

**O-359-19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3261358  
BY WINSTON THOMAS TO REGISTER THE TRADE  
MARK**

**Luv injection sound**

**IN CLASS 41**

**AND IN THE MATTER OF OPPOSITION THERETO UNDER NO. 411077 BY IAN  
GEORGE THOMAS**

**AND**

**IN THE MATTER OF REGISTRATION NO. 3213529 IN THE NAME OF WINSTON  
THOMAS IN RESPECT OF THE TRADE MARK IN CLASSES 9 AND 41**

**Luv Injection Sound**

**AND AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO  
UNDER NO. 501932 BY IAN GEORGE THOMAS**

## Background and pleadings

1) These proceedings relate to an opposition against a trade mark application and an application for invalidation against a trade mark registration, both of which are in the name of Winston Thomas (hereafter “Party A”). The application for invalidation was filed on 5 January 2018. The relevant details of Party A’s marks are as follows:

Application No.	3261358
Mark:	Luv injection sound
Filing Date:	4 October 2017
List of services:	
<b>Class 41:</b> <i>Entertainment; Entertainment by means of concerts; Entertainment club services; Entertainment in the form of live musical performances (Services providing -); Entertainment in the form of recorded music (Services providing -); Entertainment services provided at discotheques; Entertainment services provided at nightclubs.</i>	

Registration No.	3213529
Mark:	Luv Injection Sound
Filing Date:	17 February 2017
List of goods and services:	
<b>Class 9:</b> <i>Hi-fi sound systems; Music recordings.</i>	
<b>Class 41:</b> <i>Entertainment; Entertainment by means of roadshows; Entertainment services provided at nightclubs; Entertainment in the form of recorded music (Services providing -); Entertainment services provided at discotheques.</i>	

2) The opponent and invalidation applicant is Ian George Winston (hereafter “Party B”). The opposition and the application for invalidation are based upon identical grounds and claimed factual background, namely:

- A musical “sound” was formed in 1987 by Party B and Orville Higgins. Party A was invited to join later the same year. The name LUV INJECTION was chosen for the sound;
- Party B is Party A’s half-brother and was, and remains, a member of the sound alongside others;
- Between 1987 and 2016, the sound performed with both Party A and Party B as members. It used the mark LUV INJECTION throughout this time, although the spelling of LUV was sometimes LOVE;
- By virtue of this use, substantial goodwill was established and identified by each of the following signs:
  - LUV INJECTION
  - LOVE INJECTION
  - LUV INJECTION SOUND
  - LOVE INJECTION SOUND
- The sound was not subject to any agreement and did not trade as any form of limited company but, rather, “the sound came together to perform under the mark LUV INJECTION”. As a result, it is deemed in law to be an unincorporated association and that as an unincorporated association the goodwill generated by the sound is owned by its members in undivided shares. Party B is, therefore, co-owner of the goodwill and, consequently a proprietor of the earlier right relied upon;
- Party A was ejected from the sound in 2016, but it is claimed that this is not relevant to the proceedings, only that he left. The sound continued and there was no apportionment of its assets. Therefore, the sound survived after Party A’s departure and the goodwill remains with it;
- Use of the contested marks will be liable to mislead the relevant public into thinking that the services of Party A are those of the sound, or licensed or endorsed by it;
- Consequently, the contested marks offend under section 5(4)(a) of the Act;
- Party A is aware of the sound (that he left behind) and that the remaining members of the sound wish to continue using LUV INJECTION and the variants relied upon;

- It is also asserted that Party A has threatened trade mark infringement proceedings against music promoters who use LUV INJECTION to promote the sound and this has resulted in the sound losing bookings;
- Party A has attempted to launch a new sound under the same name as the sound;
- Consequently, being aware of the goodwill vested in the sound, Party A's contested marks were made in bad faith and contrary to section 3(6) of the Act;

3) Party A filed identical counterstatements denying the claims made and putting forward the following alternative factual background:

- Party A is the founder of the sound and thus, he has never ceased to be a member and, as the founder, he has never left the sound that continues to operate. It was Party B and Orville Higgins who ceased to be members in 2016;
- The sound was actually formed in 1986 when Party B and Mr Higgins left their sound and asked Party A if they could join his sound (at the time, called MESHAK) but that LUV INJECTION SOUND was subsequently chosen as the name for the sound;
- It is accepted that between 1986 and 2016 the sound performed with Party A and Party B, but that Party A organised the events and took the bookings during this period and also selected which members of the sound would play at given events. Party B paid for events upfront and paid the members of the sound a wage;
- It is denied that the sound was not subject to any agreement and there was, in fact, a verbal agreement that Party A paid the members of the sound and this included paying Party B;
- Rather than the sound being an unincorporated association, it is asserted that Party A operates as a sole trader and that this is substantiated by Party A paying, sometimes out of his own pocket, the sound's members including Party B when they performed. Further Party A often upgraded the equipment,

paid to promote events and for commissioned recordings. As a consequence, the goodwill belongs to him;

- Party A denies that he was ejected from the sound and, consequently, there was no need for the apportionment of assets;
- It is denied that Party A threatened promoters but states that he did make “the promoters aware of his rights” in the signs by notifying them of his trade mark registration.

4) Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary. A Hearing took place on 19 March 2019, with Party A representing himself and Party B represented by Aaron Wood for Wood IP Limited. Further, Party A was cross-examined and his witnesses Ray Miller, Clinton Harris and Tyrone Thomas also attended for cross examination. Party B’s witnesses Colin Lewis, Stephen May and Orville Higgins attended for cross examination and Party B was also cross examined.

### **Party B’s Evidence**

5) Party B’s evidence takes the form of the following witness statements by:

- (i) Party B, himself, providing Exhibits IGT1 - IGT5;
- (ii) Orville Anthony Billy Higgins;
- (iii) Colin Lewis;
- (iv) Stephen May.

6) The main points of this evidence can be summarised as follows:

- Prior to 1986, Party B, Mr Higgins and Mr Lewis performed together as MASTER BLASTER<sup>1</sup> and, during this time, Party B discovered he had a half-brother (Party A) who also had “created a sound” that was known as

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<sup>1</sup> Party B’s witness statement, para. 6

MESHACK. Party A's sound "fell apart" when a number of its members were sent to jail<sup>2</sup>;

- Party B approached Mr Higgins and "asked if he could join our sound". At the same time as Party A joined MASTER BLASTER, a few other members left and it was decided to have a new name. Mr Higgin's choice of LUV INJECTION was picked and the name was adopted later in 1986<sup>3</sup>;
- The roles of the founding members were:
  - Party B – engineer/selector/van driver/technician;
  - Mr Higgins – MC;
  - Mr Lewis – technician and engineer;
  - Party A – managed bookings and made promotions<sup>4</sup>;
- Party A was the sound's manager as he was the oldest and because the main performance roles were already filled<sup>5</sup>;
- The sound "mainly used MASTER BLASTER's equipment"<sup>6</sup> but also used the best of Party A's equipment and sold the remainder to fund further development of the sound<sup>7</sup>
- Other members came and went playing alongside the founders at bigger bookings as and when needed<sup>8</sup>;
- A small selection of promotional material for the sound between the years 2006 and 2016 is provided<sup>9</sup>;
- Party B states that, over the years, he has invested his own money in the sound, including purchasing sound equipment, records, "dub plates" (recordings of top reggae artists singing songs promoting a sound), the van, recording studio time, sustenance and other costs<sup>10</sup>;
- Up until 2016 "things were OK". There were occasional grumbles about money because Party A was taking booking money but not paying the sound members and by 2015, the bookings were getting bigger, but the sound's members were not getting paid and were still putting their own money into the

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<sup>2</sup> Ditto, para. 8

<sup>3</sup> Ditto, para 9

<sup>4</sup> Ditto, para 10

<sup>5</sup> Mr Higgins' witness statement, para 9

<sup>6</sup> Party B's witness statement, para 10

<sup>7</sup> Mr Lewis' witness statement, para 6

<sup>8</sup> Party B's witness statement, para 10

<sup>9</sup> Exhibit IGT4

<sup>10</sup> Party B's witness statement, para 13

sound for things that Party A claimed he would pay<sup>11</sup>. Artists left the sound because they were not getting paid. Mr May left in 2008 for this reason<sup>12</sup>;

- In 2016, the relationship between Party A and Party B started to break down when circumstances meant they were unable to get together to sort out their differences regarding the promotion of an event. One of these circumstances was Party A travelling to Jamaica (for, what turned out to be, an attempt to set up another LUV INJECTION sound without the knowledge of the other members)<sup>13</sup>;
- Upon his return, Party A wanted the sound to play some events, but Party B declined because of the passing of his mother and the need to sort out her affairs. Mr Higgins also declined because he felt he works as a team with Party A. Party B was unhappy that he had to cancel some events<sup>14</sup>;
- “Things festered” during the rest of 2016 while Party A continued to promote the sound without Party B or Mr Higgins performing. A “clear the air” meeting was held in January 2017 where Party A stated that the sound’s name belonged to the group but that the music and equipment belonged to him and he appeared unconcerned about the money the other members had put in. The meeting ended without agreement<sup>15</sup>;
- Between October 2016 and May 2017, the sound did not perform but Party A promoted some events for LOVE INJECTION “up North” and promoted the fact that Party B and Mr Higgins were performing “to drum up more people to come” but other performers were sent by Party A and he “pocketed the cash”<sup>16</sup>
- Party A’s statements from the January 2017 meeting were repeated at a further meeting in May 2017. All the founder members disagreed with Party A’s view, but a way forward was agreed, namely that allowed Party A to promote the sound without the other founding members and the others would promote events that the other founding members were playing with both

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<sup>11</sup> Ditto, para 14

<sup>12</sup> Mr May’s witness statement, para 6

<sup>13</sup> Party B’s witness statement, para 16

<sup>14</sup> Ditto, para 18

<sup>15</sup> Ditto, para 20

<sup>16</sup> Mr Lewis’ witness statement, para 15

parties contributing to the upkeep of the equipment and music<sup>17</sup>. Mr Lewis recalled the meeting ended with Party A responding to the claim that the other founding members were all entitled to a share of the sound by stating that he “would buy us all out”<sup>18</sup>;

- This arrangement led to some promoters cancelling Party A’s booking in favour of booking Party B’s booking. This led Party A to enquire as to how much to purchase the sound from the founding members, who did not want to sell<sup>19</sup>;
- After this, Party B found out that Party A had applied to register the contested trade marks<sup>20</sup>;

### **Party A’s evidence**

7) This takes the form of five witness statements, one from each of the following five individuals:

- Party A;
- Julian Tait, who had jointly owned a sound with Party A from 1971 to the early 1980s;
- Ray Miller, a member of Party A’s sound MESHAK from 1983. He left shortly after it was renamed LUV/LOVE INJECTION;
- Clinton Harris, also a member of MESHAK from 1983 and LUV/LOVE INJECTION, before leaving in 1993;
- Tyrone Thomas, nephew of Party A and a member of LUV/LOVE INJECTION from 1993 to 1999.

8) These statements can be summarised as follows:

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<sup>17</sup> Party B’s witness statement, para 21

<sup>18</sup> Mr Lewis’ witness statement, para 16

<sup>19</sup> Party B’s witness statement, para 22

<sup>20</sup> Ditto, para 23



- Party A has owned LUV/LOVE INJECTION SOUND since 1987<sup>21</sup> and he has never expressed the intention either verbally, nor in writing, to have a partnership and he has always operated as a sole trader<sup>22</sup>;
- Promoters and organisers of events have always dealt with Party A and was known as the owner of LUV/LOVE INJECTION<sup>23</sup>. To support this claim, two “Sound System Contracts” are provided from 2012 and 2013 that relate to LUV INJECTION SOUND SYSTEM appearing at a Caribbean carnival. The contracts are with Party A, identified as “the agent’ representing LUV INJECTION SOUND SYSTEM” and a letter from the company director of Sunshine Entertainment Promotions Ltd to Party A and states that when “doing various promotions over the past 10 years” she always booked LUV INJECTION SOUND through Party A<sup>24</sup>;
- As owner of the sound, Party A has always been liable and had sole responsibility for any costs associated with the sounds<sup>25</sup>. He supports this assertion by providing two certificates of public liability insurance from the years 2012/13 and 2017/18, respectively, issued by the Musicians’ Union (“the MU”). The MU member is identified as Party A. There is also a letter from the Membership Services Administrator at the MU to Party A, but beginning “To whom this may concern”, confirming that Party A “aka Luv Injection has been in continuous membership of the MU since November 2006”<sup>26</sup>;
- Party B, Mr Higgins and Mr Lewis joined MESHAK SOUND in 1986 after making an approach to Party A. At the time Mr Harris, Mr Miller, Mr Mullings and Mr Robinson were also members<sup>27</sup>. Party B and Mr Higgins asked if they could become members and after Party A consulted with the existing members they were allowed to join<sup>28 29 30</sup>;

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<sup>21</sup> Party A’s witness statement, para 1, Mr Harris’ witness statement, para 6 and Mr Thomas’ witness statement, para 3

<sup>22</sup> Party A’s witness statement, para 1

<sup>23</sup> Ditto, para 2

<sup>24</sup> Exhibits WT04, WT05 and WT06

<sup>25</sup> Party A’s witness statement, para 3

<sup>26</sup> Exhibits WT07, WT08 and WT09

<sup>27</sup> Party A’s witness statement, paras 5 & 6

<sup>28</sup> Ditto paras 8 & 9

<sup>29</sup> Mr Millar’s witness statement, para 7

<sup>30</sup> Mr Harris’ witness statement, para 4

- Party B joined as a maintenance person and helped move equipment (but in 2011 Party A also let Party B perform musically with the sound) and Mr Higgins joined as an MC<sup>31</sup>;
- After 12 months Party A decided that the sound should have a different name and the new name was selected out of a hat from all the members' choices and LUV INJECTION was chosen. Party A states he has never provided permission for anyone else to use the name<sup>32</sup>. Mr Tait states that Party A changed the name of his sound<sup>33</sup>;
- All the equipment and music were owned by Party A and when Party B and Mr Higgins joined they brought no equipment or music. Between 1989 and 1992 Party A invested heavily in new equipment and music from the proceeds of the sale of his house<sup>34</sup>;
- Party A paid Party A and Mr Higgins as well as the other members a variable fee after each event dependent upon the revenue made from each event. When the revenue was less than the fees, Party A ensured the sound's members were paid, from his own pocket if necessary<sup>35</sup>;
- Membership of the sound was always fluid with members leaving and others joining<sup>36</sup>;
- Over the years, Party B has been disruptive at times and in a performance in Oxford in 2016 when security refused to let his friend backstage he "decided to sabotage the Sound by disabling the equipment". When confronted by Party A, he decided to leave the sound. Around the same time Mr Higgins and Mr Lewis also decided to leave. LUV INJECTION continued to perform with the remaining members<sup>37</sup>;

9) The main issue in dispute between the parties goes to the point of the goodwill in the LUV INJECTION sound since its inception in 1986 with the outcome being decisive of the section 5(4)(a) ground. It is Party A's case that he was, and always has been the controlling mind and owner of the LUV INJECTION sound and that

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<sup>31</sup> Ditto, para 11

<sup>32</sup> Ditto, para 12

<sup>33</sup> Mr Tait's witness statement, para 6

<sup>34</sup> Party A's witness statement, para 13

<sup>35</sup> Ditto, para 14

<sup>36</sup> Ditto, para 15

<sup>37</sup> Ditto, paras 16 and 17

Party B is not the owner, or part owner, of the goodwill that subsists in the sound. Party B's case is that he and the other members (including Party A) of the sound hold equal shares of that goodwill and that Party A is not able to assert his part ownership to the exclusion of the other members when applying for the two contested marks. Therefore, the main focus of the cross-examination of the witnesses was to test their recollections regarding the setting up of LUV INJECTION in 1986, how the name came about and their perceptions of who owns the sound.

### **Cross-examination**

10) Taking an overview of the cross examination, it was clear to me that there was some degree of tension between the parties, particularly when Party A was cross examining Party B and his witnesses. Further, my distinct impression was that because of this tension the respective sides were prepared to say what they perceived to best support their sides case and at times appeared reluctant to depart from the core assertions relied upon by each side. As a consequence of all of this, the witnesses were not particularly convincing. I briefly discuss the cross examination of each witness below.

### ***Party B's witnesses***

11) All were questioned on their account of the meeting where the name LUV INJECTION was chosen and their account of the ownership of the sound. Party B was additionally questioned on other claimed inconsistencies in his witness statement.

### ***Party B***

12) Party B appeared evasive at times and many of his recollections were strongly challenged by Party A including, for example, when the half-brothers first met with Party B asserting it was when MASTERBLASTER was in existence (in the 1980s) but Party A putting it to him that it was in fact when he was 5 years old, but he denied this.

13) Party B provided the following comments in response to the questions put to him:

- He agreed that Party A “owned” MESHACK;
- He denied that MASTERBLASTER had ended by the time he claimed that Party A approached him with a view of joining MASTERBLASTER in 1986;
- He denied that it was he and Mr Higgins who approached Party A to join MESHACK rather than Party approaching them to join MASTERBLASTER;
- He repeated his statement that Party A’s role was to manage the sound but also conceded that he also organised “recordings”;
- He denied that he knew other members of Party A’s previous sound MESHACK;
- He denied that MASTERBLASTER had no equipment but borrowed it from Party A’s MESHACK, stating that most of MASTERBLASTER’s equipment went to Party B (and subsequently was used by LUV INJECTION and the proceeds of the equipment sold went to fund LUV INJECTION);
- He claimed that he invested money into LUV INJECTION;
- He accepted that he received money after performances from Party A;
- When put to Party B that he left the sound in 2016, he responded by saying that he did not decide to leave but, rather, he decided not to play;
- Meetings between the parties were held in January and May 2017 in an attempt to resolve differences. Party B stated that in August 2017, he discovered that Party A had made an application for the first of his marks in February 2017 but had not told him at the meeting in May 2017.

*Mr Higgins*

14) Mr Higgins struck me as a reasonable witness but there was some tension between himself and Party A and on a number of occasions stated that he was unable to recall whether certain assertions put to him were correct.

15) Under questioning, Mr Higgins re-confirmed much of the contents of his witness statement. He insisted that MESHACK had ceased operating at the time of the demise of MASTERBLASTER and that Party B asked Party A if he wished to join

them. Mr Higgins stated that Party A said yes, subject to MASTER BLASTER being renamed. He denied Party A's claim that it was Mr Higgins and Party B who asked to join MESHACK.

16) On the issue of ownership of the sound, Mr Higgins was asked what he contributed financially to the sound. He identified "his talent" then, after some pressing, he identified money from the sale of MASTERBLASTER's equipment. Party A pointed out there was no evidence of this.

17) Mr Higgins confirmed that he received money for performing, but that it was sometimes late or not received at all. These payments were given to him by Party A.

*Mr Lewis*

18) Mr Lewis did not strike me as a particularly convincing witness. He was, at times evasive and occasionally contradictory.

19) He recalled that when the LUV INJECTION sound was started, it was agreed that any money generated was to go back into the sound. When asked what financial contribution he had made in the LUV INJECTION sound he stated that he had lent money to Party A (and that he wanted it back). Party A suggested that he was lying but Mr Lewis denied that he was. He added that he had also contributed "blood, sweat and tears".

20) When put to him that he was not present when Party A and Party B first discussed coming together musically, he disagreed and stated that he was and that it was Party A who approached Party B rather than the other way around. He was challenged on this, but maintained his position, but I have to say, not particularly convincingly.

21) Mr Lewis also denied getting paid, nor was he aware that others were paid for performing as part of LUV INJECTION.

*Mr May*

22) Mr May struck me as, in the most part, an honest witness who appeared to answer the questions put to him in a straightforward, honest way.

23) He confirmed that he had been a member of LUV INJECTION since 1988 but had not made any financial contribution to LUV INJECTION. He admitted that Party A had given him money to order music but that he thought it the sound's music and that he was ordering the music on behalf of the sound.

***Party A's witnesses***

*Mr Miller*

24) Mr Miller appeared defensive at times and also appeared to be somewhat frustrated by the line of questioning. He was not a convincing witness.

25) Mr Miller explained that he was part of MESHAK and then LUV INJECTION and he asserted that both were/are "owned" by Party A, but there was no written agreement between the members. He stated that there was a verbal employment agreement in place.

26) He also stated that:

- Party A always took all the proceedings for performances because he owned LUV INJECTION;
- Although not at the meeting where it was discussed, he stated that Party B and Mr Higgins regularly performed as part of MESHAK and when it was suggested that Party B and Mr Higgins did not know him, he responded by saying "it's a joke";
- Party B and Mr Higgins asked to join MESHAK but stated that he was not present when they did so but as a matter of courtesy Party A asked him if they could join the sound;

- He was part of LUV INJECTION, albeit 32 years ago. When challenged he confirmed that he remembered this with clarity;
- He also stated, contrary to his witness statement, that:

“He [Party A] bought the equipment and stuff like that, but the sound itself, the playing out and stuff like that, it is collectively ours. We are members of that sound. So you can't really say that it was his sound because the sound couldn't run without the members of the sound. Winston couldn't stand there by himself and play the sound because it takes members. He couldn't carry all the equipment by himself. So it takes members of the sound to be a part of that sound.”

*Mr Harris*

27) Mr Harris was sometimes indirect in his answers and at times appeared unsure. His answers can be summarised as follows:

- He was part of both MESHAK and LUV INJECTION. There was no written agreement but there was a verbal agreement that he was an employee and paid as such, but there were no pay slips, nor did he pay tax;
- He did not always get paid, particularly if it was a “bad night” and would also sometimes forego being paid so that Party A could buy equipment that the sound needed;
- Party A managed and paid for everything;
- The sound's equipment was owned by Party A;
- Party B asked Party A if he could join his sound (when MASTERBLASTER came to an end);
- Whilst Mr Miller expressed the view that he did not have to, out of courtesy Party A asked the other members of his sound (including Mr Miller) if Party B and Mr Higgins could join;
- Mr Miller held the view that in MESHAK, the members jointly owned the sound but Party A owned the equipment;

- Party B and Mr Higgins never performed with MESHAK and that it had ended before LUV INJECTION came into being;
- When put to him that Mr Lewis, Mr Higgins and Party B do not know him and therefore, could never have been a member of LUV INJECTION, he merely insisted that he was;
- When taken to page 15 of Exhibit ICT1 (a third-party report regarding [a number of sounds] that stated that MASTERBLASTER became LUV INJECTION, Mr Harris responded by saying that it “may have looked like it from the outside” but that it was not the case;

*Mr Tyrone Thomas*

28) Mr Thomas was rather defensive and clearly had a determination to fight for Party A’s corner. This approach led Mr Thomas to talk in terms of asserted certainties regarding issues some 32 years ago when he was only 9 years old. Such unlikely certainty at times undermined his credibility as a witness.

29) The main points made by Mr Thomas in his answers were:

- He joined LUV INJECTION in 1992 when he was 15 years old;
- He would have been present at meetings discussing the formation of LUV INJECTION in 1986 (when he was 9 years old). He stated that because of his presence at the meetings he was aware of what was discussed at these meetings;
- Party A was the manager as well as undertaking other roles;
- He was always paid for his performances with LUV INJECTION;
- He disputed that others were not always paid

*Party A*

30) Party A was somewhat combative at times but provided clear answers that often merely confirmed a fact that was consistent with both sides positions.



31) Party A's answers can be summarised as follows:

- MESHAK did not end, but became LUV INJECTION;
- MASTERBLASTER did not have any equipment, but later described MESHAK as having "superior equipment";
- Three members of MASTERBLASTER joined MESHAK and he denied that he joined MASTERBLASTER;
- Party A was taken to his Exhibit WT02 consisting of a photocopy of pages from his Filofax from 1986. He stated that they relate to events for LUV INJECTION but Mr Wood pointed out that these predate the sound being named as LUV INJECTION;
- In respect of his Exhibit WT10 showing a sum of money in a savings account between 1989 and 1993, Party A stated that this money was his and came from the sale of his property and was used to buy equipment for LUV INJECTION. Mr Wood put it to Party A that, despite his claim that he paid the members of the sound, the only evidence is this handwritten Filofax entry that relates to a time before the LUV INJECTION name was decided upon;
- He paid the members of LUV INJECTION 98% of the time but sometimes when the event did not go well, the members were not paid;
- More money was going out than was coming in to LUV INJECTION and the shortfall of payments to the sounds' members was paid from Marty A's personal funds, however, there is no evidence of this;
- LUV INJECTION only performs 7 or 8 times a year for an average of about £400 a time and one recording costs £250 to £800 and up to 60 are played at each event. Therefore, LUV INJECTION is not financially viable and has cost Party A "for years and years" and the sound has "lived off [his] money for years";
- He disputed that Party B, Mr Higgins and Mr Lewis had put in money responding with the question "where is the evidence?";
- It was put to Party A that it was Party B and Mr Higgins who were the front of the sound, something he denied.

32) Party A was then taken to the following evidence:

- Exhibits WT04 and WT06: Contracts for LUV INJECTION to perform at Derby Caribbean Carnival. Party A is identified as “the agent” for LUV INJECTION. Party A dismissed his characterisation as agent, asserting that it was just the term used by the carnival organiser;
- Exhibit WT05: In response to Party A’s assertion that the author of the letter had been booking LUV INJECTION for 10 years or more, Mr Wood produced an extract from the Companies House register to show that the company who the author was purportedly writing on behalf of, had only been incorporated the day before the letter was dated. Party A’s response was that he may not have dealt with them as a registered company, but maintained that LUV INJECTION had been booked by them for over 10 years;
- Exhibit IGT4: photocopies of LUV INJECTION featuring up to nine members, with Mr Higgins and Party B appearing prominently. It was put to Party A that this shows they were the front of the sound. Party A pointed out that these photocopies only relate to three performances, that Mr Higgins and Party B were not at the front of the pictures, concluding that they were not the face of LUV INJECTION

33) Party A was asked directly if he accepted that goodwill resided in the LUV INJECTION sound. He did not provide a straight answer to the question.

34) Mr Wood raised a question of Party A’s reliability as a witness by asking about a judge’s comments about him as a witness in Crown Court proceedings in 2005. Party A claimed to be unable to recall the comments of the judge. Mr Wood produced a news article from 5 September 2005 that reported on the case and recorded that the judge described Party A as being “in most respects an unsatisfactory witness” after being untruthful regarding the source of funds used to purchase his house at the time.

## DECISION

### Invalidation proceedings

35) In respect of the invalidation proceedings, grounds based upon section 3(6) and section 5(4)(a) are relevant because of the provisions set out in section 47 of the Act, the relevant parts being as follows:

“47. - (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

[...].

(2) The registration of a trade mark may be declared invalid on the ground-

(a) [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed.

## **Partnership at will/Unincorporated Association**

36) In his pleadings, Party B claims that the sound operated as an “unincorporated association”. The following information regarding unincorporated associations is available on [www.gov.uk](http://www.gov.uk):

“An ‘unincorporated association’ is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit (for example, a voluntary group or a sports club).

You don’t need to register an unincorporated association, and it doesn’t cost anything to set one up.

Individual members are personally responsible for any debts and contractual obligations.

### **If you make a profit**

If the association does start trading and makes a profit, you’ll need to pay Corporation Tax and file a Company Tax Return in the same way as a limited company.”

37) At the hearing, I granted leave to Mr Wood to provide a written submission on the subject of “unincorporated associations” and “partners at will”. In this submission he referred to the above information. He referred to the comments of Geoffrey Hobbs, sitting as the Appointed Person in *CLUB SAIL*, BL O-074-10, para. 26 that, in turn, referred to a passage from *R v. L(R) and F(J)* [2008] EWCA Crim. 1970; [2009] 1 Cr. App. R 16 in which a partnership is said to be one of the many types of unincorporated associations.

38) Mr Wood also provided the definition of a “partnership” contained in section 1(1) of the Partnership Act 1890, namely:

"the relation which subsists between persons carrying on a business in common with a view of profit"

39) Generally, a “partnership at will” is understood as being an informal arrangement whereby there is no fixed or formal arrangement with regard to the activities of the partnership.

40) It therefore appears to me that a partnership at will is a subset of unincorporated associations.

### **Section 5(4)(a)**

41) Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

42) In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "*a substantial number*" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

43) Halsbury's Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(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.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(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.”

44) In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.

### **The relevant dates**

45) The relevant date for assessing if section 5(4)(a) applies has been discussed by Mr Daniel Alexander QC sitting as the Appointed Person in *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11. A summary of the position provided by Allan James, for the Registrar, in *SWORDERS TM O-212-06* was quoted with approval and I reproduce it below:

“Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.”

46) The relevant dates for the purposes of these proceedings is the filing date of the contested application and the contested registration, namely 17 February 2017 and 4 October 2017, respectively.

47) There is no claim to a competing goodwill identified by this mark as of these dates. In the absence of any counterclaim to an earlier or concurrent goodwill on the part of the applicant, there are only two relevant dates for assessing the issue of passing off in these proceedings.

### **Party B's goodwill at the relevant dates**

48) The following definition of goodwill was provided in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL):

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

49) In Party B's statement of cases it is asserted that the sound existed as an unincorporated association and that the members of the sound are the owners of all goodwill established in the sound and consequently, he is a co-owner of the goodwill and is a proprietor of the earlier right relied upon. In light of the following guidance by Geoffrey Hobbs, sitting as the Appointed Person in *CLUB SAIL*, BL O-369-13, the fact that Party B commenced proceedings in his own name is not, in itself, a bar to his raising it:

“29. It appears to be open to any of the existing members of an alliance to bring proceedings in passing off against a third party for the protection of their proprietary interest in the collectively owned goodwill. In *Scott v. Tuff-Kote (Australia) Pty Ltd* [1975] 1 NSWLR 537 it was held that an underwriter at Lloyds (that is to say a person who was a member of the Society of Lloyds incorporated by statute and who, with other members, joining in syndicates, underwrote insurance risks) was entitled to proceed in his own name for injunctive relief against misuse to his detriment of the name **LLOYD'S OF**



**LONDON**, without joining the Society or all members, or any other member of the syndicate of which he was a member and which, as he did, suffered detriment from the misuse of the name. That case was mentioned with approval by Lord Fraser of Tullybelton in *Erven Warnink BV v. J Townend & Sons (Hull) Ltd* [1980] RPC 31 (HL) at p. 106. In *Dawnay Day & Co Ltd v. Cantor Fitzgerald International* (above) at p. 705 the Court of Appeal observed per Sir Richard Scott V-C:

It is not, in my judgment, necessary to analyse the ownership of the “Dawnay Day” name for the purpose of deciding whether the goodwill in the name belongs to the holding company, or is shared by all the members of the group or whether the goodwill is jointly or severally owned by the group members. Each of the group members that trades under a style which includes the name “Dawnay Day”, has, in my judgment, a legitimate interest, for passing-off purposes, in complaining of a deceptive use of the Dawnay Day style by CFI. The deceptive use by CFI of the “Dawnay Day Securities” trading style represents in respect of each Dawnay Day group member that the proprietor of Dawnay Day Securities is an associate with that member in the Dawnay Day group. Each is, in my judgment, entitled to complain of that misrepresentation. In my judgment, DDCL and DDI are entitled to sue CFI for passing-off and DDI is entitled to sue also on behalf of all other group members who trade under a style that includes “Dawnay Day”.

That was the approach applied in *Artistic Upholstery Ltd* (above). It does not enable a claim in passing off to be maintained by a person who has no proprietary interest of his own in the goodwill he seeks to protect: *Chocosuisse Union des Fabricants Suisse de Chocolat v. Cadbury Ltd* [1999] RPC 826 (CA) at pp. 843, 844 per Chadwick LJ. The net effect of these considerations is that an earlier right to prevent the use of a trade mark by

virtue of the law of passing off can be asserted under Section 5(4)(a) of the 1994 Act by a person who is entitled, either alone or with others, to a proprietary interest in the goodwill to which the earlier right relates.”

50) Party B is entitled to a proprietary interest in the goodwill generated by the sound LUV INJECTION by virtue of being one of a number of members of the sound.

51) Party A’s defence is advanced on the premise that he was the founder of the sound in 1986 and that it performed with the involvement of both himself and Party B until 2016. Whilst his defence did not contain a specific counterclaim that he is the owner of the goodwill generated by the activities of the sound, the nature of his defence strongly indicates this. Further, at the hearing he did accept that the sound had generated goodwill. Therefore, I proceed on the basis that it is not in dispute whether the sound generated goodwill during this time, but rather, the tension between the parties’ cases is that Party A believes he owns that goodwill and Party B believes the ownership is shared between the members of the sound (including himself and Party A).

52) The parties both provided four witnesses for cross-examination including themselves. Having heard all eight testimonies, I was left with the impression that the witnesses were all fiercely loyal to the side they were providing evidence for, with the result that they were often restricted in their answers for fear of saying something that was not fully supporting their side. It further led to the expressing of very definite recollections of what occurred some 32 years ago when, with the best will in the world, imperfect recollection will play a role. Symptomatic of this was that, on a number of occasions, when asked a question, where the witness did not understand what might be the implications of his answer, rather than provide a truthful answer, there was a tendency to fall back upon their pre-rehearsed lines even if they were not an appropriate answer to the question.

53) In light of all of the above, I did not find the cross examination to be particularly helpful beyond establishing the uncontested background that the sound was established under the name LUV INJECTION in about 1986, that it performed between then and 2016 with Party B as a performer in the sound and Party A

managing the financial side. Notwithstanding issues regarding whether he did so consistently, and accusations of how he handled the finances, he also paid the performers after the performances and made bookings for the sound. It is, therefore, clear that Party A's primary role in the sound was to manage it.

54) At this stage, it is useful to understand the nature of groups such as the sound LUV INJECTION and the goodwill that such groups generate. Firstly, whilst proof of ownership of the goodwill may provide a definitive answer (something that is absent in the current case), perhaps it is more important to ask who is perceived by the public as being responsible<sup>38</sup>. In the current case, as with music bands more generally, the public would blame the sound's members themselves if their quality was not good. Further, it is Party B's case that, as an unincorporated association, the goodwill generated by the sound is owned by its members in undivided shares. This is somewhat typical of the way music groups are formed, with no formal agreement in place. In such circumstances, the members usually constitute a "partnership at will" unless there was an agreement to the contrary.

55) It is the case of Party B that no agreement existed. Party A claims there was a verbal agreement in place. In making his case he pointed to his claimed version of events that; a) he was the founder of the sound, and; b) that he was, at all times, and remains the controlling mind behind the sound and that he paid the members of the sound after each performance, sometimes using his own money. The only firm evidence supporting Party A's assertion that a verbal agreement exists/existed was obtained during cross examination when Mr Miller stated that there was verbal employment agreement. Whilst it is not disputed that Party A distributed money received to the sound's members, there is nothing to corroborate his claimed exclusive ownership or that the members of the sound where his employees or were paid a salary.

56) As I commented earlier, even if this was the belief of Mr Miller, it is unclear why he believed this beyond the fact that Party A was undertaking the activities that could be described as him acting as the manager of the sound.

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<sup>38</sup> See paras 3-136 and 3-137, *The Law of Passing-Off*, 4<sup>th</sup> Edition, Prof. Christopher Wadlow

57) Taking all of this together, the evidence is insufficient for me to conclude that there was a verbal agreement in place between the members of the sound and Party A to the effect that he owned the goodwill generated by the sound. In the absence of such evidence, I find that, as an unincorporated association and a partnership at will, the goodwill resided with the changing members of the sound. Mr Wood referred to the leading authority relating to partnerships at will, namely SAXON Trade Mark, [2003] EWHC 295(Ch), in particular, I take account of the comments of Laddie J in paragraph 33 when he stated:

“... Mr Dawson's historical connection with the original band in the 1980's would be no defence. Second, if and to the extent that there is any residual goodwill in the original band, as Mr Dawson and Mr Oliver allege, that is owned by the partnership, not the individual members of it...”

58) As a consequence of my finding, the members of the sound, including Party B himself, were the owners of the goodwill up until 2016 when the sound split. It is not necessary to consider what happened regarding the ownership of the goodwill at that point other than to satisfy myself that it was not transferred solely to Party A. Whilst I understand Party A's defence to be that he had always been and remains the owner of the goodwill, this has not been established in the evidence before me. Having found that, up until the split, the goodwill was owned by the members of the sound, there would have had to be an agreement to transfer the ownership to Party A at the time of the split. This, self-evidently, did not occur. Therefore, at the relevant date in these proceedings, namely the 17 February 2017 and 4 October 2017, Party B, together with the other members of the sound, had the requisite goodwill, even if this could have been diminished to a degree by the ceasing, or reduction, of the sound's activity between the split in 2016 and the relevant date.

59) If Party A's assertion that it was Party B and Mr Higgins who left the sound in 2016 is correct (but it is hotly disputed), and Party A was left as one of the “last man standing” in the LUV INJECTION sound, it would not impact upon my findings regarding goodwill. As referred to, at the hearing, by Mr Wood, Geoffrey Hobbs, sitting as the Appointed Person, in ANIMAL Trade Mark, BL-O-369-13, paragraph 33, commented that:

“It was, as I have said, open to the opponent as one of ‘the last men standing’ to invoke the law of passing off for the protection of the goodwill and reputation to which they were collectively entitled. The fact that the applicant was also one of ‘the last men standing’ did not enable him to lay claim individually to the whole of the benefit of their goodwill and reputation by registering **THE ANIMALS** as his trade mark for live and recorded performances. The evidence on file does not show that he was free by virtue of devolution or dissipation or on the basis of any relevant authorisation or consent to apply for registration of the trade mark in this own name.”

### ***Misrepresentation and damage***

60) The dispute, insofar as it relates to passing off, is in respect of where the ownership of the goodwill lay. It is self-evident from the factual background of the case that, having established that Party B has the requisite goodwill, use of Party A’s mark will amount to misrepresentation leading to damage.

61) Party B’s grounds based upon section 5(4)(a) succeeds in its entirety.

62) Finally, there was much disagreement about who owned the equipment used by the sound. This has no bearing on the ownership of the goodwill. Further, the parties were in disagreement regarding who joined whose sound in 1986. The evidence fails to confirm either sides’ version of events, but it is my view that this is not crucial to the outcome. What is clear is that Party A’s case regarding ownership of the LUV INJECTION sound has not been made out, and in the absence of this, I have found that the sound operated as a partnership at will.

### **Section 3(6)**

63) I will comment upon the ground based upon bad faith only briefly. Section 3(6) of the Act states:

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

64) The law in relation to section 3(6) of the Act (“bad faith”) was summarised by Arnold J. in *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch):

“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* [2008] EWHC 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)."

65) Mr Wood submitted that the purpose of obtaining/attempting to obtain registrations incorporating the name LUV INJECTION was for Party A to hinder the activity of Party B as evidenced by Party A approaching (the emotive description of "threatening" is used by the other side) promoters who had booked LUV INJECTION through Party B. Party A's defence is that he believed he was the owner of the goodwill in the sound and, therefore, was entitled to obtain registrations in his own



name. As I have found, he was not the sole owner of the goodwill and consequently, he was not legitimately permitted to do so unless it was done on behalf of the other members, or at least with their consent. This is a position that Party A should have been alert to and falls short of the standards of acceptable commercial behaviour. When judged by ordinary standards of honest people, his actions of registering and attempting to register marks incorporating the name LUV INJECTION independently, and without the knowledge, of the other members of the sound amounts to an act of bad faith.

66) Therefore, Party B has been successful in his actions based upon section 3(6) of the Act.

### **Summary**

67) Party B has been wholly successful and Party A's application 3261358 is refused and his registration 3213529 is invalidated.

### **COSTS**

68) Party B has been successful in both the opposition and the invalidation proceedings and is entitled to a contribution towards his costs. Mr Wood, on behalf of Party B, invited me to depart from the usual scale because of Party A's actions that amount to bad faith. I dismiss this. A finding of bad faith does, and should, not result in an automatic finding of enhanced costs. There is nothing in the case before me that suggests that costs should be made other than on the published scale.

69) I take account that both sides filed evidence and, that a hearing took place in Birmingham, where the parties and their witnesses are based and that four witnesses on either side attended the hearing for cross examination. In respect of the expenses associated with Party B's witnesses attending the hearing for cross examination costs, as they are based in Birmingham, their expenses will be minimal and I will make a small estimated award rather than protract the proceedings further by inviting Party B to provide a schedule of expenses. I award costs on the following basis:

Official fees	£400
Preparing statements and considering statements in reply	£400
Preparing and attending hearing	£1600
Witness expenses	£100
TOTAL	£2500

70) I, therefore, order Winston Thomas to pay Ian George Thomas the sum of £2500. The above sum should be paid within seven days of the expiry of the appeal period or within 14 days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 27<sup>th</sup> day of June 2019**

**Mark Bryant**

**For the Registrar**

**The Comptroller-General**