

O-099-20

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 502480
BY SERAPHIM SPACE CAMP ACCELERATOR LTD
TO REVOKE FOR NON-USE
THE REGISTRATION OF
TRADE MARK NO. 1398673
OWNED BY
ALABAMA SPACE SCIENCE EXHIBIT COMMISSION**

BACKGROUND AND PLEADINGS

1. This decision follows an oral hearing of an application that was filed on 22 February 2019 (“**the Application**”) by Seraphim Space Camp Accelerator Ltd (“**the Applicant**”) to revoke trade mark No. 1398673, owned by Alabama Space Science Exhibit Commission (“**the Proprietor**”). The trade mark is “SPACE CAMP”; it was filed on 6 September 1989 and registered on 19 March 1993 in respect of:

Class 25: Leisure clothing; caps, visors and headgear, flight suits, shorts, shirts and tee-shirts, pullovers, overalls and jackets; socks, shoes and trainers; all included in Class 25.

Class 41: Theme park entertainment, educational and recreational services based on science, space and technology; teaching and educational services in the theory and principles of space travel and of propulsion, guidance and control of space craft; all included in Class 41.

2. The Applicant relies on **section 46(1)(a) Trade Marks Act 1994** (“the Act”), which provides for revocation where a mark has not been put to genuine use in the UK within the period of five years following the date of completion of the registration process by the registered owner or with its consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.
3. The Applicant states in its claim that the Proprietor “*provides its goods and services in the US, specifically in Huntsville, Alabama in respect of a space museum called US Space & Rocket Center. This entity is wholly focused on the provision of services in the US and ... there is no evidence to suggest that this trade mark has ever been used in the UK whether by marketing actions undertaken by the proprietor or sales of its services in the UK.*”
4. The Proprietor filed a Form TM8(N) with a counterstatement, in which it admitted that it operates a business called US Space & Rocket Center in Huntsville, Alabama, which serves as the Official NASA Visitor Center for Marshall Space Flight Center and is home to SPACE CAMP. It expressly denied the allegation of non-use, which had related both to the goods and the services under the registration. However, on 27 November 2019, a few days before the hearing, and just one day before the filing of skeleton arguments, the Proprietor “voluntarily

surrendered” the class 25 goods. This decision therefore concerns proof of use only in relation to the class 41 services.

5. Only the Proprietor filed evidence, which I summarise below. Both parties filed skeleton arguments in advance of the hearing, which took place before me by video conference on 2 December 2019. Stephanie Wickenden of Counsel acted for the Proprietor at the instruction of J A Kemp LLP; Maxwell Keay of Counsel acted for the Applicant at the instruction of Dentons UK and Middle East LLP.

The Relevant Period

6. Section 46(1)(a) requires the Proprietor to prove use during the five years following the completion of the registration process. The mark was registered on 19 March 1993, therefore the 5-year period expired on 20 March 1998; it is from this date that the Applicant sought revocation to take effect. Ms Wickenden explained that the evidence filed by the Proprietor is dated after the 5-year period owing to the greater difficulty of obtaining documents from longer ago. The Proprietor accordingly relies upon section 46(3) of the Act, which provides:

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparation for the commencement or resumption began before the proprietor became aware that the application might be made.

7. The Proprietor made no admission as to whether there has ever been a period of non-use, but for the purpose of these proceedings I acknowledge that it is reasonable to focus my consideration on whether the evidence establishes in any event that use has commenced or resumed prior to 22 November 2018 (3 months prior to the filing date of the Application).¹

¹ Ms Wickenden referred at the hearing and in her skeleton argument to 22 December 2018, but that was presumably a miscalculation of dates.

Accordingly, the relevant period may be construed as 20 March 1998 – 22 November 2018 (“**the Relevant Period**”). If it is shown that there has been genuine use of the mark within the Relevant Period then the Application must fail.

THE EVIDENCE

8. As one would expect in proceedings that centre on the need to prove genuine use, counsel for the parties expressed quite different views as what the evidence filed may properly be considered to have shown. Since I shall, later in this decision, necessarily consider the parties’ competing submissions on aspects of the evidence, it is helpful to set out here a somewhat detailed account of the evidence filed, including any observations that I consider useful to make upfront.
9. The evidence filed consists of a **witness statement of Louie Ramirez (“WSLR”)**, dated 15 July 2019, with **Exhibits LR1 – LR9**. Mr Ramirez is the Vice President and Chief Financial Officer of the Proprietor.

Context/nature of Space Camp and the contested services²

10. Mr Ramirez gives a background history of the work of the Proprietor, based at the US Space & Rocket Center in Huntsville, Alabama. He references the location’s role in space exploration and in putting a man on the moon, and that the Center houses unique resources such as the Saturn V rocket and the Pathfinder Space Shuttle. He states that the trade mark SPACE CAMP is used in relation to various residential and educational programmes for both children and adults, including space-oriented camp programmes designed to promote science, engineering, aviation and technology, and leadership and teamwork, while encouraging fun and creativity.

Space Camp’s “Ambassadors”

11. Mr Ramirez states (§8) that the Proprietor “*operates as a specialist destination for performing the service activity which is promoted and offered through a SPACE CAMP Brand Ambassador in the UK ...*”, which until the end of 2018 was Gifted Tours Limited. He states that Gifted Tours “*operated exclusively to promote and develop our SPACE CAMP programmes in the UK as a brand ambassador*” (§17).

² (The headings referring to sections of the evidence are my own and for ease of reference.)

12. **Exhibit LR1** shows various pages from the website of the Proprietor “www.spacecamp.com”. At page 1, under the heading “Ambassadors”³ it states: “ambassadors are an elite network of leaders who represent Space Camp across the world. We define a Space Camp Ambassador as an individual or group who brings students from their region to Space Camp several times a year.” Pages 1-5 of the exhibit are shown to have been printed on 01/07/2019 (after the Relevant Period). However, later in the exhibit, at page 7, there is an indication from the web archive resource⁴ of how the Proprietor’s website stood based on a capture for 11 August 2015 – 23 November 2018 (dates spanning the Relevant Period⁵). That again shows among the list of ambassadors, the contact details for Gifted Tours in the UK, identifying Ken Lewis, and the email address and the website of giftedtours.co.uk.

Numbers of UK attendees at Space Camp

13. Paragraph 18 of the WSLR includes a table (as below – “**the Proprietor’s Attendees Table**”) said to show the numbers of students from the UK who attended the Proprietor’s “US programme during the preceding 5 year term”.

| YEAR | NUMBER OF STUDENTS |
|-------------|---------------------------|
| 2015 | 240 |
| 2016 | 179 |
| 2017 | 112 |
| 2018 | 126 |
| 2019 | 94 |

14. Notwithstanding the promotional activities attributed to Gifted Tours as the ambassador in the UK, Mr Ramirez stated (§17) that the Proprietor also separately received “direct custom from the UK where such enquiries and subsequent programme booking has not originated through Gifted Tours.” Mr Ramirez says nothing as to what proportion of the numbers in 2015 and 2016 (240 and 179) were booked via Gifted Tours, but does state (at §18) “... as far as our records show for the period 2017 to 2019 half of the total number of students originated through Gifted Tours”. I take this to be saying that 2017 – 2019 the number of UK attendees booked via the UK ambassador was 0.5 x (112 + 126 + 94), which totals 166.

³ URL: www.spacecamp.com/ambassadors

⁴ (“the Wayback Machine”)

⁵ §17 WSLR states that the dates are 18 September 2016 and 12 June 2017 – and such dates seem consistent with the URLs (and with the dates faintly visible in the search parameter icon) evidenced in the exhibit.

15. He also states that the 94 students who attended SPACE CAMP in 2019 were booked through Gifted Tours / another in the preceding year. Even though it may seem likely that the 2019 figures, booked in 2018, would fall within the Relevant Period, especially noting the lead time for such visits indicated elsewhere in the evidence, I note that it cannot be ruled out that they may have been booked in 2018 after 22 November, and thus within the three month period that must be discounted in the assessment of use in this case.
16. Mr Ramirez includes evidence relating to data seemingly derived from annual accounts of Gifted Tours (WSLR at §§17 – 20, and in particular as set out in **Exhibit LR2**, which I describe below). Having stated that the records of the Proprietor show that “*for period 2017 to 2019 half of the total number of students originated through Gifted Tours*”, Mr Ramirez then states that that “*will mean that total turnover generated under the mark in the UK during the period 2017-2019 will be double the values shown in the table under 20 below*”. I will come back to that latter interpretation by Mr Ramirez. I reproduce that table (from §20) below (“**the Gifted Tours Turnover Table**”) and for the moment note simply that the evidence on this point led to some confusion and discussion at the hearing, since the claims of Mr Ramirez involve elements of extrapolation and cross-referencing.

| YEAR | TURNOVER |
|-----------------|-----------------|
| 2014 (for 2015) | £ 173, 173 |
| 2015 (for 2016) | £ 186, 743 |
| 2016 (for 2017) | £ 111, 129 |
| 2017 (for 2018) | £ 116, 097 |
| 2018 (for 2019) | £ 91, 244 |

17. **Exhibit LR2** is said to show the Company Accounts for Gifted Tours for the years 31 July 2013 – 31 July 2018. Mr Ramirez draws attention (at §20) to the part of Exhibit LR2 (page 22) that sets out, under the heading “*Notes to the abbreviated accounts for the year ended 31 July 2013*” and under the sub-heading “*Accounting Policies*” (and further sub-heading “*Turnover*”) that (in relation to Gifted Tours) “*turnover represents commissions earned in respect of customer tours which occurred during the year*”. As Mr Ramirez states (at §19), that same Accounting Policy is “*visibly applied in the Accounts for 2014 and 2015*” – which is to say that the same description of “Turnover” is expressly repeated in the abbreviated accounts for the years ending 31 July 2014 and 2015 (pages 16 and 12 of Exhibit LR2). Mr Ramirez observes that such wording is “*omitted from the form of presented accounts for 2016 onwards*” but he states that “*Notwithstanding the omitted statement from the Accounts*

this continued to reflect the Turnover represented". I do not necessarily take issue with that point, but I pause here to consider the clarity of any connection between the turnover figures cited in the table above (from the body of WSLR) and the figures that are presented in the accounts exhibited in LR2.

18. I note that pages 1 – 13 of Exhibit LR2 cover the years ending 31 July 2018, 2017, 2016 and 2015, yet those pages contain no relevant figures at all, so this exhibit offers no corroboration in relation to the figures against those years in the Gifted Tours Turnover Table. Page 15 of the exhibit shows the abbreviated balance sheet at 31 July 2014, and against the heading "CREDITORS (Amounts falling due within one year)" is recorded the sum £173,173, which correlates to the figure given in the first row of the table. I note that Mr Ramirez refers to the contents of the Gifted Tours Turnover Table as showing "*Turnover by reference to the Commissions earned shown as a booked credit for the following year for which Student numbers are shown above ...*" in the Proprietor's Attendees Table (set out at paragraph 13 above). This may tend to indicate that the £173,173 figure is attributable to the value of the advance bookings by Gifted Tours, reserving places at Space Camp for attendees for 2015, but the position is certainly not absolutely clear. Page 21 of the exhibit shows the abbreviated balance sheet at 31 July 2013, and against the heading "CREDITORS (Amounts falling due within one year)" is recorded the sum £85,423 – but since the evidence gives no information about the levels of UK take-up of the services under the mark in that year, that sum offers no useful point of cross-reference.
19. I also note that in reference to phrase "commissions earned" (which phrase I have underlined in paragraph 17 above and which relates to the Gifted Tours Turnover Table) Mr Ramirez states (at §19) as follows: "*The Commissions earned figure should not be taken as a commission being payable by My Company to Gifted Tours Limited. My Company has never paid Gifted Tours Limited nor any of their other ambassadors a commission. Occasionally, my Company has offered a lower group rate to its ambassadors and their participants for the SPACE CAMP Programme but never any direct payments.*"

The printed flyers

20. **Exhibit LR3:** Mr Ramirez states (at §21) that Gifted Tours engaged their target customers through direct marketing and that Exhibit LR3 shows examples of their marketing materials (print media flyers) which he states show the trade mark and relationship as between the

Proprietor and Gifted Tours as authorised representative. Mr Ramirez states that the relationship between Gifted Tours and the Proprietor ceased as of the end of 2018 and that the flyers all therefore precede the demise of this relationship and were made available during the Relevant Period.

21. None of the material is dated, although page one sets out a typical itinerary for an all-inclusive 9-day visit to take place in 2019, starting with flights to the USA, arriving at a Marriott Hotel, and, *en route* to the Proprietor, a lunch at Five Guys Burgers (which references Mr Keay picks up on in his submissions, as I will mention later). The exhibit shows four or five flyers, which set out the sorts of activities that attendees will experience, including the G-Force Accelerator, 1/6th Gravity Chair, Multi-Axis Trainer and “Space Shot”; there are also references to seminars, lectures and team activities including a *“five hour mock mission using world class simulators where the students rely on their training as Mission Specialists or Pilots in order to take command of an orbiter on its flight to the International Space Station to repair a satellite and the return safely home.”*⁶
22. The flyers include the words Space Camp used in a way that is consistent with trade mark use, with the letters capitalised, or included within a logo and at page 4 of the exhibit, includes the words with the ® symbol. Each flyer also includes clear references to Gifted Tours including its contact details, its *“ten years of Space Camp experience”*. Page 2 states that Gifted Tours offers and arranges *“this unique all inclusive visit from a teacher’s perspective and relieve schools of much of the preparation and time consuming work associated with the organisation of school trips. Director of the company, Ken Lewis, has been appointed as the official Space Camp Ambassador for the UK as an authorised representative of Space Camp and the US Space & Rocket Center.”* Similarly, the flyer at page 4 states that *“Gifted Tours specialise in arranging school visits to the Space & Rocket Center ®, Huntsville, Alabama, USA, where Ken Lewis was appointed the official Space Camp ® Ambassador for the UK as their authorised representative.”*
23. As Mr Keay submitted, Mr Ramirez does not say how he knows that it was used as a direct marketing by Gifted Tours (nor how he came to have this material). We do not know to what extent these undated printed flyers were used, and I agree that they do not demonstrate genuine use of the trade mark in the UK. I do note, however, that much of their content,

⁶ (page 2 Exhibit LR3).

such as to the types of activities at Space Camp, the focus of Gifted Tours, and its ambassador relationship, reflects what is stated in other evidence from the Relevant Period.

The press articles

24. **Exhibit LR4** shows three print articles: the first is from *Thurrock Gazette* dated 12th August 2012. Under the headline "Kids can experience space!", the article refers to trips to the Proprietor and explains that Ken Lewis "*used to work at St Clere's School and had the brainwave of taking talented pupils to space camp 12 years ago after an American astronaut visited the school.*" The news article states that since then the school has taken more than 250 pupils, "*more than any other school in the UK*". It states that "*Mr Lewis ended up setting up his own company ... called Gifted Tours*" and he is "*also UK ambassador for*" the Proprietor. The article also states that "*pupils at the Harris Academy in Chafford Hundred have also visited for the past seven years.*" The next news article is dated 17th August 2012, entitled "South Essex kids blast off for space camp in US" and it appears both in the *Basildon Canvey Southend Echo* and the *Basildon Standard*. The article states that Mr Lewis ended up setting up his own company Gifted Tours "*because schools from across the country showed so much interest*" and "*it's now his full-time job.*" It refers to the sorts of activities undertaken on the trip and that (in 2012) trips cost £1600.

The school letters

25. **Exhibit LR5** shows copies of two letters from the Headteachers of St George's School, Harpenden to parents of the school promoting a trip to Space Camp. The first letter is dated 3 September 2015 for a trip departing 31 March 2017 at a cost of £1800. The second letter is dated 6 September 2017 for a trip departing 5 April 2019 at a cost of £2300. It references 4 previous trips to Space Camp by the school. Both letters refer to the spacecamp.com website and to related presentations provided at the school for parents and pupils by Ken Lewis of Gifted Tours. The letters also include a quote by Ken Lewis, promoting Space Camp, seemingly taken from the *Sunday Express* on 12 August 2012. The exhibit also includes a copy of a Borlase school news letter dated 14 February 2014. Under the heading "SPACE CAMP" it references high demand for places trips to Space Camp, which the school has run "*for several years now*" and offering a further trip for Easter 2015. Again, it refers to Ken Lewis of Gifted Tours giving a presentation about the trip.

The MP blog

26. **Exhibit LR6** shows a copy of a blog dated 25 November 2013 from the website of Stephen Metcalfe, MP for South Basildon & East Thurrock. It centres on his meeting with the directors of Gifted Tours as “UK Space Camp Ambassadors”. It includes a link to the Proprietor’s website and refers to Mr Metcalfe’s interest in seeing how involvement with the camp could be developed in line with his efforts to promote STEM subjects in his constituency.

Website of Gifted Tours

27. **Exhibit LR7**: Mr Ramirez states (at § 25) that the website associated with Gifted Tours’ use of the trade mark ceased as of 2019⁷. Exhibit LR7 shows a selection of webpages taken from Wayback Machine for the relevant period (from 2014, 2016 and 2017) for giftedtours.co.uk. Page 1 is headed “Gifted Tours SPACE CAMP ® Trips for SCHOOLS”. It states, under the heading ‘Who we are’: “*Gifted Tours exclusively specialise in arranging school visits*” to the Proprietor in the USA and that “Ken Lewis of Gifted Tours was appointed in 2005 as the official Space Camp® Ambassador for the UK as an authorised representative of the Space Camp® and the US Space& Rocket Center®. Page 10 of Exhibit LR7 (where the URL indicates 2014) includes testimonials from school staff and students who attended via Gifted Tours, praising the “Space Camp” experience. These include schools such as Southend High School for Boys, the Humphry Davy School, Penzance and St Mary’s Catholic School, Bishops Stortford. Page 23 outlines a typical day at Space Camp®.

The Proprietor’s website

28. Mr Ramirez states (§26) that the Proprietor operates a website at spacecamp.com “*which is visible to all in the English language as a resource to educational establishments when seeking to make an informed decision to attend*” one of the Proprietor’s programmes. He states that during the period 2018/2019 there were 118,153 UK-based users of the website and of these 58,599 were shown as new users originating from the UK. There is no explanation of how these figures were obtained and clearly at least some of that time is after

⁷ The same point about the (amicable) end of the relationship is made elsewhere in the papers filed, including on the Form TM9 filed during the evidence rounds (which secured an extension in the time available to the Proprietor to file its evidence).

the Relevant Period.) **Exhibit LR8** shows extracts taken from Wayback Machine in relation to the Relevant period. Most of the 50+ pages of the exhibit were of no informative or evidential value. However, I consider the following pages relevant:

- Page 1 shows a site map of the website as at 8 February 2014, which shows the inclusion of a page entitled Space Camp Ambassadors, reflecting what is shown in full at **Exhibit LR1**;
- Page 5 outlines activities undertaken by Space Camp trainees, emphasising the importance and role of unique space travel artifacts, the conduct of science experiments to learn basic scientific principles. It also refers to showing IMAX or 3D movies providing an astronaut’s view of the earth, and to scaling the “Mars climbing walls”;
- Page 54 shows a page from 29 February 2016, which states that “*Each year, thousands of trainees from around the world arrive at the US Space & Rocket Center in Huntsville, Alabama, for a week of fun, new friends and amazing adventures at Space Camp*”;
- Page 65 shows (11 February 2016) Space Camp used as a trade mark as an umbrella term covering a range of educational offerings aimed at different ages, those offerings include Space Camp (for ages 9 – 11), Space Academy (12 -14), and Advanced Space Academy (15-18).

The Proprietor’s Annual Report

29. **Exhibit LR9** shows extracts from the Proprietor’s Annual Report for 2017. I note that page 3 of that report refers to the US Space & Rocket Center as “*one of only 0.5% of museums that pay their own expenses with income from operations such as Space Camp and Space Camp ROBOTICS.*” It also highlights that Gifted Tours was among its top international customers in 2017.

APPLICABLE LAW

30. At paragraph 2 above, I have given the essential content of section 46(1)(a) of the Act, and at paragraph 6 above I set out the caveat against revocation set out in section 46(3)(a). For completeness, I also note that section 46(2) permits use in acceptable variant forms⁸, and that section 46(5) and section 46(6) provide as follows:

⁸ No significant issue of variant use arose in these proceedings.

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

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

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

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

31. In addition to the parts of section 46 that I have set out, section 100 of the Act is also relevant and reads: “*If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.*” It is therefore plain that the burden of proof falls on the Proprietor to show that it has used its mark.

32. Furthermore, Ms Wickenden highlighted that the non-exhaustive list of acts that constitute use for the purpose of trademark infringement as set out at section 10(4) of the Act includes:

- offering or supplying services under the sign – s.10(4)(b);
- using the sign on business papers and in advertising – s.10(4)(d).

33. The principles for the assessment of whether there has been genuine use of a trade mark were summarised by Arnold J (as he then was) in *London Taxi Corp v Frazer-Nash Research Ltd* [2016] EWHC 52 (Ch), [2016] ETMR 18 at [219] and *W3 Limited v Easygroup Limited v Jean Camille Pons* [2018] E.T.M.R. 40 [194], both of which were subsequently endorsed by Carr J in *Pathway IP SARL v Easygroup Ltd* | [2018] EWHC 3608⁹:

- i. Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark;
- ii. The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark;
- iii. The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user

⁹ Mr Keay referred me to comparable wording in the judgment of Arnold J in *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) at paragraphs 114-115.

by enabling him to distinguish the goods or services from others which have another origin;

- iv. Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: .. Internal use by the proprietor does not suffice: .. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: .. But use by a non-profit making association can constitute genuine use;
- v. The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark;
- vi. All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use;
- vii. Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule;
- viii. It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use

34. I also bear in mind applicable aspects of case law that offer guidance, particularly in the context of the following three considerations: (a) the extent to which a website may be considered to be targeting consumers in the UK; (b) the sufficiency of the evidence filed;

and (c) the relationship between the Proprietor and its UK ambassador in the context of use with consent.

DECISION

35. The points of dispute between the parties, as expressed in the skeleton arguments and amplified at the hearing involved essentially the following:
- (i) The Applicant denied that the Proprietor had used its services at all in the UK;
 - (ii) Mr Keay referred to an absence of evidence of a commercial relationship between the Proprietor and Gifted Tours and contended that any use of the mark shown in the evidence is not in relation to the Proprietor's services, but only in relation to tour operator services offered by Gifted Tours;
 - (iii) The Applicant was generally critical of the evidence in various ways: some of the evidence was unclear both in content and source, and included gaps, where evidence could have been filed but was not filed, and requiring inferences; it noted that no direct evidence was filed from Gifted Tours and Mr Keay invited me to treat with particular caution aspects of the witness statement that were unsupported by corroborating evidence;
 - (iv) Mr Keay submitted that the numbers of UK attendees at Space Camp were anyway insufficient to establish genuine use, and that it was unclear how or whether the UK attendees would have been exposed to the mark in the UK;
 - (v) The Applicant denied that even insofar as the Proprietor offered services in the USA, its services did not extend to the full breadth of those registered in Class 41, and that in particular the reference to "theme park entertainment" was not warranted and the specification should be cut down accordingly.

I address the above five points below.

Use by the Proprietor directly

36. It was not in dispute that it was not necessary for the services themselves to be provided in the UK for there to be use of the mark in UK in relation to those services. It is possible to establish genuine use in circumstances where services, provided in another country, are at least partly targeted at UK consumers. (Ms Wickenden offered as an illustration, the

services of Disneyland in Florida, promoted in the UK.¹⁰) In the present case, there is no evidence of the Proprietor having spent money on adverts in the UK; the only relevant evidence in support of use by the Proprietor itself is the evidence relating to its own website.

37. There is no doubt that use of a mark on the internet may constitute genuine use in the UK: the courts have decided that a website which is use 'targeted' at a particular territory counts as use in that territory. The question then arises, what counts as targeting? The relevant principles were summarised by Kitchin LJ in *Merck* as follows¹¹:

"[167] First, in determining whether an advertisement of goods bearing a trade mark on the website of a foreign trader constitutes use of the trade mark in the UK, it is necessary to assess whether the advertisement is targeted at consumers in the UK and in that way constitutes use of the mark in relation to goods in the course of trade in the UK.

[168] Secondly, the mere fact that a website is accessible from the UK is not a sufficient basis for concluding that an advertisement displayed there is targeted at consumers in the UK.

[169] Thirdly, the issue of targeting is to be considered objectively from the perspective of average consumers in the UK. The question is whether those average consumers would consider that the advertisement is targeted at them. Conversely, however, evidence that a trader does in fact intend to target consumers in the UK may be relevant in assessing whether its advertisement has that effect.

[170] Fourthly, the court must carry out an evaluation of all the relevant circumstances. These may include any clear expressions of an intention to solicit custom in the UK by, for example, in the case of a website promoting trade-marked products, including the UK in a list or map of the geographic areas to which the trader is willing to dispatch its products. But a finding that an advertisement is directed at consumers in the UK does not depend upon there being any such clear evidence. The court may decide that an advertisement is directed at the UK in light of some of the non-exhaustive list of matters referred to by the Court of Justice in *Pammer* at [93]. Obviously the appearance and content of the website will be of particular significance, including whether it is possible to buy goods or services from it. However, the relevant circumstances may extend beyond the website itself and include, for example, the nature and size of the trader's business, the characteristics of the goods or services in issue and the number of visits made to the website by consumers in the UK."

¹⁰ In reference to the need for services to be offered or advertised in the UK Ms Wickenden cited *L'Oréal SA v eBay International AG* [2011] ECR I-0000, [2012] EMLR 6; and *Sofa Workshop The Sofa Workshop Limited v Sofaworks Limited* [2015] E.T.M.R. 37: "32. In short, genuine use of a trade mark by reason of its use in an article or advertisement in a publication will qualify as genuine use in a particular Member State if, viewed objectively, the article or advertisement is at least partly targeted at consumers in that Member State."

¹¹ *Merck KGaA v Merck Sharp & Dohme Corp* [2017] EWCA Civ 1834, [2018] ETMR 10

38. What the Court of Justice said in *Pammer* at [93] was as follows:

"The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists."

39. I have outlined the evidence in relation to the Space Camp ".com" website (LR1 and LR8). The website describes in outline the services offered by the Proprietor. Notwithstanding the absence of certain indicators of targeting (e.g. prices in pound sterling) I consider the following points relevant. The website evidence refers explicitly (LR8 page 54) to the fact that thousands of attendees each year "from around the world" and shows a page dedicated to Space Camp Ambassadors (LR1) from which a UK visitor to the Proprietor's website would be aware that it could contact the UK-based ambassador to arrange school visits. The UK contact details for Gifted Tours are shown to have been provided during the Relevant Period. Having regard to the factors from *Merck*, I consider that the average UK consumer for the services would consider themselves among those at whom the services advertised on the website were targeted; I also consider that it would be reasonable to conclude from the inclusion of those points on its website that the Proprietor did in fact intend to target consumers in the UK. I also have in mind the nature of the services provided, which are based on residential educational camps, provided in a site-specific location, whose draw includes the authenticity and quality of the space-related resources offered and to which consumers may be prepared travel (and indeed are shown to have travelled from the UK). I therefore find that the Proprietor itself may be considered to have made actual use of its trade mark in the UK by way of its website. Having made that finding as to actual use, I shall consider in due course the other factors necessary for genuine use. Moreover, given the

focus of the evidence on the activities of Gifted Tours, I shall deal with the question of whether the evidence shows use of the mark in the UK with the consent of the Proprietor.

Use by Gifted Tours

40. Use with the consent of the registered proprietor of a trade mark is deemed to be use by the proprietor himself for the purposes of section 46(1)(a) and (b) of the Act. Mr Keay made submissions regarding a lack of evidence as to the nature of the relationship between Gifted Tours and the Proprietor. On that point, what can be said from the evidence is as follows:
- Gifted Tours was paid no commission by the Proprietor in respect of the attendees it brought to Space Camp (it might; at most, have had access to a lower group rate);
 - In 2017, Gifted Tours was described as one of the Proprietor's top international "customers";
 - During the Relevant Period, the Proprietor identified Gifted Tours on its website as its ambassador the UK;
 - On the website of Gifted Tours, its director, Ken Lewis, is identified as having been appointed in 2005 as the official Space Camp® Ambassador for the UK as an authorised representative of the Space Camp®, and that the relationship ceased at the end of 2018.
 - the Proprietor refers to ambassadors as "an elite network of leaders who represent Space Camp across the world" defining a Space Camp Ambassador "as an individual or group who brings students from their region to Space Camp several times a year" (albeit that that definition may date from after the Relevant Period);
 - Gifted Tours exclusively specialised in arranging school visits to the Space Camp.
41. There is no evidence to suggest that the Proprietor required its ambassador to keep up a particular flow of attendees, but in my view that lack of contractual relationship between the Proprietor and its ambassador does not jeopardise the claimed position, that Gifted Tours was using the Space Camp trade mark in the UK with the consent of the Proprietor. I see no reason to doubt the issue of consent. According to case law it is appropriate to adopt and apply the same basic concept of use 'by the proprietor or with his consent' whether the question is one of non-use or infringement (or indeed exhaustion of rights).¹² Clearly if the Proprietor had taken action for trade mark infringement in relation to the use by Gifted Tours

¹² See *Einstein Trade Mark* [2007] RPC 23 / BL O-068-07, Geoffrey Hobbs QC, sitting as the Appointed Person; see too Mann J in *Aiwa Co. Limited v -Aiwa Corporation* [2019] EWHC 3468(Ch)

of the Space Camp trade mark in the UK, the ability of Gifted Tours to have evidenced its status as an ambassador and an authorised representative of Space Camp would have served as an unimpeachable defence of consent¹³. In my view, such endorsement as ambassador may be considered express consent, or else, at the very least, is implied consent, which suffices. It is certainly not an instance of silent acquiescence.

42. Mr Keay also argued that to the extent that Gifted Tours promoted the Proprietor's programmes, such promotion was ancillary to the promotion of its own tour operator services and that there was no evidence that Gifted Tours was using the trade mark to create and maintain a market for the Proprietor's services programmes in the UK. In the appeal decision in *Einstein*¹⁴, the Appointed Person stated (at paragraph 21):

“use of a UK registered trade mark ‘shall be deemed to constitute use by the proprietor’ if it is ‘with the consent of the proprietor’. It follows that use by a third party with authority to use the mark equals use by the proprietor for the purpose of defeating an application for revocation on the ground of non-use: Case C-40/01 Ansul BV v. Ajax Brandbeveiliging BV [2003] ECR I-2439 at paragraph 37.”

43. Since that is the case, it is of little significance whether the promotional use of the Proprietor's trade mark may be considered ancillary to the promotion of the services offered by Gifted Tours. In any event, the evidence shows that the entire business of Gifted Tours rested fundamentally on the services provided by the Proprietor. There was clearly mutually beneficial arrangement. In attending schools Ken Lewis promoted the Space Camp services provided by the Proprietor that centrally underpin the organisational “tour operator” services offered by Gifted Tours. Ms Wickenden highlighted that the testimonials on the Gifted Tours website from participants were in review of the Space Camp experience, not the surrounding logistics. (I reject Mr Keay's suggestion that the use by Gifted Tours of the mark “Space Camp” was comparable to its use of “Marriott” and “Five Guys”, mentioned in the tour itinerary in the printed flyers.) The evidence of **Exhibit LR7** is relevant evidence of use, notwithstanding the absence of evidence as to how many people visited the Gifted Tours website.

¹³ By virtue of section 9(1) of the Act.

¹⁴ Cited above

General sufficiency of the evidence

44. Mr Keay referred me to the guidance on evidence in non-use cases of the Appointed Person (Daniel Alexander QC) in *Awareness Ltd v Plymouth City Council*¹⁵ (Mr Keay's own emphasis as indicated):

The burden lies on the registered proprietor to prove use. However, that and other cases show that there is no particular way in which use must be established. At the initial stage of revocation proceedings, where all he has to show is an arguable case, the approach may be more relaxed but even when the matter comes to be finally determined there is also no hard and fast way in which use must be proved. Evidence which may be sufficient to establish an arguable case that there has been use for the purpose of r.31 may be insufficient ultimately to prove that there has been such use on the balance of probabilities. However, it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more, so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the hearing officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.

45. Mr Keay submitted that aspects of the evidence were unclear. For example, he noted that Paragraph 3 of WSLR read as follows: “*All of the information within this Witness Statement is within my own knowledge or has been obtained from the records of my Company or that of Gifted Tours to which I have access.*” Mr Keay questioned how Mr Ramirez could have access to the records of Gifted Tours since he is not an officer of that company and the relationship had ended months before the date of his witness statement. On that particular point, Ms Wickenden acknowledged the potential ambiguity in the phrasing of Mr Ramirez's

¹⁵ [2013] RPC 34; O/236/13.

sentence, but said that she took it to mean that the information came from such records of Gifted Tours that Mr Ramirez happened to have access by virtue of the relationship that had existed until the end of 2018. I consider that a fair and plausible understanding.

46. Moreover, while Mr Ramirez did not make clear how he came to have possession of certain documents, I do not consider that sufficient basis to disregard such evidence. For example, although the evidence of the accounts of Gifted Tours suffers from the weaknesses I described at paragraph 18 above, Exhibit LR2 exhibit contained repeated references to the documents having been communicated and authenticated in line with the Companies Act 2006. I therefore consider it reasonable to understand that those records come from those on public record at Companies House.
47. There is no direct evidence from Gifted Tours, whose use of the mark forms an important part of the evidence. However, as the Appointed Person noted in *Einstein*: “There is nothing in any of these provisions or in the law of evidence more generally which either obliges the proprietor of a trade mark to rely on evidence of use from ‘internal’ witnesses or prevents him from relying on evidence of use from ‘external’ witnesses.” As stated in *Awareness Ltd* (above), there is no particular way in which use must be established.
48. It is clear of course that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned¹⁶. There were notable shortcomings in the evidence in the present proceedings, some of which I referred to in my evidence summary. However, I do not go so far as to accept Mr Keay’s submission that unless a point of evidence is corroborated by independent documentation, it must be rejected. The content of the witness statement by Mr Ramirez is a legitimate source of evidence, given under a statement of truth, and the Applicant did not file evidence in contradiction, nor did it request to cross examine the witness. I assess the evidence as it is, albeit that I do so with due caution and factoring in that aspects that are unclear or unsupported will carry less weight. I also bear in mind that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items

¹⁶ GC, 19 April 2013, Luna International Ltd/OHIM-Asteris Industrial and Commercial Company SA, T-454/11, paragraph 29.

of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts¹⁷.

Sufficiency of evidence on quantum of use

49. There were certainly weaknesses in the evidence on the extent to which promotion of the services under the mark to UK consumers had led to uptake of the contested services:
- I have already commented on the shortcomings of **Exhibit LR2**; I consider that exhibit only of marginal relevance;
 - In the Attendees Table Mr Ramirez gives the numbers of students from the UK who attended what he refers to as the Proprietor's "*US programme*" - I acknowledge that that term is vague enough to extend potentially to offerings beyond those encompassed under the umbrella of its Space Camp services;
 - Returning to the claim by Mr Ramirez (as I highlighted at paragraph 16 above). Based on the premise that the Proprietor's records show that half the total of the 2017-2019 attendees from the UK originated other than through its UK ambassador, Mr Ramirez presumes to double the corresponding values shown in the Gifted Tours Turnover Table in order to arrive at the (Proprietor's) "*total turnover generated under the mark in the UK during the period 2017-2019*". This is a convoluted and unreliable claim by Mr Ramirez. Mr Keay submitted that those UK attendees might not have encountered the trade mark in the UK, but might have attended after having been made aware of the services by family or friends in the US. Notwithstanding that Mr Keay's submission should be considered in the context of my finding that the Proprietor's website may also be considered to have been targeting the UK (as well as US consumers) and in the context of the nature of residential educational courses, I nonetheless agree that it is not possible to determine with confidence how many of the attendees may be attributable to use of the mark in the UK;
 - **Exhibit LR9** confirms that Gifted Tours was among the top international customers in 2017. Describing the numbers involved as "tiny", Mr Keay referred to the line graph in the Proprietor's annual report¹⁸, which indicates that the number of Space Camp attendees in 2017 was around 35,000. The Attendees Table from WSLR gives the

¹⁷ Luna Internation, T-454/11, cited above, paragraph 36.

¹⁸ At the top of the page 4 of Exhibit LR9.

number of UK attendees for 2017 as 112 and Mr Keay points out that this equates to 0.32% of the total.

50. However, despite the above weaknesses I take into account the evidence from Mr Ramirez relating to the numbers of UK attendees, noting, for example that in 2015, 240 attended, and in 2016, 179 attended. I also note the evidence of the school letters in **Exhibit LR5** that show that schools in the UK have, repeatedly, across several years and during the Relevant Period, sent groups of children to Space Camp following its promotion by the ambassador. The press articles in **Exhibit LR4** refer to schools from across the country having shown sufficient interest that certainly by 2012 the Gifted Tours business had become the ambassador's full-time occupation. **Exhibit LR7** provides further names of schools in England taking up the Proprietor's services during the Relevant Period, again following promotion by the ambassador. (I noted at least five different schools in England identified in the evidence.) I also note that although the Relevant Period spans 20 years, much of the evidence is far more recent than that and includes the period of five years prior to the application for revocation.

51. I also consider the nature of the services at issue, which necessitate travel from the UK to a particular destination in the USA, for an activity week with an emphasis on academic disciplines relevant to space-travel. Although Space Camp may be enjoyable and fun, as well as educational, such services will by their nature have a less broad attraction, than, say, a trip to Disneyland. I also take into account the cost of attendance, which is shown to have ranged from 1600 – 2300 pounds per attendee, which again will have a limiting effect on the numbers likely to be able to access the services.

Conclusion on genuine use

52. In light of my various findings above, I consider that the Proprietor has established genuine use of the contested mark in the UK. The final point of dispute relates to the terms in which, on the basis of the evidence filed, the services of the Proprietor may fairly be described, and to whether they extend to the services covered by its UK trade mark registration. I shall deal with that point shortly, but before I do so, I review the factors outlined in case law (paragraph 32 above) that have led to my finding of genuine use.

- There has been actual use of the trade mark by the Proprietor (via its website, referring to the UK contact), and, more substantially, use by a third party with authority to use the mark (the Proprietor's named ambassador from 2005 – 2018).
- There has been no suggestion that use has been 'merely token', serving solely to preserve the rights conferred by the registration of the mark.
- It will have been apparent to attendees / prospective attendees where and by whom the services would be provided; use was thus consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the services to the consumer or end user by enabling them to distinguish the services from others which have another origin.
- Use of the mark relates to services already marketed.
- Noting that use by an authorised third party is deemed to be use by the proprietor, the channel of a network of ambassadors is use by way of real commercial exploitation of the mark on the market for the relevant services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the services that bear the mark.
- The UK is clearly not the Proprietor's principal target, but bearing in mind factors such as the cohorts of UK attendees, year on year, at what is a somewhat niche educational offering under the mark, and that use of the mark need not always be quantitatively significant for it to be deemed genuine, I am satisfied that the level of use in evidence may be deemed to be "justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant services".

53. However, I must consider whether the Proprietor has shown genuine use of its mark in the UK in relation to all of its registered services, and whether it may be appropriate to formulate an amended specification to reflect what is fair in line with the evidence. In the *Titanic Spa* case¹⁹, Mr Justice Carr summed up the law relating to partial revocation as follows.

"iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require

¹⁹ *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), at paragraph 47.

amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

54. In similar vein, Mr Geoffrey Hobbs Q.C. as the Appointed Person in *Euro Gida*²⁰ summed up the law as being:

"In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify.

²⁰ *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10

For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

55. The contested mark is registered in respect of the following services:

Class 41: Theme park entertainment, educational and recreational services based on science, space and technology; teaching and educational services in the theory and principles of space travel and of propulsion, guidance and control of space craft; all included in Class 41.

Mr Keay denied, for instance, that even in the USA the Proprietor’s services did not extend to “theme park entertainment”. Mr Keay submitted that the Proprietor was more properly considered a museum, and that the presence of a number of interactive, fun resources did not make it a theme park. Although I note that the phrase “*Theme park entertainment*” is qualified by the words “*based on science, space and technology*”, I have also noted that the evidence of the Proprietor’s Annual Report (Exhibit LR9) speaks in terms of a museum; there is no evidence referencing a theme park. Moreover, although I do not doubt that the educational provision includes notably fun elements (the 1/6th Gravity Chair, Mars Climbing wall, films etc) I do not think that the ordinary consumer would naturally describe the services in evidence as “Theme park entertainment”— that phrase is suggestive of services having a broader draw than I have allowed for in my finding of genuine use, which rests on custom drawn from UK schools attending residential educational camps; the evidence does not establish genuine use in relation to adult educational services. In my view, a fair specification of the Proprietor’s services in Class 41 would be: *Space-oriented educational camp programmes for children, including principles of space travel and of propulsion, guidance and control of space craft.* The registration should be amended accordingly.

OUTCOME:

56. The registration of trade mark No. 1398673 is to be revised to reflect the following:

In view of my findings in this decision, the Proprietor’s services in Class 41 should be deleted
~~*Class 41: Theme park entertainment, educational and recreational services based on science, space and technology; teaching and educational services in the theory and principles of space travel and of propulsion, guidance and control of space craft; all included in Class 41.*~~

And replaced with the following:

Class 41: Space-oriented educational camp programmes for children, including principles of space travel and of propulsion, guidance and control of space craft.

The Proprietor voluntarily surrendered its goods in Class 25, which shall thus be removed:

~~*Class 25: Leisure clothing; caps, visors and headgear, flight suits, shorts, shirts and tee-shirts, pullovers, overalls and jackets; socks, shoes and trainers; all included in Class 25.*~~

57. There is a difference between formal surrender of goods and revocation of such goods. Partial surrender of a registration requires the filing of a Form TM23. No such form has been filed, and in this case, I consider it reasonable to equate the “voluntary surrender” of Class 25, so close to the hearing date, as a concession to the effect that those goods were liable to revocation. (Certainly, the evidence established no genuine use for those goods.)
58. As to the date from which the rights of the Proprietor shall be deemed to have ceased, in line with section 46(6)(b), and based on the evidence (or absence thereof), the above changes operate as **from 20 March 1998**.

COSTS

59. Mr Keay argued that it was unreasonable for the Proprietor to maintain its denial of the non-use allegation in respect of the Class 25 goods right to the last minute and that in considering costs, I should have regard to the conduct of the Proprietor in surrendering the Class 25 goods the day before skeleton arguments were due to be exchanged. I consider this a valid point, even if the services would have anyway been the central focus of the proceedings. I also take into account that I have found genuine use only in relation to some of the services in Class 41, with some services being removed in the fair specification. In the circumstances, I make no order for costs. The parties shall each bear their own costs in the proceedings.

Dated this 17th day of February 2020

Matthew Williams

For the Registrar