

O-152-05

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2314737
BY PEARLY GUILD
TO REGISTER A TRADE MARK IN CLASSES 36, 41 AND 42**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 91561
BY PEARLY GUILD**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application No. 2314737
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Classes 36, 41 and 42**

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**IN THE MATTER OF Opposition thereto under No. 91561
by Pearly Guild**

BACKGROUND

1. On 2 November 2002 Pearly Guild of HMS President (1918), Victoria Embankment, London EC4Y 0HJ, applied to register the trade mark PEARLY GUILD in Classes 36, 41 and 42 of the register for the following specifications of services:

Class 36:

Charitable collections and fund raising for charitable purposes.

Class 41:

Education, training and entertainment.

Class 42:

Website compilation, creation and maintenance.

2. The application was subsequently accepted by the Registrar and published in the Trade Marks Journal.

3. On 12 March 2003 Pearly Guild of 21 Baylis Road, Waterloo, London SE1 7AY filed a Notice of Opposition under Section 3(6) of the Act on the grounds that the application was made in bad faith as those applying for the mark are a breakaway group of individuals who are not hereditary and that the mark has belonged to the President of the Guild since 1995.

4. Background to the opposition was attached to the Statement of Grounds. In brief summary it states that:

- a) The Pearly Guild was first formed in March 1902 principally to collect for charity for the poor and sick;
- b) the “tradition” was handed down through the generations;
- c) the Second World War had a devastating effect on the Guild and it withered until 1977 when it was set up again by President George Major to encourage Pearlys of past standing to support the Queen’s Silver Jubilee through charitable works;
- d) some eighteen months later the Guild again drifted apart but the name was left on the shelf for any original Pearly to set up again;

- e) in 1995 President George Major was approached to reform “The Pearly Guild”;
- f) a draft constitution was adopted in December 1997 and a committee of individuals “born into the Pearly tradition” was established;
- g) subsequently a number of new members were appointed, some of whom sought self praise and publicity and “their posh voices would distract the public” as “They were not the down to earth type of people that would be expected of a Pearly”;
- h) in 2002 the President got himself involved in some difficulties, following which the “newcomers” turned against him;
- i) while the President was away as a result of these difficulties, a meeting was held, contrary to the rules and constitution, which voted out the Treasurer Kathy Major;
- j) subsequent meetings failed to resolve the position and “a take over bid had begun by a very small majority who were not real Pearlys”;
- k) the “newcomers” or “breakaway” group applied to register the mark in suit to which they are not entitled.

5. The applicant filed a Counterstatement denying the grounds of opposition. They state that the application was made with the unanimous approval of the genuine Pearly Guild following meetings and in accordance with the Constitution. The Counterstatement goes on to say that:

- a) the genuine Pearly Guild were all democratically elected at Annual General Meetings when Mr Dole and Mr Major (the person behind the opposition) were members;
- b) the applicant (the genuine Guild) is a Company Limited by Guarantee operating as a Charity (Registered Company No. 4553954, Charity No. 1097013)
- c) the opponent is a separate body set up by Mr Dole and Mr Major between December 2002 and March 2003 independent of The Pearly Guild, although they refer to themselves as The Pearly Guild;
- d) Mr Dole was expelled from the Pearly Guild in 2001 and Mr Major has not been a member since 2002;
- e) the post of President of the Pearly Guild ceased when it became a Company Limited by guarantee (operating as a charity) in September 2002, a course of action supported and voted for by Mr Major at Pearly Guild meetings;
- f) in addition to the Pearly Guild, there are two other Pearly organisations, the Pearly Association and the Pearly Society, both of whom back the applicant.

6. Both the applicant and opponent have filed evidence. The parties are content for a decision to be issued without recourse to a hearing and the opponent forwarded written submissions for the Hearing Officer's attention.

OPPONENT'S EVIDENCE

7. The opponent's evidence comprises forty witness statements from the following individuals – Alf Dole, George Major, Diane Martin, Kathy Major, Loraine Burton, Roxanne Warren, Janet Major, May Howard, Mary Robinson, Sean George Kingsbury Major, Karren Crocker, Ricky Conway, Claire Major, Jimmy Jukes, Lee Burton, Tammy Major, Simon Dole, Daniel Moyle, Terry Martin, Charmaine Grant, Flow Cheer, Joanne Martin, Steve Strange, Yvonne Kane, Jade Major, Paul Major, Kim Warren, Arthur Dole, Trisha Conway, Ray Donovan, Donna Mathieson, Violet Donovan, Keith Newman, Graham McKeon, Pauline Newman, Billy Murrell, Rose Murrell, Leon Andrews, Graham Barrett and Dave Newman.

8. I do not intend to summarise this evidence in any detail. The vast bulk relates to personalities, wider disputes and subjective issues. In relation to the actual grounds of opposition before me that the application was made in bad faith by a breakaway group who are not hereditary and that the mark belongs to the President of the Guild, a copy of the Pearly Guild Constitution adopted 21 December 1997 has been filed which makes provision for the Management of the Guild and the Guild's Policy.

APPLICANT'S EVIDENCE

9. The applicant's evidence consists of a witness statement by Edward D Berman MBE dated 21 October 2004. Mr Berman is "Charity Advisor" to the applicant and was appointed in 2001.

10. Much of this evidence relates to issues and events after the relevant date for these proceedings ie. 2 November 2002, the date of application. The Pearly Guild Ltd was registered as a company on 4 October 2002 but was not registered as a charity until 11 April 2003.

11. Mr Berman provides information in relation to Mr Major's financial dealings and points to a conflict with his position in the organisation in 2002.

12. Mr Berman states that prior to the relevant date the Guild pursued the path voted on unanimously by the members (including Mr Major) to become a registered company limited by guarantee and registered as a charity. This is supported by Minutes of the meeting held on 4 August 2002. Exhibit 10 to Mr Berman's statement comprises "hand written" notes of a sub-committee meeting of 5 July 2001, which Mr Berman states he attended with Mr Major and two others. These notes refer to a proposal to register The Pearly Guild as a trade mark which he says was agreed. Furthermore, at Exhibit 8, Mr Berman attaches the published minutes of The Pearly Guild Extraordinary General Meeting dated 9 November 2002. This refers to the trade mark application proposal and its unanimous support by the Sub-Committee. It also states that Mr Major and his family were unable to verify their membership to the Guild as they had not paid subscriptions for at least 12 months, contrary to the requirements of the constitution.

OPPONENT'S EVIDENCE IN REPLY

13. This consists of five witness statements, one each by Ricky Conway, Kathy Major, George Major, Alf Dole and Diane Martin.

14. Much of this evidence, once again, relates to personalities and wider issues. The bulk of it also concerns matters arising after the relevant date.

15. The statement of Mr Conway alleges that the Constitution of the Guild was ignored in the removal of individuals and the holding of meetings. The issues raised do not appear to be directly linked by Mr Conway to the trade mark application. However, I infer this goes to the point that those applying for the mark were a breakaway group.

16. This completes my summary of the evidence filed in this case. I turn now to the decision.

DECISION

17. Section 3(6) of the Act states:

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

18. The opponent contends that the application to register the mark in suit was made in bad faith because those applying for the mark are a breakaway group of individuals who are not hereditary and that the mark has belonged to the President of the Guild since 1995.

19. In *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367, Lindsay J considered the meaning of “bad faith” in Section 3(6) of the Act and stated (at page 379):

“I shall not attempt to define bad faith in this context. Plainly includes dishonesty and, as I would hold, includes 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. Parliament has wisely not attempted to explain in detail what is or is not bad faith in this context; how far a dealing must so fall-short in order to amount to bad faith is a matter best left to be adjudged not by some paraphrase by the courts (which leads to the danger of the courts then construing not the Act but the paraphrase) but by reference to the words of the Act and upon a regard to all material surrounding circumstances.”

20. In *Harrison v Teton Valley Trading Co* [2004] EWVA Civ 1028, the Court of Appeal confirmed that bad faith is to be judged according to the combined test set out by the House of Lords in *Twinsectra v Yardley* [2002] 2 AC 164. Paragraphs 25 and 26 of the Court of Appeal decision are of particular assistance and read as follows:

“25. Lord Hutton went on to conclude that the true test for dishonesty was the combined test. He said:

“36. Therefore I consider That your Lordships should state that dishonesty requires knowledge by the defendant that what he was doing would

be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct.”

26. For my part, I would accept the reasoning of Lord Hutton as applying to considerations of bad faith. The words “bad faith” suggest a mental state. Clearly when considering the question of whether an application to register is made in bad faith all the circumstances will be relevant. However the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as in bad faith by persons adopting proper standards.”

21. Thus, in considering the actions of an applicant, the test is a combination of the subjective and objective. Furthermore, it is clear that bad faith in addition to dishonesty, may include business dealings which fall short of the standards of acceptable commercial behaviour ie. unacceptable or reckless behaviour in a particular business context and on a particular set of facts.

22. Much of the opponent’s evidence and submissions go to the allegation that committee members were removed and meetings held contrary to the Guild’s Constitution. However, this is not the issue before me as such. I have to decide whether, at the relevant date ie. 2 November 2002, the application to register the trade mark was made in bad faith.

23. The opponent’s grounds assert that the mark belongs to the President of the Guild. The Constitution of the Guild, as adopted on 21 December 1997 (see Annex One to this decision) provides no support for this claim. Indeed at the time of application the Guild was a registered company limited by guarantee (and had been since 1992). The company’s memorandum and articles of association state that the trustees and officers forming the board have control of the property and funds.

24. The opponent also asserts that those applying for the mark are a breakaway group and not hereditary.

25. While the control of the Guild is obviously an issue of great contention, the evidence indicates that all parties were supportive of the strategy of corporate charitable status and trade mark recognition.

26. Turning to the control of the Guild at the relevant date, I note that the Executive Committee of the Guild (as defined in the 1997 constitution) at the Annual General Meeting, 30 June 2002 comprised George Major, George Davison, Sue Smith and the Charity Steward Ed Berman. At the Annual General Meeting of 9 November 2002 (a week after the application for the trade mark registration had been made), the Executive Committee of the Guild comprised George Davison, Sue Smith, Harry Mayhead and Ed Berman. Three of the four members remained. This hardly smacks of a breakaway – certainly not at the relevant date.

27. The opponent also goes to the issue of the hereditary nature of Pearly King and Queen titles. The 1997 Constitution provides that full members are Pearly Kings, Queens, Princess and Princes and the management of the Guild must be fully paid up members. However,

provision is made in the Constitution for Prospective Pearly Kings and Queens who are not hereditary to take titles and for associate members (non-hereditary) to be co-opted to the Committee. In any event it appears that in 2002, Mr Major was content to sit on the same Committee with three of the four individuals who were subsequently in post when the trade mark application was made.

28. As mentioned earlier in this decision, the issue of Mr Major's (or any other persons) removal and fitness for office is not the one before me. The ground of opposition is whether the trade mark application was made in bad faith.

29. From the evidence it seems to me that the Guild's strategy of securing corporate, charitable status and trade mark registration had widespread support. I have no reason to believe that those applying for the mark had nothing but the Guild's best interests at heart and were faithfully putting a long planned business strategy into effect. There is no evidence to support any allegation that their actions in this regard were the result of undue motivation or influence.

30. The opposition fails.

COSTS

31. The applicant is entitled to a contribution towards its costs. I order the opponent to pay the applicant the sum of £1000 which takes into account the fact that no hearing took place in these proceedings. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 10th day of June 2005

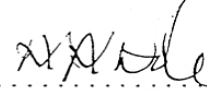
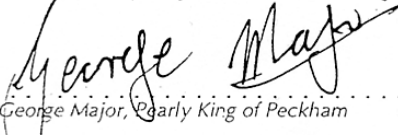
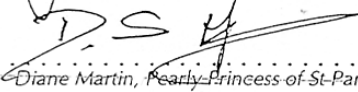
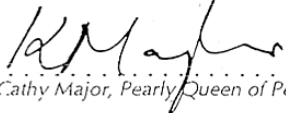
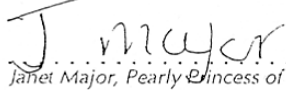
JOHN MacGILLIVRAY
For the Registrar
the Comptroller-General

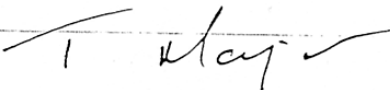
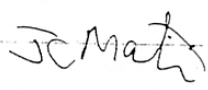
The PEARLY GUILD

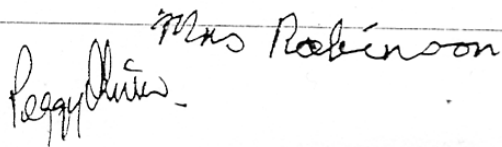
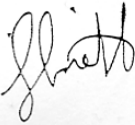
(Established 1902)

Constitution

Adopted this 21st day of December 1997
by the Executive Committee

- Chairman 
Alf Dole, Pearly King of St Pancras
- Almoner & Life President 
George Major, Pearly King of Peckham
- Secretary 
Diane Martin, Pearly Princess of St-Pancras
- Treasurer 
Cathy Major, Pearly Queen of Peckham
- Charity Steward 
Janet Major, Pearly Princess of Peckham

1. Organisation and History of The Pearly Guild

- a) The name of the organisation is 'The Pearly Guild' (hereinafter referred to as The Guild) ;
- b) The motto of the The Guild is 'The Helping Hand';
- c) The official crest of The Guild is as reproduced on the front cover to this document;
- d) The management of The Guild shall be under the direction of an annually elected Committee;
- e) The Pearly Guild was first established by original Pearly Kings and Queens in 1902, it lapsed after the second World War and has been rekindled with this updated Constitution;
- f) The Guild is a non-political non-religious organisation.

2. Key Attributes of Pearly Kings and Queens

Pearly Kings and Queens have a long and proud heritage. Since Victorian times Pearlies have been respected for their never ending work for charitable causes, their good character, honesty and the goodwill that they spread.

3. Key Objectives of The Guild

- a) To preserve, safeguard, regulate and promote the traditions and honourable standing of Pearlies;
- b) To provide a democratic Guild in which Members feel proud to belong;
- c) To support Members in their Pearly activities;
- d) To provide Members with necessary guidance and training;
- e) To keep Members fully informed through regular communication;
- f) To unite as many Pearlies as possible and create a close family bond amongst Members;
- g) To maintain an up-to-date register of all title holders;
- h) To strictly register and safeguard the titles of the Pearlies and their areas so they are not misused;
- i) To ensure the future of Pearlies by encouraging new generations to continue the heritage;
- j) To produce an annual marketing strategy and action plan;
- k) To help and support UK Registered Charities and other charitable causes;
- l) To help and support The Cockney Museum.

4. Membership of The Guild

Membership of The Guild shall comprise the following categories:-

- a) **Full Members:** Pearly Kings, Queens, Princess & Princes over 18.
Full Members are entitled to attend and vote at all general meetings and be elected to a Committee post.
- b) **Youth Members:** Pearly Princes & Princes under 18.
Youth Memebers are entitled to attend all general meetings, but not vote.
- c) **Associate Members:** Civilian Ambassadors and Pearly Prides.
Associate Members are entitled to attend all general meetings, but not vote.

5. Enrolment

- a) The fee for enrolment shall be the cost of purchasing The Guild's Medal of Honour;
- b) Members receive their official medallion at an initiation ceremony conducted by the Committee.

6. Subscription

- a) The annual subscription shall be such amount as is recommended by the Treasurer, approved by the Committee and agreed in General Meeting;
- b) Annual subscriptions are due on the 1st day of April or such other date as be determined from time to time by the Members of The Guild in General Meeting;

- c) Should a Member not pay their annual subscription within three months of the due date, notice shall be given by the Committee in writing sent by recorded post to the Member in default informing them that their membership shall lapse unless payment is received within twenty-one days of receipt of the notice.

7. Management of The Guild

- a) The management of The Guild shall be in the hands of an elected Executive Committee (herein referred to as the Committee) consisting of a Chairman, Secretary, Treasurer, Charity Steward, Almoner and Life President (who also acts as Vice-Chairman), all of whom must be fully paid up members. The Committee shall have full power to superintend and conduct the business of The Guild in accordance with this Constitution and shall in all things act for and in the name of The Guild;
- b) With the exception of the Life President, the Committee shall be elected annually at the Annual General Meeting (AGM);
- c) Should any vacancy occur in the Committee during the year, the other Members of the Committee shall have the power to co-opt a Member of The Guild to fill the post, the appointee to hold that post until the next AGM, except for the post of Treasurer whose appointment is to be confirmed at an Extraordinary General Meeting to be held as soon as possible after such appointment;
- d) A new Chairman shall be elected annually at the AGM by a majority of the Members present and entitled to vote, and shall retain the post until the next AGM;
- e) The Chairman shall also have the honorary title of 'Pearly Mayor of London';
- f) Associate Members may be co-opted to the Committee to provide business and marketing assistance;
- g) Any Committee Member may be removed by resolution of an Extraordinary General Meeting (EGM) which may proceed to fill the vacancy;
- h) Should any officer die, resign, be removed or become unfit or incapable to act, the Committee may at any time appoint a person to fill the vacancy until the next AGM, unless the vacancy is previously filled at an EGM;
- i) Committee Meetings will be held according to need, as and when necessary, with the length of notice left to the Members thereof and may consist of a meeting via the telephone.

8. Meetings

- a) Normal General Meetings shall be held no less than bi-monthly and at such other times as may be agreed;
- b) All meetings will be convened by the Secretary, who will notify all Members in writing posted to their last known address, giving not less than seven days notice for General Meetings, twenty-one days in respect of the AGM and fourteen days in respect of an EGM;
- c) The Chairman, or Vice-Chairman in the Chairman's absence, shall preside over all meetings, with any four Members of the Committee forming a quorum;
- d) Every Full Member present shall have one vote (so long as they are not disqualified by arrears or otherwise as mentioned in these rules) with the Chairman having an additional or casting vote when the votes are equal;
- e) Notice of all resolutions to be submitted to the Members shall be given in the notice of the meeting at which the resolution is to be proposed;
- f) Resolutions shall be passed by a simple majority of those attending and entitled to vote at the meeting at which the resolution is proposed;

- g) A resolution to amend, add, delete or in any way change the Constitution shall be considered by the AGM or at an EGM of which due notice has been given, and shall be passed by a majority of two thirds of the members entitled to vote;
- h) Voting at meetings shall be by show of hands of those attending and entitled to vote;
- i) EGMs may be held if three or more of the Committee concur, or whenever six or more Members so request in writing to the Secretary, so long as at least six Members plus the Committee are in attendance. No other business other than that specified in the notice shall be taken into consideration;
- j) The Guild shall keep a Minute Book in which shall be recorded the names of those present at each meeting and minutes of all the proceedings of the meeting. The minutes of each meeting shall at the next regular meeting be read or taken as read (if previously circulated) and submitted for confirmation as a true record of that fact.

9. Pearly Guild Policy

- a) Pearly King and Queen titles by tradition are inherited by direct family descendants;
- b) If a Pearly title belonging to a Member of The Guild becomes vacant due to their death or retirement, and the family are unable to fill the title, then that title is retained by The Guild until such time that the title may be allocated;
- c) Prospective Pearly Kings & Queens must follow and abide by all the principles laid down in this Constitution, beyond that there shall be no restrictions as regards occupation, race, residence or gender;
- d) Prospective Pearly Kings & Queens may take a vacant title relating to any area so long as they have ensured that no existing Pearly already holds that title;
- e) Temporary membership for a probationary period of six months may be given at the discretion of the Committee, after which the Committee may offer Full, Youth or Associate Membership as appropriate, or agree to an extension of the period of probation, or cancel the temporary membership;
- f) Members are expected to respect the Pearly cloth by not exploiting their use or allowing members of the public to use their Pearly suits in any way;
- g) Out of courtesy, when working in another Pearly's area, Pearlies should consult with the event organiser;
- h) All work coming in through The Guild shall be shared amongst Members appropriately and as equally as possible;
- i) All Press Releases relating to The Guild must be cleared by the Committee;
- j) Any Member may resign at any time by writing to the Secretary of The Guild;
- k) The Committee reserves the right to reject any application for membership;
- l) The Committee reserves the right to suspend or expel Members whose conduct is considered to be in breach of the Constitution. Members suspended or expelled may appeal in writing to the Secretary who will convene an Extraordinary General Meeting for the Member's case to be heard;
- m) A Register of Members shall be maintained by the Secretary and be open for inspection at any and all General Meetings;
- n) Members should notify any change of address in writing to the Secretary within one month;
- o) Further Guild Policy is listed in 'The Pearly Guild's Nine Comandments'.

10. Accounts

- a) All monies due to, or held for The Guild shall be paid or remitted to the Treasurer direct, who shall without due delay deposit the same in an account in the name of The Guild at a bank to be approved by resolution;

- b) The Treasurer shall make such payments as are duly authorised, or have been sanctioned by The Guild;
- c) All cheques must be signed by the Treasurer and countersigned either by the Chairman or the Secretary;
- d) The Treasurer shall keep proper books of account, in which are recorded a complete record of monies passing through their hands;
- e) The Treasurer shall prepare a statement of accounts annually at a date to be determined by the Members, showing the exact financial position of The Guild. The statement shall relate to a period of twelve months or any such lesser period ending on th 31 March each year or until the Members determine any different date;
- f) The statement of account shall be audited by an appropriately qualified person or persons who shall not be a full Member(s) of The Guild, or a servant of The Guild, or be a partner of or be employed by or who employs an officer or servant of The Guild;
- g) The Auditor shall be appointed by the Members of The Guild in General Meeting and shall be eligible for re-appointment at every subsequent AGM;
- h) Copies of the accounts and the Certificate of the Auditor stating that the accounts have been duly audited shall be sent to all Members of The Guild together with the notice of the meeting at which they are considered. Such meeting to be held within four months of the end of the financial year;
- i) The books of account shall be open for inspection at that meeting and on any other occasion if required by a resolution of the members.

11. Notices

All summonses and notices shall be deemed to have been duly served if addressed to the member at their last known address, and delivered at or sent by post to that address.

12. Copies of The Constitution

The Secretary shall deliver to every person on demand a copy of the Constitution on payment of a sum to be agreed by the Committee.

13. Dissolution

The Guild may at any time be dissolved by the consent of a majority of the Members, testified by their signatures to an instrument of dissolution. In the event of a decision to dissolve The Guild, a receiver shall be appointed who shall realise the assets of The Guild, pay any outstanding liabilities and distribute the remainder to charitable organisations as decided by a two thirds majority of those entitled to vote at the meeting at which the receiver is appointed.

14. Interpretation

In these rules, unless the contrary intention appears, words denoting the masculine gender shall be deemed to include the feminine, words in the singular shall include the plural and words in the plural shall include the singular.

The Pearly Guild's Nine Commandments

1. Thou shalt try to attend all events for the good of of The Guild, so get on ya plates of meat down the frog 'n' toad
2. Thou shalt try to attend all General Meetings, unless you've got a bloody good reason not to
3. Thou shalt promote The Guild and the Pearly heritage and be fully familiar with our history
4. Thou shalt respect fellow Brother & Sister Pearlies
5. Thou shalt hold his or her own opinion with regard to public affairs whilst in Pearls and not to bring disgrace to fellow Pearlies, so don't get Brahms & Liszt
6. Thou shalt be faithful and honourable to The Guild and fellow Members
7. Thou shalt always be fully dressed in your Pearly whistle & flute and badge of honour at official events, so leave ya dicky dirt & Peckham Rye at home
9. Thou shalt help fellow Brothers and Sisters in times of ill-health or any other problems and support each other at all times
10. Thou shalt always show in your public work in Pearls the cheerful Cockney spirit and adhere to the doctrine that charity is spelt

"L.O.V.E."