. Dodds Gracey was allowed until 9 February 2017 to file evidence. They did not file evidence by that date and did not say anything about the admission of Oakmead's evidence. Nor did they request leave to appeal my case management decision, conveyed to them in my letter of 8 December 2016.

13. At no point from 8 December 2016, when Dodds Gracey received my letter, to 12 May 2017 did Dodds Gracey complain about the admission of Oakmead's evidence. It is highly unfair to raise such a point now when so much time and opportunity has passed, and to do so half an hour after the hearing had started, at which Dodds Gracey were not present, not represented and had not indicated whether or not they would be, despite being asked by the Registry. Dodds Gracey

have long since exhausted their right to be heard on the admissibility of Oakmead's request for an extension of time.

14. On 15 May 2007, a further email was received from Fiona Dodds:

[CA000500964] **Notice** [Dodds-Gracey ('A') & 9722810 ('Q')] **SUN.14.MAY.2017** (c) 2317.PDF - **p.#1to#1** ...  
{Witness Evidence re. Sean *ultra vires* acts re. TMA s.79(1) & FRI.19.FEB.2016 fee-less eot appn re. **Q nullity** 'evidence'}

- (1.) **To.** Sean Dennehey \*man (\*by the Grace of God in God's image) re. who is mandated to never, without lawful excuse, violate primary legislation including the **Treason Act** (1351) s.2 c.f. the **Coronation Oath Act** [1688] s.4 {"... solemnly promise ... to govern ... according to ... laws and customs ... in Mercy ... to the utmost ... maintain the Laws of God and the true profession of the Gospel ... I will perform and keep ... So help me God ..."} and c.f. the **Fraud Act** [2006] s.2(3) {"... fraud upon the facts / law ..."}; i.e. in respect of promises made, by Elizabeth II \*[wo]man (temporall person) and thereby also on behalf of related corporate entity public office/s including 'The Crown' / 'Her Majesty the Queen' [HM] (spirituall / perpetuall person/s), likewise Sean is obligated to **uphold** those promises as \*subject of Elizabeth Alexandra Mary \*[wo]man and/or as actor/citizen/officer/public-servant acting as/for the HM/Crown citizen/office title 'REGISTRAR'.
- (2.) **Sean, hi, within 7 days** i.e. before TUE.23.MAY.2017 -
  - (2.1.) Please provide transcript, and audio recording, of FRI.12.MAY.2017 'hearing'; and
  - (2.2.) Please acknowledge OC352154 [D.YOUNG] "duty" not to defraud the REGISTRAR;
  - (2.3.) Please acknowledge wording of written Witness Evidence, recorded on behalf of **A**, via -
    - (2.3.1.) **Notice TUE.06.DEC.2016** - "... (2.1) please note that every document bearing my signature is hereby solemnly affirmed to be a record of true facts relating to all related proceedings and is to be referred to as evidence by way of the present statement of truth ..."; and
    - (2.3.2.) **Notice WED.07.DEC.2016** - "... (1.4) Cc. Judi Pike \*[wo]man who sometimes acts as HM public servant office-title "Hearing Officer" via [Judi.Pike@ipo.gov.uk](mailto:Judi.Pike@ipo.gov.uk) {re. *ultra vires* public 'main hearing' on ... 06.DEC ... at 1400 without jurisdiction in apparent violation of law including **Confirmation of the Charters** [1297] s.1 and c.f. **Trade Marks Act 1994** s.79(1)} ... (1.7) Cc. Jeremy B Pennant \*man acting via [JPB@dyoung.com](mailto:JPB@dyoung.com) ...".
- (3.) **Rule-of-Law ref.** Fraud vitiates, **fraus omnia corrumpit**, fraudulent acts - c.f. *Lazarus Estates Ltd -v- Beasley* (1956) 1 QB 702-722 [CA] *Morris, Parker, per Denning* [Lord-Justice] at p.#712 - "... *Fraud unravels everything* ..."; and c.f. *Kokkinakis -v- Greece* (1993) [1994] 17 EHRR 397-441 [ECHR] *Bernhardt, Pettiti, De Meyer, Valticos, Martens, Foighel, Loizou, Lopes Rocha, per Ryssdal* [President-Judge] at p.#397 - "... *Freedom of thought, conscience and religion: interference (Art. 9)* ..."; and c.f. *Arthur J S Hall & Co -v- Simons (AP)* (2000) [2002] 1 AC 615 [HL] *Browne, Wilkinson, Steyn, Hoffmann, Hutton, Hobhouse, Millet, per Hope* [Law-Lord] at p.#715 - "... *advocate's duty to the court ... authorities* ..."; and c.f. *Regina -v- J* (2004) [2005] 1 AC 562-592 [HL] *Bingham, Steyn, Clyde, Hale, per Rodger* [Law-Lord] at para.#64 - "... *The notion of a fraud upon an Act, acting in fraudem legis, is ancient* ...".
- (4.) **Cc.** Allan James \*man and, as actor (officer), acting as Crown officer title "Head of Trade Marks", for the Crown pub. office of REGISTRAR {re. "**Barrell Jurisdiction**" c.f. In re. **Barrell Enterprises** (1973) 1 WLR 19 and c.f. In re. **L and B (Children)** (2013) UKSC 8};
  - (4.1.) Cc. Jeremy B Pennant \*man / officer for Crown priv. office reg. OC352154 [D.YOUNG];
  - (4.2.) Cc. Raoul Colombo \*man / 'complaints officer' Crown pub. office of REGISTRAR; and
  - (4.3.) Cc. David J Beckman \*man / officer for Crown priv. office reg. 9722810 [OAKMEAD].
- (5.) **From.** Fiona Gabrielle Dodds \*[wo]man re. **Laws of God** inc. the **Gospel Law** Matthew ch.23 v.10 (re. v.8 to v.12) **KJV** (1611) {"... *unlawfull to be called by title* ..."} and **Q** violation of primary legislation inc. - **Confirmation of the Charters** (1297) s.1 {**Great Charter of Liberties** (1224/1225) ch.29 ('*rights of man-folk*') & ch.37/38 ('*nullity if ch.29 violated*')}; **Observance of Due Process of Law** (1368) s.3; and c.f. **Petition of Right** [1628]; c.f. **Bill of Rights** [1688/1689] {"... *zero power to suspend-law, or enforce-law, except by the express authority of Parliament* ..."}; c.f. **Act of Settlement** [1701] ch.4; and c.f. **Trade Marks Act** [1994] 'TMA' s.79(1) {"... *There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed* ..."}.
  - (5.1.) **Statement of Truth** ... i beleve that all the facts recorded via this Notice are true ...
  - (5.2.) **Capacity** - Warm thanks i \*[wo]man x fiona  on behalf of **A** of \*man

12. It is not clear what is being asked for in this email. A copy of the transcript of the hearing held on 12 May 2017 has been provided to the parties. I turn now to the substantive decision, beginning with a summary of the evidence filed in these consolidated proceedings.

## **Evidence**

13. Although Fiona Dodds stated that all her correspondence was to be treated as evidence, none of the correspondence contains facts which go to the section 3(6) ground, or to the issues of use or proper reasons for non-use. I have not, therefore, included the contents of the correspondence in the evidence summary.

14. Oakmead's evidence comes from David Beckman. His witness statement is dated 19 April 2016. Mr Beckman states that his company is associated with Bishop IP Investigations Ltd (hereafter "Bishop"), which has previously conducted investigations into the business activities of Dodds Gracey. Exhibit OA1 to Mr Beckman's witness statement is a witness statement of Graham Robinson of Bishop, dated 19 April 2016, which describes the investigations and findings.

15. Mr Robinson exhibits at Exhibit BIP01 a copy of Bishop's investigation report<sup>2</sup>, which is dated 31 July 2014. Points which appear potentially relevant to the issues in these proceedings are as follows:

- Nicholas Gracey, Fiona Dodds and other Gracey family members own numerous UK trade marks, including three registrations for Adrenalin/Adrenaline in class 32. The investigators found no evidence of use of the mark in class 32. The Gracey family and Fiona Dodds appear in numerous combinations together as proprietors of trade marks, as per a screenshot from the ADP account register on the IPO website on page 4 of the report.

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<sup>2</sup> The report is headed Farncombe International, which is a trading name of Bishop.

- The website at [adrenalin.co.uk/adrenaline.co.uk](http://adrenalin.co.uk/adrenaline.co.uk) has not changed significantly since first reviewed in 2002. The website offers health and fitness consultancy sessions with specialists Fiona Gabrielle Dodds, Nicholas Dynes Gracey and Colin Theodore Gracey. The website advertises Adrenalin branded clothing and footwear, and includes a long alphabetical list of buttons, all of which incorporate the mark, many of which are linked to related pages or third party websites, or were not linked to any other pages. Nicholas Dynes Gracey is described as a graduate in medical biochemistry from Birmingham University, founder of Adrenaline Research and creator of CLOtherapy clothing. The reviews and references all date from the 1990s. Nicholas Dynes Gracey's Facebook page links to the Adrenalin Polo Clothing Facebook page, which says "We are a new, cool clothing company with our roots in polo...buy yours here: [www.adpolo.co.uk](http://www.adpolo.co.uk). Men's and ladies' clothing was offered, some of which was Adrenalin branded. The most recent post was dated 22 January 2013.
- At the time of the report, none of the Gracey Family members or Fiona Dodds were formally linked to any active trading companies in the UK. Adrenalin Ltd, which was dissolved on 10 October 2012, was classified at registration as a non-trading company. The accounts were abbreviated, so it is not possible to say whether the company ever traded.
- Bishop had 'recently' tried to purchase the registrations in several classes, without success. The only response was a brief email from 'skygracey' on 8 November 2012, stating that 'they' would only respond to an offer "hundreds of times the magnitude of the figure you're mentioning" and even £100,000 was "way below what they would expect" since the amounts they had been receiving from Nike and Brooks "for breach of copyright" were more than that. 'They' would be more interested in granting a licence.
- The IPO database lists 27 trade mark decisions involving Nicholas Dynes Gracey, dating from 1998 to 2006. Some of these were the result of applications by third parties to cancel Adrenalin registrations on the grounds

that there had been no bona fide intention to use the mark, or that there was no genuine use of the mark for a continuous period of 5 years.

16. Oakmead's written submissions, dated 19 April 2016 and filed with its evidence, include the following paragraphs which, effectively, are a longer version of its section 3(6) pleadings:

"The Proprietors own several earlier trade marks consisting of or containing the trade mark ADRENALIN(E), dating back to as early as 1984. The trade marks all cover a very broad range of goods and services. Through an associated business, extensive investigations have been conducted (details of which are contained in the enclosed Witness Statements). The investigations revealed that these trade marks have not been used for a majority of the goods and services for which they are registered. The investigation has also revealed that trade mark protection for the ADRENALIN(E) name has been secured by filing trade marks in the name of other members of the Gracey family, such as 'Colin Gracey, Elizabeth Gracey, Nicholas Gracey, Stanley Gracey' – ADP account No 67566. This appears to be an effort on the part of the Proprietors to avoid it being found that one proprietor is filing trade marks in bad faith.

It is understood that trade mark right in the UK can only remain valid if they are put to genuine use within five years from the date of registration, and any subsequent continuous five year period thereafter. We believe that the Proprietors are more than aware of the potential vulnerability of their existing trade marks, especially in light of revocation cases which have been filed against their trade marks in the past. In turn, to avoid their trade mark rights becoming vulnerable to cancellation on the basis of non-use they have sought to file successive trade mark applications in order to maintain unchallengeable trade mark rights in the ADRENALIN(E) name. It is also notable that whilst successive applications have been filed, the earlier registrations have been maintained. This would ensure [sic] not only the Proprietors secure unchallengeable perpetual rights, but they still maintain early filing dates to exert against third parties, if required.

In effect, the Proprietors have sought to obtain perpetual rights which can indefinitely avoid challenge by a third party if the mark is not ever put to genuine use for all goods and services claimed. If the most recent application No 3028625 is allowed to proceed to registration it will essentially give the Proprietors a further five years of trade marks rights in the ADRENALIN(E) name which are not open to challenge if no use of made of the mark.

When a trade mark application is filed the applicant is required to state that the mark is in use or there is a bona fide intention to use the trade mark in respect of all the goods and services claimed. The investigations we have conducted clearly show that the Proprietors over the last 20 years have not put the ADRENALIN(E) trade marks to use for all of the goods and services covered. Nor did the investigations show any indication that the Proprietors have any current or future plans to commence use for all the goods and services claimed. In particular, our investigations show there has been no use of the ADRENALIN(E) trade mark on Class 32 goods. Therefore, it is our belief that the successive trade mark applications made by the Proprietors were filed each time with a false statement to the Proprietors having a bona fide intention to put the trade mark to genuine use in the UK for all of the goods and services covered.

The actions of the Proprietor in effect seek to prevent others who may have a legitimate interest in adopting and using the same or similar trade mark. This is inequitable and unjust and goes against the principles of “honest commercial practices”. The contested trade marks are simply the Proprietor’s systematic attempt to block potential future use of the ADRENALIN(E) name in the UK, for example, in respect of Class 32 goods. The behaviour of the Proprietors in this manner falls short of the standards of acceptable commercial behaviour.

The intentions and actions of the Proprietors in relation to the contested trade marks were not in ‘good faith’. The Proprietors have failed to explicitly deny the accusation and do not indicate they intend to provide evidence which



disputes the assertions made against them. We contend that there was no 'due cause' for the Proprietors to adopt the ADRENALIN(E) trade mark, in particular for Class 32 goods. The onus is on the Proprietors to dispel this allegation. However, the counterstatement filed by the Proprietors does not provide anything which can be said to confirm the trade marks are intended to be used by them for all goods and services covered, or that they were filed in 'good faith'."

## **Decision**

### Revocation application against 2550825

17. Oakmead's application for revocation is made under section 46(1)(a) of the Act on the grounds that there was no genuine use of the mark between 9 July 2011 and 8 July 2016, with an effective date of revocation of 9 July 2016. Dodds Gracey's defence (filed on form TM8(N)) and counterstatement stated:

"Evidence of "proper reasons for non-use" including materially relevant wrongdoing [including fraud & oppression]."

18. Evidence was not filed with the statutory defence form TM8(N), but under Rule 38(4), proprietors who choose not to file evidence with the TM8(N) are permitted a further period of not less than two months to file evidence:

"Where the proprietor fails to file evidence of use of the mark or evidence supporting the reasons for non-use of the mark within the period specified in paragraph (3) above the registrar shall specify a further period of not less than two months within which the evidence shall be filed".

19. As set out earlier in this decision, Dodds Gracey were allowed until 9 February 2017 to file evidence to support their defences for the consolidated proceedings, which included the revocation for non-use proceedings. No evidence supporting the defence of proper reasons for non-use was filed and no further time was requested for such purpose.

20. Rule 38(7) states:

“Where the proprietor fails to file evidence within the period specified under paragraph (3) or any further period specified under paragraph (4), the registrar may treat the proprietor as not opposing the application and the registration of the mark shall, unless the registrar directs otherwise, be revoked.”

21. Under the provisions of this rule, the Registrar may exercise discretion so as to treat the proprietors (Dodds Gracey) as opposing the application for revocation. No reasons have been advanced as to why such discretion should be exercised and I can see no reason to exercise such discretion. I, therefore, decline to do so. As a consequence, the application for revocation succeeds.

### **Revocation outcome**

22. Registration 2550825 is revoked. The effective date of revocation (under section 46(6)(b) of the Act<sup>3</sup>) is 9 July 2016.

### Invalidation application against 2550825

23. Section 3(6) of the Act states that:

“A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

24. The counterstatement says:

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<sup>3</sup> “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 existing at an earlier date, that date.”

“Oakmead Associates Limited is put to proof that if consent to its use of the trade mark had been reasonably requested on behalf of the Oakmead Associates Limited or any third party – that consent, as perceived within the mind of Sky Gracey, and or the mind Fiona Gabrielle Dodds, at the time of filing of the trade mark, would have been consent that would have been other than reasonably provided.”

25. In *Fianna Fail and Fine Gael v Patrick Melly* [2008] ETMR 41, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, pointed out that:

“Bad faith is an absolute, hence free-standing, ground for refusal of registration. It can be raised in relation to matters arising between applicants and third parties as well as between applicants and the Registrar.”

26. Anyone can apply to cancel a registration (or oppose an application) on absolute grounds. It is not contingent on the applicant/opponent having an interest in the mark (such as earlier rights, or its own application for registration). Therefore, Oakmead neither has to prove that it would have sought consent, nor that, hypothetically, if it had done so that consent would not have been forthcoming.

27. In *Red Bull GmbH v Sun Mark Ltd & Anr* [2012] EWHC 1929 and [2012] EWHC 2046 (Ch) (“Sun Mark”) Arnold J summarised the general principles underpinning section 3(6) as follows:

“Bad faith: general principles

130 A number of general principles concerning bad faith for the purposes of section 3(6) of the 1994 Act/ Article 3(2)(d) of the Directive/ Article 52(1)(b) of the Regulation are now fairly well established. (For a helpful discussion of many of these points, see N.M. Dawson, “Bad faith in European trade mark law” [2011] IPQ 229.)

131 First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see Case C-529/07

*Chocoladenfabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH* [2009] ECR I-4893 at [35].

132 Secondly, although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date: see *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2009] EHC 3032 (Ch), [2009] RPC 9 at [167] and cf. Case C-259/02 *La Mer Technology Inc v Laboratoires Goemar SA* [2004] ECR I-1159 at [31] and Case C-192/03 *Alcon Inc v OHIM* [2004] ECR I-8993 at [41].

133 Thirdly, a person is presumed to have acted in good faith unless the contrary is proved. An allegation of bad faith is a serious allegation which must be distinctly proved. The standard of proof is on the balance of probabilities but cogent evidence is required due to the seriousness of the allegation. It is not enough to prove facts which are also consistent with good faith: see *BRUTT Trade Marks* [2007] RPC 19 at [29], *von Rossum v Heinrich Mack Nachf. GmbH & Co KG* (Case R 336/207–2, OHIM Second Board of Appeal, 13 November 2007) at [22] and *Funke Kunststoffe GmbH v Astral Property Pty Ltd* (Case R 1621/2006-4, OHIM Fourth Board of Appeal, 21 December 2009) at [22].

134 Fourthly, bad faith includes not only dishonesty, but also “some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined”: see *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 and *DAAWAT Trade Mark* (Case C000659037/1, OHIM Cancellation Division, 28 June 2004 ) at [8].

135 Fifthly, section 3(6) of the 1994 Act, Article 3(2)(d) of the Directive and Article 52(1)(b) of the Regulation are intended to prevent abuse of the trade mark system: see *Melly's Trade Mark Application* [2008] RPC 20 at [51] and *CHOOSI Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) at [21]. As the case law makes clear, there are two main classes of abuse. The first concerns abuse vis-à-vis the relevant office, for

example where the applicant knowingly supplies untrue or misleading information in support of his application; and the second concerns abuse vis-à-vis third parties: see Cipriani at [185].

136 Sixthly, in order to determine whether the applicant acted in bad faith, the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case: see *Lindt v Hauswirth* at [37].

137 Seventhly, the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant's conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant's own standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry: see *AJIT WEEKLY Trade Mark* [2006] RPC 25 at [35]-[41], *GERSON Trade Mark* (Case R 916/2004-1, OHIM First Board of Appeal, 4 June 2009) at [53] and *Campbell v Hughes* [2011] RPC 21 at [36].

138 Eighthly, consideration must be given to the applicant's intention. As the CJEU stated in *Lindt v Hauswirth*:

“41. ... in order to determine whether there was bad faith, consideration must also be given to the applicant's intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant's intention at the relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 48).”

139. There have been a series of cases in which courts and tribunals have had to consider whether a lack of intention to use the trade mark on the part of the applicant constitutes bad faith within section 3(6) of the 1994 Act/Article 3(2)(d) of the Directive/Article 52(1)(b) of the Regulation. It should be noted at the outset that there are a number of variants of this question, including the following:

(1) whether the making of a declaration of intention to use the mark as required by section 32(3) of the 1994 Act, which is false because in fact the applicant did not intend to use the mark, amounts to bad faith;

(2) whether an intention to use the mark in relation to some goods covered the application, but not others - and hence a statement of intention to use that is true in relation to the former goods, but not in relation to the latter – amounts to bad faith; and

(3) whether a lack of intention to use amounts to bad faith if there are exacerbating factors, such as (a) an attempt to obtain protection for an unregistrable mark or (b) an attempt to block others from registering the mark by repeated applications.”

28. Although the revocation application has been successful, it is not an automatic sequitur that there was no intention to use the mark when the trade mark application was filed on 17 June 2010. Dodds Gracey signed the application form with a statement that they had a bona fide intention to use the mark for the goods and services for which registration was sought, as required by section 32(3) of the Act. I note that in *Demon Ale Trade Marks* [2000] RPC, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, stated:

“In the present case the objection under section 3(6) related to the applicant’s breach of a statutory requirement. Section 32(3) of the Act required him to be a person who could truthfully claim to have a bona fide intention that DEMON ALE should be used by him (or with his consent) as a trade mark for beer. His application for registration included a claim to that effect. However he had no such intention and could not truthfully claim that he did. That was enough, in my view, to justify rejection of his application under section 3(6). I see no reason to doubt that section 32(3) is compatible with Community law. The 8<sup>th</sup> recital to the Directive<sup>[4]</sup> specifically confirms that “*in order to reduce the total number of trade marks registered and protected in the Community .... it is essential to require that registered trade marks must actually be used or, if not used, be subject to revocation*”. I am satisfied that this is not a case which tests the limits of section 3(6) of the Act (article 3(2)(d) of the Directive) from the point of view of Community law.”

29. Recital 31 to Directive (EU) 2015/2436 states:

“Trade marks fulfil their purpose of distinguishing goods or services and allowing consumers to make informed choices only when they are actually used on the market. A requirement of use is also necessary in order to reduce the total number of trade marks registered and protected in the Union and, consequently, the number of conflicts which arise between them. It is therefore essential to require that registered trade marks actually be used in connection with the goods or services for which they are registered, or, if not

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<sup>4</sup> An earlier version of Recital 31 to Directive (EU) 2015/2436.

used in that connection within five years of the date of the completion of the registration procedure, be liable to be revoked.”

30. The essential function performed by a trade mark is that it enables consumers to distinguish the goods and services of one undertaking from another. If a mark is not being used, it cannot do this job. It also hinders other traders who are in a position to commercialise goods and services using the same or similar mark, thereby harming commerce and innovation.

31. Oakmead’s case is that Dodds Gracey, by sequentially re-filing ADRENALIN(E) applications, are able to maintain earlier rights in this mark because as each registration matures to the point where it becomes vulnerable to a non-use challenge, there is a younger registration which is not. The claim is that the registration under attack was made in bad faith because there was no intention to use it as a trade mark indicating the trade origin of goods and services but, rather, to keep the mark alive and indefinitely immune from a non-use attack.

32. Cited by Arnold J in *Red Bull*, paragraph 21 of *CHOOSI Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) states:

“Article 51(1)(b) CTMR<sup>[5]</sup> does not therefore allow applications for registration of trade marks to be made for abusive or fraudulent ends which are contrary to the objectives pursued by Community trade mark law. In such a hypothesis the applicant’s purpose is not to protect a trade mark according to its distinctive function but to wield the registration as a weapon or tool to reach an abusive or fraudulent end deviated from the legitimate functions of trade marks, the protection of which are the objectives pursued by the Community trade mark law.”

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<sup>5</sup> “A Community trade mark shall be declared invalid on application to the Office or on the basis of a counterclaim in infringement proceedings.

(a) ...

(b) where the applicant was acting in bad faith when he filed the application for the trade mark.”



33. Dodds Gracey's only answer to the claim is contained in their counterstatement, signed by Fiona Dodds. None of the correspondence filed during the proceedings addresses the claim, despite Fiona Dodds characterisation of the correspondence as evidence. Consequently, if Oakmead has established a *prima facie* case of bad faith, it will succeed, as per *Ferrero SpA's Trade Marks* [2004] RPC 29, paragraph 17, because Dodds Gracey have not answered the claim, other than an unsupported assertion in the counterstatement.

34. The following points, in combination, lead me to conclude that Oakmead has presented a *prima facie* case. There has been no use of the mark in relation to the registered goods and services since it was filed on 17 June 2010. Oakmead has not found any use; Dodds Gracey have not shown any use; and Dodds Gracey pleaded proper reasons for non-use in the revocation action against the same registration.

35. The volume, longevity of the various ADRENALIN(E) registrations without evidence of use, and the overlapping dates of the ADRENALIN(E) registrations and applications which are owned by various members of the Gracey family, as below (this is not all of the registrations):

- 1229890 (class 25), filed 9.11.1984, expired 2015
- 1272101 (class 25), filed 16.07.1986, registered
- 1524250 (class 25), filed 19.01.1993, registered
- 2106345 (various classes, including 25), filed 29.07.1996, expired 2016
- 2126620 (various classes, including 25), filed 27.12.1996, expired 2016
- 2392137 (various classes, including 25), filed 17.05.2005, expired 2015
- 2399047 (various classes, including 25), filed 09.08.2005, expired 2015
- 2550825 (various classes, including 25), filed 17.06.2010, registered
- The latest application on 30.10.2013, 3028625, opposed by Oakmead. ("Although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date", *Red Bull*).

36. In paragraph 51 of *Club Sail*, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, BL O/074/10 found that:

“It seems to have been a matter of administrative convenience that the opposed application for registration was filed in the name of Andrew Williams’ partner, Janet Wills, before being assigned to the Applicant. No argument to the contrary has been raised on its behalf. On the basis of the evidence on file, the knowledge, intentions and motives of Andrew Williams can properly be attributed to the Applicant.”

I find that a finding of bad faith is not avoided simply by different members of the Gracey family owning the registrations, rather than the same person.

37. In *Ferrero SpA’s Trade Marks*, Mr David Kitchen QC, sitting as the Appointed Person, upheld a finding that the proprietor had applied to register trade marks in bad faith on the basis of unanswered evidence that it had been ‘stockpiling’ unused marks. He said:

“I have also come to the conclusion that the hearing officer was entitled to find the allegation established on the basis of the materials before him. By the date of Mr Rickard's declaration the registered proprietors had filed in excess of 60 applications to register trade marks including the word KINDER but had only ever used six. The number of applications had increased to some 68 by the date of Ms Bucks' witness statement. The large number of unused applications and the period of time over which the applications had been made led Mr Rickard to conclude that the registered proprietors were filing applications without any real and effective intention to use them. The evidence of Mr Rickard was never answered by the registered proprietors. No attempt was made to justify or explain the filing policy.”

Dodds Gracey, as in *Ferrero*, have filed a number of unused applications over a period of time and have not answered Oakmead’s evidence, making no attempt to justify or explain the filing policy.

38. The reviews and references on the ADRENALIN website all date from the 1990s, and the website has not changed significantly since first reviewed in 2002.

Even if there was once an intention to trade in clothing, this was some time ago. In a Trade Mark Registry decision in 1999, BL O/336/99, Trocadero Plc attacked seven registrations belonging to Nicholas Dynes Gracey for non-use and bad faith. There was no use of the marks (although some survived the bad faith attack for a limited range of clothing) and the revocations succeeded. This was in 1999. Also issued in 1999, was a decision of Mr Simon Thorley QC, sitting as the Appointed Person, which involved an application to revoke registration 1259790 for goods in Class 3, owned by Mr N D Gracey and Mrs E Gracey<sup>6</sup>. Mr Thorley said:

“In the event, Mr Gracey has never disputed that the trade mark in suit has not been used. He made it clear both before the Registry and before me that the defence to the application by Unilever was going to be based upon the provisions of Section 46 which provide that even if there has been no use of the mark for a relevant period, if there are proper reasons for non use, the mark need not be revoked.”

Class 3 is one of the classes covered by the registration which is the subject of the current proceedings. The position as at the relevant dates in these proceedings does not appear to have changed since 1999. If it has, there is no evidence of it.

39. At the time of the report, none of the Graceys, or Fiona Dodds, were linked to any active trading companies in the UK. There is zero evidence of any trading income, any licensing, or of consent to use the mark having been given to any third parties.

40. The lack of use, the successive applications/registrations, and lack of any evidence of actual licencing, is suggestive of speculative registration of ADRENALIN(E), without any licensing plans at the time of filing, in order to ‘licence’ the mark for large amounts of money to those who wish to use the mark in trade at some unknown point in the future, such as in relation to sporting goods and services or attractions<sup>7</sup>. Mr Pennant put it like this:

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<sup>6</sup> BL O/475/99.

<sup>7</sup> This was the reason why several ADRENALIN(E) registrations were, largely successfully, cancelled in 1999, either for non-use or for having been filed in bad faith: decision BL O/336/99.

“The mere registration of a mark without an intention to put it into use, but simply to passively offer licences to potential infringers, does not amount to a genuine *bona fide* intention to put the mark into use at the date of application. So on the application form, when you say you are going to use the mark, or you have an intention to its use, that cannot just be looking at the possibilities of passively seeking someone to use the mark on your behalf at some stage in the future.”

As I have explained above, such a filing strategy would mean that the mark cannot fulfil its essential function, and would run contrary to the objective set out above in Recital 31 to the Directive, and explained in the quotation from *CHOOSI*. Oakmead has made out a *prima facie* case on the facts I have described, which has not been answered by Dodds Gracey. The initial onus was on Oakmead to make a *prima facie* case. Having done so, the onus switched to Dodds Gracey. They have filed no evidence to meet that burden.

41. In coming to the view that Oakmead has presented a *prima facie* case, I have borne in mind the following observations by Arnold J in *Red Bull* about intention to use (my underlining):

*“Is a possible or conditional future intention to use enough?”*

161. If the UK's requirement for a declaration of intention to use is compatible with the Directive, and the making by the applicant of a false declaration of intent to use can amount to bad faith, the next issue concerns the intention which the applicant must have in order to be able to declare in good faith that he intends to use the mark in relation to the goods or services specified in the application in the UK. Counsel for the Defendants submitted that a concrete present intention was required, whereas counsel for Red Bull submitted that a possible or contingent future intention was sufficient.

162. In *Knoll* Neuberger J said that "whether a contemplated use, or a possible or conditional intention to use, can suffice must depend upon the

circumstances". In that case, he found that the proprietor had had a definite intention to use the mark in relation to pharmaceutical preparations for the treatment of obesity and contemplated that it might use the mark in relation to other pharmaceutical products. In those circumstances he held that it was unarguable that the proprietor had acted in bad faith by making a false declaration that it intended to use the mark in relation to pharmaceutical preparations and dietetic substances. In *32Red* the Court of Appeal appears to have accepted that a possible future use of the mark in relation to the services applied for was enough to defeat an allegation of bad faith on the ground of lack of intention to use in the circumstances of that case, albeit without any detailed consideration of the law.

163. Neuberger J's statement in *Knoll* appears to me to be not only correct in principle, but also supported by the subsequent jurisprudence of the CJEU in *Lindt v Hauswirth and Internetportal v Schlicht*. I therefore conclude that a possible or contingent intention to use the mark at some future date may suffice. Whether it does suffice will depend on all the circumstances of the case, and in particular whether there are other factors present of the kind mentioned in paragraph 139 above."

42. The other factors mentioned in paragraph 139 of *Red Bull* include "an attempt to block others from registering the mark by repeated applications". The underlined section also refers to an assessment of all the circumstances of the case, as per *Lindt v Hauswirth*.

43. In the absence of any evidence to the contrary from *Dodds Gracey*, all the circumstances set out by *Oakmead* mean that *Oakmead* has provided *prima facie* evidence that the purpose of the application for the contested registration was a blocking registration, without any intention to use the mark in relation to the goods and services, except opportunistically if a licensing opportunity should present itself. Registering the trade mark as a commodity, with no evidence of any licensing income or of licences, and perpetuating the right in the manner described earlier means that the mark cannot fulfil its essential function, and stifles trade. *Fiona Dodds* (at least) is no stranger to the trade mark system, acting as a solicitor in *BL*

O/336/99 for Nicholas Dynes Gracey. Fiona Dodds (at least) knew about the matters in question. The filing of the application, *prima facie*, fell short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the area of trade mark registration.

### **Invalidation application outcome**

44. The application to invalidate 2550825 succeeds because Oakmead has presented a *prima facie* case of bad faith under section 47(1)/3(6) of the Act to which no evidence has been filed in answer by Dodds Gracey. Under the provisions of section 47(6) of the Act, the registration is deemed never to have been made.

### **Opposition to 3028625**

45. The position here is not materially different to the invalidation against 2550825, despite a different relevant date of 30 October 2013. The evidence and arguments by Oakmead were identical, the defence and counterstatement from Dodds Gracey were identical, and they filed no evidence going to the allegation of bad faith. The opposition succeeds because Oakmead has presented a *prima facie* case of bad faith under section 3(6) of the Act to which no evidence has been filed in answer by Dodds Gracey.

### **Overall outcome**

46. 2550825 is revoked from 9 July 2016. However, the effect of the registration having been revoked from that date is superseded by the successful invalidation, which means that the registration was never made. The opposition has been successful and application 3028625 is refused.

### **Costs**

47. Oakmead has been successful in all three consolidated actions. Mr Pennant submitted that Oakmead was content for the scale of costs to apply (the scale published in Tribunal Practice Notice 4/2007 applies to these proceedings).

Oakmead was not professionally represented until the hearing stage, so would not have incurred the costs associated with professional representation until that stage. I will adjust the costs up until that point, after which the scale applies for professional representation. I consider that there were no 'winners' or 'losers' from the case management conference, so have not made an award of costs to either side for the case management conference. I award costs to Oakmead as follows, taking into account the later economies of consolidation (the statutory fees are reimbursed):

Statutory fees (invalidation, revocation and opposition) 3 x £200	£600
Preparing statements of case and considering the counterstatements x 3	£300
Filing evidence and submissions	£500
Preparation for and attendance at the hearing	£500
<b>Total</b>	<b>£1900</b>

48. I order Fiona Gabrielle Dodds and Sky Gracey to pay Oakmead Associates Ltd the sum of £1900 which, in the absence of an appeal, should be paid within fourteen days of the expiry of the appeal period.

**Dated this 26th day of June 2017**

*J Pike*

**Judi Pike**

**For the Registrar,**

**the Comptroller-General**