

O-307-11

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NOS 2512392 AND 2512470
BY ALISON J HENDRICK
TO REGISTER THE TRADE MARKS:



AND

Artjunkie

IN CLASSES 24 AND 25

AND

THE CONSOLIDATED OPPOSITIONS THERETO
UNDER NOS 99597 AND 99437

BY TONY KNIGHT

AND

REGISTRATION NO 2518310 OF THE TRADE MARK:



Death before Dishonour

IN THE NAME OF TOO FAST TO LIVE TO YOUNG TO DIE APPAREL CO
AND THE APPLICATION FOR INVALIDATION THERETO UNDER NO 83630
BY ALISON J HENDRICK

Trade Marks Act 1994

**In the matter of application nos 2512392 and 2512470
by Alison J Hendrick
to register the trade marks:**



**and
Artjunkie
in classes 24 and 25 and the consolidated oppositions thereto
under no 99597 and 99437
by Tony Knight
and registration no 2518310
of the trade mark:**



Death before Dishonour

**in the name of Too Fast To Live To Young To Die Apparel Co
and the application for invalidation thereto under no 83630
by Alison J Hendrick**

1) Ms Alison J Hendrick applied to register the trade mark **Artjunkie** on 30 March 2009. The application for registration was given the number 2512470. It was published for opposition purposes on 8 May 2009 with the following specification:

textiles and textile goods; bed and table covers; travellers' rugs, textiles for making articles of clothing; duvets; covers for pillows, cushions or duvets;

clothing, footwear, headgear, T-shirts, jeans, outerwear, sweatshirts, accessories, scarfs, underwear.

The above goods are in classes 24 and 25 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

2) Ms Hendrick, on 30 March 2009, applied to register the trade mark:



The application for registration was given the number 2512392. The trade mark was published for opposition purposes on 10 July 2009 with the following specification:

textiles and textile goods; bed and table covers; travellers' rugs, textiles for making articles of clothing; duvets; covers for pillows, cushions or duvets;

clothing, footwear, headgear. Underwear, scarves, sweaters, wristbands, t-shirts, outerwear.

The above goods are in classes 24 and 25 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

3) On 11 June 2009 Too Fast To Live To Young To Die Apparel Co (however, see below re the legal status of this entity and the actual owner) applied to register the trade mark:



Death before Dishonour

The registration process was completed on 16 October 2009. The trade mark is registered for the following goods:

t-shirts, jeans, trousers, shirts, blouses, skirts, underwear, coats, hats, gloves, scarfs, socks, footwear.

The above goods are in class 25 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

4) A hearing took place on 10 August 2011. Ms Bashir of Murgitroyd & Company represented Ms Hendrick. Mr Knight represented himself. An e-mail was received from Ms Ashley Bell of Murgitroyd & Company by the IPO attaching the skeleton arguments of Ms Bashir. The e-mail was sent at 13.47 on 8 August. The e-mail shows that it was copied to toofasttolive@live.co.uk and tonyknight37@hotmail.co.uk. Mr Knight contacted the IPO to state that he had not received the skeleton arguments of Ms Bashir. Ms Bell sent an e-mail at 12.15 on 9 August 2011, copied to toofasttolive@live.co.uk and tonyknight37@hotmail.co.uk. The e-mail attached 2 screen dumps from the MessageLabs website. These show that the e-mail was sent to the 2 e-mail addresses of Mr Knight at 12.47 on 8 August 2011 (the difference in the hour relates to the difference between Universal Time and British Summer Time). The screen dumps show that the e-mails were received at 12.47, accepted and delivered at 12.47. An e-mail was sent to the IPO from Mr Knight at 23.12 on 9 August 2011. Mr Knight states that he had still not received the skeleton arguments from Ms Bashir. At the hearing Mr Knight continued to say that he had not received the skeleton arguments. He also denied receiving the e-mail with the screen dumps, although this was copied to him at his 2 e-mail addresses. I arranged for the skeleton arguments of Ms Bashir to be sent to Mr Knight at the beginning of the hearing. I also arranged for the e-mail with the screen dumps to be sent to Mr Knight, after the hearing.

5) Mr Knight has continued to send e-mails denying the receipt of the skeleton arguments and accusing Murgitroyd & Company of malpractice and forging documentation. Unlike Murgitroyd & Company he has put in no evidence to substantiate his claims. I can see no reason why staff at Murgitroyd & Company would lie about this. As well as the screen dumps, the e-mail sent to the IPO with the skeleton arguments shows that the skeleton arguments were copied to Mr Knight at his 2 e-mail addresses. It is my finding, for the record, that Ms Bashir sent her skeleton arguments timeously as per Tribunal Practice Notice 1/2004.

Introduction

6) Parts of the evidence in relation to the oppositions and the application for invalidation are the same. The probity of parts of the evidence has had to be considered; with directly contradictory evidence. The parties have made

accusations against each other in relation to their behaviour, their character and the evidence. The oppositions and the application for invalidation have also suffered from a number of procedural problems, giving rise to a procedural hearing. In order to gain a coherent and the clearest picture of the issues, the decisions in relation to the three trade marks follow the summaries of the evidence and the procedural issues. Separate decisions have, of course, been given in relation to the three cases, based on the individual factual matrixes.

Opposition no 99437

7) Form TM7A, notice of threatened opposition, filed by Tony Knight was received at the Intellectual Property Office (IPO). It is dated 23 May 2009. On 28 July 2009 a form TM7, notice of opposition, was received by the IPO. Mr Knight states on the form that that he notified Ms Hendrick of his intention to oppose her application on 5 June 2009. On the form Mr Knight requests a preliminary indication in relation to grounds under sections 5(1) and/or 5(2) of the Trade Marks Act 1994 (the Act). However, there are no grounds under these sections of the Act. The grounds of opposition identified are under sections 5(4)(a) and 3(6) of the Act.

8) Mr Knight states that SAINT ARTJUNKIE is a fashion label established in 1994 by him for use in classes 14, 18 and 25. He states that it was established in 1994 in Manchester. Mr Knight states that the sign has been used in relation to clothes, headgear, footwear, bags, wallets, purses and jewellery. **He opposes the class 25 goods of the application.** There are attachments to form TM7. The first one bears the title of Saint Artjunkie, Part of the Red planet group, Trade Mark protection dept, Head office, 58 Hamnett St, Droylsden, Manchester.

9) Mr Knight states:

“Saint Art junkie is Apperal Company established in 1994 in Manchester England. It has strong reputation to bring street urban fashion to the high street and our clothes are sold worldwide through authorised retailers and on our website.

Saint Art junkie is part of the Red planet clothing group.

We do not have any issues for the applicant to register the name artjunkie in class 24 but we do oppose the class 25 footwear headgear clothing.

We feel this would cause confusion to our customer new and our already customer base.

The applicant also has a reputation for stealing other companies trademarks to which she uses with out consent of the trademark owners.

We enclosed a few of the trademarks Alison Hendricks has used to make financial gain of other companies trademarks and there reputation.

We also understand that the applicant started selling items on eBay using the id name artjunkie but it is not clear what items were sold.

What we do know is that Alison Hendricks was bidding and buying her own items on the eBay auction site to push up her feedback rating using another account called rogue_zebra and also Jomac 17.

Please find attached info backing up our claims. The information has come from ebay and paypal.”

10) The information referred to consists of the following:

- A picture of a t-shirt upon which is printed a device and the word OBEY, under which Mr Knight has written: “Alison Hendrick also started producing Miffy the bunny Tee and sold on Ebay. The copyright holder was informed all listing were once again removed from Ebay. Miffy the bunny is owned by mercis – Dick Brauna also the obey Logo is a trademark owned by a company ONE 3 TWO they also filed a complaint to ebay.”
- A picture of a t-shirt upon which appear two letters c crossing each other and back to back. Mr Knight has written: “Alison Hendrick sold this item on ebay and many more this is a copyright and trademark infringement of the Chanel Company Trademark. Chanel was informed and all listing were removed from the ebay site.”
- “Alison Hendrick and Joanne McCormack were buying items on my Ebay shop SAINT ART JUNKIE. this also proves they were copying my design for there own financial Gain. info from Ebay and paypal.” Copies of two transaction details for eBay are attached. One relates to Ms Joanne McCormack (eBay ID jomac17) and the other to Ali Hendrick (eBay ID rogue_zebra), they share the same address. The items purchased are described as “red planet westwood skull london TEE vivienne punk” and “red planet westwood too fast bag by vivienne punk goth”. One order was refunded and the other reversed. The orders were generated on 4 April 2009.

11) Under the part of form TM7 relating to section 3(6) of the Act, Mr Knight has written:

“The Trade Mark already exists and is well known please read attached letter.”

Attached to the opposition form is a letter sent by facsimile transmission by Mr Knight, this was received on 3 November 2009, although the sender’s machine

shows it having been sent on 2 January 2008 at 05.04. The letter is headed "Amended letter for section 3 – 5(4)". It goes on as follows:

“1 – Saint Art junkie is a fashion brand established in 1994 in Manchester England.

2 – It has strong reputation in the fashion market place to bring high quality designs to the consumers in the classes 25 18 14, (clothes, footwear, head gear, Bags, wallets, underwear, and jewellery.

3 – The brand Saint Art junkie has well established customer base not only in the UK but all over the world including customers from USA, Hong Kong, Australia. Please read our Testimonials on our website.

4 – I also own and manage the following brands

- 1 – Red planet®
- 2 – 2 skull jeans®
- 3 – Red planet jeans®
- 4 – Destroy Red planet™©
- 5 – Too fast to live to young to die™
- 6 – Death before dishonour®
- 7 – Sacred saints™©
- 8 - Devine youth

5 – We know Alison Hendricks only sells on eBay and opened her account in 2004 selling canvasses, photograph, and selling counterfeit t-shirt of the following companies and pop stars

- 1 – Disney Characters
- 2 – Chanel
- 3 – Miffy the bunny
- 4 – Obey
- 5 – Michael Jackson

We have evidence to prove our claims.

5 – Alison Hendricks then in 2008 started selling counterfeit items of my brands names and logo's this to include the following:

- 1 – 2 skull jeans
- 2 – Death before dishonour
- 3 – Devine youth
- 4 - Sacred Saint
- 5 – Saint by saint art junkie

We have evidence to prove our claim

6 – Alison Hendricks also has been found buying her own items on the eBay auction site through other l'd names to push up her feedback, she also uses other companies' trademark in her listing to entice, mislead consumers.

We have evidence to prove our claims

7 – To allow Alison Hendricks to register Art junkie would cause confusion to my existing and potential new customers.

8 – We don't have any issue in Alison Hendricks registering art junkie in class 24 but do OPPOSE the registering in class 25 clothes head gear footwear”

12) Ms Hendrick filed a counterstatement on 25 November 2009. She states:

“1. The applicant for registration denies that the opponent has achieved reputation and goodwill in their Mark such that they could prevent the use of the Mark applied for by virtue of the law of passing off. The opponent is put to strict proof of its case.

2. Moreover, it is the applicant's contention that the opponent has hijacked her Marks and is passing off its goods as being of hers.

3. As an illustration of this point, the opponent's statement of case clearly shows that the opponent uses the Intellectual Property of others in a flagrant fashion, namely both the famous Miffy Rabbit and the Chanel CC Logo on its wares.”

Opposition no 99597

13) Form TM7a was received at the IPO, it is dated 23 July 2009. Form TM7 was received by the IPO on 6 October 2009. Mr Knight states that he informed Ms Hendrick of his intention to oppose the application by post on 15 July 2009. Under section 3(6) of the Act Mr Knight states:

“The Trade Mark applied for already exists and has been in constant use since 1994 and is owned and managed by Tony Knight – Saint Artjunkie.”

All of the goods of the application are opposed. Mr Knight claims that registration of the trade mark would also be contrary to sections 5(4)(a) and (b) of the Act. He states that he first used his earlier right in Manchester in 1994 and that it has been used in relation to footwear, headgear and clothes. Mr Knight goes on to say:

“the application made Alison Hendrick was made in bad faith, also her mark is 99% identical to that of my company brand saint ARTJUNKIES. this would cause confusion to already existing customer and new customers”.

Attached to form TM7 is a reproduction of a device. To the side of this device Mr Knight has written:

“This is copy of my company Trade mark for our brand SAiNT ARTJUNKIE which was established in 1994 in the classes 25 footwear, Head Gear, Clothing”.

Mr Knight has also reproduced Ms Hendrick’s trade mark, to the side of this he has written:

“this a copy of the Alison Hendrick application as you can this mark is 99% identical of that of my brand Saint Art Junkies even though she has attempted to alter the mark I feel this would still cause confusion and *illegible* in *illegible* in *illegible* with passing off”.

14) Ms Hendrick filed a counterstatement on 25 November 2009. She denies that the application was made in bad faith and puts Mr Knight to proof of his claims. Ms Hendrick denies that Mr Knight has attained the requisite reputation and goodwill in relation to the sign upon which he relies to prevent the use of her trade mark under the law of passing-off. Ms Hendrick states:

“3. It is the applicant’s contention that the opponent has taken her intellectual property and is passing off his wares as those of the applicant. The opponent is put to strict proof regarding its claims of having reputation and goodwill in such a sign.

4. The applicant denies that the opponent has an earlier right under Section 5(4)(b) i.e. an earlier right by virtue of copyright, design right or registered designs. The opponent is put to strict proof regarding its claim of such a right. It is the applicant’s contention that she is the rightful owner of the copyright in the Mark applied for and that the opponent’s opposition and conduct to date represent copyright infringement of her rights.”

The oppositions

15) On 12 January 2010 the registrar wrote to the parties stating that it had been decided to consolidate the two opposition proceedings. Dates were set for the filing of evidence and/or submissions. The opponent was granted until 12 April 2010, the applicant 3 months from receipt of the opponent’s evidence and the opponent two months from the receipt of the applicant’s evidence to furnish evidence in reply/submissions.

16) On 4 May 2010 the IPO wrote to Mr Knight. It acknowledged receipt of evidence from him under rule 20 but advised that it could not be accepted in the format in which it had been provided. The letter advised that the evidence had to be accompanied by a witness statement, statutory declaration or affidavit in

which reference should be shown to the evidence that had been filed; this evidence would be exhibits. The letter went on to explain how the exhibits should be formatted. The evidence was returned to Mr Knight. Mr Knight was advised that as the proceedings had been consolidated, the evidence should refer to both application and opposition numbers. Mr Knight was given until 4 June 2010 to resubmit his evidence and was advised that on conclusion of this matter the date for Ms Hendrick to submit her evidence would be set.

17) A file note advises that Mr Knight telephoned the case work examiner (CWE) on 6 May 2010. In the telephone conversation he said that:

1. He had never been told the format that the evidence should be in.
2. He had never received the official letter of 12 January 2010.
3. His documents are set out and indexed and he wanted them admitted.
4. The letter of 4 May 2010 is gobbledygook. He said that he is a litigant in person who does not know what to do. He said the guidance notes that had been issued to him were of no use and that it was the function of the IPO to accept his documents.

The CWE tried to advise Mr Knight how to proceed but he was not prepared to listen. Mr Knight wished to speak to only one member of staff as that member of staff was "the only one with a brain" in the place. He refused to speak to a manager as he said that he had already made a complaint against her. Mr Knight then put the telephone down. Mr Knight asked that the CWE did not deal with his cases again.

18) On 22 June 2010 the IPO wrote to Mr Knight, under recorded delivery no DV 9155 7585 3GB. The letter acknowledged receipt of the amended evidence. The letter stated that the evidence required further amendment. It stated that:

1. The evidence was not headed for the consolidated proceedings, as advised in the official letter 4 May 2010.
2. Exhibits 1, 1a and 1b had been attached but no reference had been made to them in the witness statement.
3. Exhibit 5 did not contain a witness statement by Simon Aarronson, as stated in the witness statement.

The evidence was returned to Mr Knight. Mr Knight was advised that in order to correct the evidence and re-submit it, he was required to file a request for a retrospective extension of time. The request should be accompanied by form TM9 and a fee of £100. The request should be supported by detailed reasons and advise how much time he considered that he needed to complete the evidence.

19) On 28 June 2010 the IPO received a letter from Mr Knight in which he stated that:

“In receipt of your letter dated the 22nd June 2010 I would like to point out I will not be asking for an extension of time as you had this information for weeks therefore had enough time to contact me by phone or email to point out the minor points you have raised therefore you left me no choice to ask you be removed from this case as I feel you are doing to many of my cases and mistakes are being made I have spoke to Raoul Colombo and I have insisted you be taken of this specific case and that 2515322 There have been to many mistakes on this case since day one, to which I spoke to Al Skilton last year due to this application being allowed to go to registration then it being with drawn.

Also this two opposition will not be consolidated and treated as independent you have no right to consolidate without my consent.”

20) On 29 June 2010 the IPO wrote to Mr Knight, under recorded delivery no DV 9155 7581 9GB. The letter explained the purpose of consolidation. It then stated that as Mr Knight had not objected to the consolidation, as per the official letter of 12 January 2010, the other party would be asked to make comments in response to his objection within 14 days. Following the expiry of this period the IPO would give a preliminary view. The letter noted that Mr Knight would not be requesting a retrospective extension of time. Mr Knight was advised that he had been allowed until 4 June 2010 to file amended evidence but that as his amended evidence had not been received until that day the IPO did not have time within which to notify him of the “discrepancies” in the evidence prior to the expiry of the deadline. The letter went on to advise receipt of the amended evidence in which the omissions had been corrected and the reference to Mr Aarronson removed. It stated that as these amendments were “of a typographical nature” and no additional evidence having been provided, the IPO did not require a form TM9. The letter advised that Mr Knight’s evidence had now been accepted into the proceedings. The letter advised that owing to other working commitments the CWE would be allocating all of his tribunal cases to other members of the section over the coming months.

21) A file note states that Mr Knight telephoned on 5 July 2010. The CWE explained consolidation to him, he said that he “wouldn’t have a problem with it”. He was told that the IPO was now awaiting the response of Murgitroyd & Company and that once this matter was resolved his evidence could be admitted into the proceedings.

22) On 31 August 2010 a letter from Murgitroyd & Company was received. It referred to a telephone conversation with the CWE and that in that conversation Murgitroyd & Company stated that it was awaiting confirmation of the position re consolidation but since then nothing had been received from the IPO re this matter and re the setting of time limits.

23) On 15 September 2010 letters were sent to the parties by the IPO. (The letter to Mr Knight was send under recorded delivery no AG 5882 1794 4GB.) They were advised that it was the preliminary view of the IPO that consolidation should take place and that any objection to this view should be received on or before 29 September 2010. The letter acknowledged receipt of the evidence of Mr Knight and advised that it included a witness statement by Mr Knight and 6 exhibits. Ms Hendrick was granted until 15 December 2010 to file evidence and/or submissions and Mr Knight two months from that date to file evidence in reply and/or submissions.

24) On 20 September 2010 an e-mail was received from Murgitroyd & Company in which it was stated that it had not received a copy of the evidence from Mr Knight. The time limit set was rejected, as the evidence of Mr Knight had not been received. If Mr Knight maintained that he had sent the evidence, Murgitroyd & Company required proof of this. A letter from Murgitroyd & Company, received on 28 September 2010, reiterated that the evidence of Mr Knight had not been received by it. The IPO was requested to forward a copy of the evidence to Murgitroyd & Company.

25) On 1 October 2010 the IPO wrote to Murgitroyd & Company, under recorded delivery no AG 5882 2000 2GB. The IPO stated that, in order resolve the issue of the non-receipt of the evidence and move matters forward, it was enclosing a copy of the evidence of Mr Knight.

26) On 24 December 2010 a form TM9 was received from Murgitroyd & Company requesting an extension of time of two months from 1 January 2011. The reasons for the request were as follows:

“Due to the bad weather, and the Christmas and New Year holidays, a significant amount of time has been lost that would otherwise have been available to the Applicant.

Furthermore, Mr Knight in his evidence, makes a number of assertions, which have required review and investigation, all of which is taking quite some time. Therefore, coupled with usable time available in the period provided because of the bad weather, and the Christmas and New Year holidays, and the complexity of responding to some of the assertions made by Mr Knight in his Witness Statement, some further time is required. Notwithstanding the basis of time, to date, a Witness Statement has been drafted, much of the evidence to answer Mr Knight’s assertions has been collated and a number of investigations have already taken place, it has not, however, been possible to complete all of the evidence within the timeframe provided.”

27) On 29 December 2010 an e-mail was sent to the IPO attaching the documents relating to the request for an extension of time.

28) On 29 December 2010 Mr Knight sent an e-mail in which he stated:

“I oppose the the Extention due to the following, the bad weather has not effected the royal mail and the applicant and there representative have an enough time to gather the evidence they needed. it has been nearly 1 year since the start of this case and to allow them any form of extention is unfair to me and this would allow the applicant to fabricate evidence.

i also feel that if they are allowed any form of extention i should also should be allowed a furthur two months to respond to there evidence.

therefore there extention should be declined.

furthur more they are using the bad weather as a excuse but there client seems to have no problem selling her stuff on ebay and posting it out and has had no problems with royal mail. as i checked her the feedback so if there client alsion hendrick can get shipments out they her represenative should have no problem posting the information which could have been sent by fax, email or by special delivery.”

29) On 30 December 2010 a letter was received from Murgitroyd & Company. It stated that there was no objection to Mr Knight requesting an extra two months to file any evidence in reply to any evidence submitted by Ms Hendrick. The letter reiterated that there had been problems with the weather and that many people had not been able to reach their offices. Royal Mail special delivery was cancelled in Scotland and the weather led to schools being closed and stopped people getting into work. Many businesses are closed between 24 December and 5 January and contacting other people becomes difficult. The letter stated that following the bad weather and the holiday period there had been a backlog of work. Mr Knight had made a number of personal allegations relating to the integrity of Ms Hendrick and, according to Murgitroyd & Company, it is only just that she is given ample and adequate opportunity to address them. Comment was made on the to-ing and fro-ing with the IPO, Mr Knight and Murgitroyd & Company.

30) On 30 December 2010 an e-mail was received from Mr Knight is which he again requested that the extension of time be refused. He stated that the applicant had had plenty of time. He claimed that his evidence had been submitted to the applicant prior to the expiration of the 3 month period he had been granted. He wrote that the applicant should have begun collating her evidence over a year ago. He wrote that he had kept to the time limit and the applicant had not.

31) On 20 January 2011 the IPO wrote to Murgitroyd & Company, under recorded delivery no AH 2698 9731 9GB. A preliminary view was expressed that

the request for an extension of time should be refused as it was considered that the reasons submitted re the bad weather did not warrant a 2 month extension.

32) On 21 January 2011 a letter was received from Murgitroyd & Company. It was stated that the applicant was entitled to at least an extension of one month. The letter effectively reiterated what had been submitted by Murgitroyd & Company previously. At the end of the letter it was stated that a two month extension was still required and that if it was not granted, a request was made for a preliminary hearing. On 2 February 2011 the IPO wrote to Murgitroyd & Company, under recorded delivery no AH 2698 9983 6GB, maintaining the refusal. A copy of the letter was sent to Mr Knight, under recorded delivery no AH 2698 9984 0GB.

33) On 9 February 2011 a letter was received from Murgitroyd & Company. The letter referred to the difficulties in obtaining a copy of Mr Knight's evidence. It commented that that the first official letter in relation to the request for an extension of time, despite several telephone calls, was not issued until 20 January 2011. Murgitroyd & Company commented that it would appear that the IPO is delaying providing responses for extensions of time for up to 3 weeks "but a further request of two months to lodge what is in fact serious and necessary evidence is being refused for what would appear to be no valid reason". The letter stated that it was necessary to address the allegations made by Mr Knight against Ms Hendrick, which being part of opposition proceedings were a matter of public record. It was stated that investigation of the provenance of some of the documents of Mr Knight had been undertaken by Murgitroyd & Company but that it was considered necessary to instruct an investigator, who had greater expertise in such matters. It was stated that it would be extremely harsh if the applicant was not able to lodge her evidence. The letter went on to comment that if the IPO had decided that only one month should be granted, a response could have been expected in early January. The letter comments on the IPO having a backlog of correspondence owing to the weather and the Christmas period. The letter asked for the preliminary view to be overturned and maintained the right to attend an interim hearing if it was not.

34) On 9 February 2011 an e-mail was received from Mr Knight addressed to Ms Bashir of Murgitroyd & Company and copied to the IPO. In the e-mail Mr Knight wrote:

"i am satisfied the IPO has made the right decission in this matter i have downloaded the full contents of your clients ebay accounts for the time period over xmas and new year and either your client has made false feed backs claims on her account or your client was able to ship item out over the heavy the snow period in scotland

so if your client can managed this them you as a company could of managed the same i will be using this evidence and pasing this to lara hayes. to prove there was postal situation. or your client is lying.

if it turn out your client has lied on her feedback page i will contact ebay.

i await your responce”

35) An e-mail to Mr Knight from Ms Bashir, dated 9 February 2011, was copied to the IPO. In this e-mail Ms Bashir pointed out that her letter was addressed to the IPO and not to him and that there was no reason for him to contact her directly in these or any other proceedings. He was asked to address his future correspondence to the IPO, furnishing a copy to Murgitroyd & Company.

36) Despite the above e-mail Mr Knight responded to Ms Bashir on the same day, the response being forwarded on to the IPO by Ms Bashir. In this e-mail Mr Knight wrote:

“We are just keeping you informed and we wil produce the evidence that is required not might fault yuo are your client are liars. and we noticed accoring to your client she shipped over 150 item over the xmas period and had no problems,. good reading.”

Mr Knight then sent a further e-mail on the same day to Ms Bashir, sending a copy to the IPO. He wrote:

“i have downloaded and printed of your client ebay account during the snowy weather this has been sent by recorded mail to LARA HAYES i will ask her to look and for you and your client to expalin how your client managed to deleiver over 150 items and why you claim you could not get your evidence to me in the time frame set out

it is clear you were just buying extra time for no reason. i will also ask once again your evidence not be submitted due to not being submitted in the time frame set out.”

37) On 11 February 2011 the IPO wrote to Murgitroyd & Company, copying the letter to Mr Knight under recorded delivery no AH2698 9993 8GB. The letter stated that it had been decided to exercise the registrar’s discretion and allow the applicant more time to file its evidence. It was stated that it was considered very important that all of the available evidence was admitted into the proceedings. Acknowledgment was made of the delay that would be consequential on the decision. The preliminary view was that the applicant should be allowed until 1 March 2011 to file her evidence. The parties were advised that they should advise the IPO on or before 25 February 2011 if they disagreed with the preliminary view expressed in the letter.

38) On 17 February 2011 Mr Knight sent an e-mail to Ms Bashir, which was copied to the IPO. It stated:

“can you please provide full details of the investigator who you so called hired and who they work for as i dont believe this person exists if you fail to provide details i will ask the hearing officer to throw your claims.”

39) Ms Bashir sent an e-mail to the IPO on 17 February 2011. She stated that in order to avoid protracted and unnecessary correspondence, she advised that the investigator was Mr Tim Dabin of Prialx Associates. Ms Bashir again requested that Mr Knight cease addressing correspondence directly to her.

40) On 24 February 2011 the IPO received a letter from Mr Knight. At the top of the letter the handwritten comment “01.12.2010 – 31.12.2010 bad weather period for UK and Scotland.” The typewritten part of the letter reads:

“Please Find Attachments for my request of refusal for the extension of time submitted by the applicant representative Ann Bashir as you can see this is feedback from the applicants account now this clearly show of one of to things

Firstly the applicant had no problems in despatching items during the cold snowy weather in which the applicant representative claim they couldn't post out evidence during the bad weather.

2 the Applicant has made false feed back claims on her eBay account.

This is not all feedback from the account during the heavy snow period a few pages if you require more evidence then I will get for you.

So there grounds for extension is nothing more then lie. So I ask for the extension to be refused as stated by the Hearing office in there email.”

41) On 1 March 2011 the evidence on behalf of Ms Hendrick was received by the IPO. On the same date a file note stated that Murgitroyd & Company had telephoned re an e-mail which had been sent. The CWE was not able to open the e-mail owing to its size; the e-mail had been forwarded to the IT department of the IPO in order for it to be opened. The CWE was advised that the e-mail was confirmation of the hard copy of the evidence that had been sent. Murgitroyd & Company confirmed that a hard copy had been sent to Mr Knight by recorded delivery. It could not be sent to him by e-mail as he could not accept large e-mails. Murgitroyd & Company said that if Mr Knight did not accept the recorded delivery package a copy would be sent to the IPO for it to forward onto him.

42) A file note dated 2 March 2011 records that Mr Knight had telephoned. The CWE confirmed that she had received a letter from Mr Knight on 24 February 2011. Mr Knight said that he had not received the official letter of 11 February 2011. He was given the track and trace number and he was advised that Royal Mail records showed that it had tried to deliver the letter to him but that no one had signed for it. Mr Knight said that he was frustrated with the postal system. Mr Knight was told that he would need to request an interlocutory hearing as his letter and attachments had not requested one. Mr Knight was advised that he could use e-mail rather than the postal system if he had concerns about Royal Mail and that the IPO could communicate by e-mail. Mr Knight said that he would send an e-mail requesting an interlocutory hearing.

43) On 2 March 2011 an e-mail was received from Mr Knight stating:

“Further to our coverstation i request a hearing in regards the over tuned decision for the extension of time made by the Alison hendricks legal team in cases 99437 and 99597

I have not recieved the letter you said was sent therefore its unfair that i wasnt given a chance to respond to the deadline. i believe this to be a royal mail error and i will investigate this matter.

i have sent evidence for the hearing officer to look at which clearly show sales of items being depatched by Alison hendricks over the set period of snowy weather in which the applicant claims they could not get the evidence to me.

i feel they have just played for time and this unfair.”

44) On 2 March 2011 an e-mail was received from Murgitroyd & Company objecting to Mr Knight being granted an interim hearing re the extension of time, as the request was outwith the time set.

45) On 3 March 2011 Mr Knight sent an e-mail to Ms Bashir, copied to the IPO. He wrote:

“Having spoke to Lara Hayes yesterday 2-3-2011 she has checked on the Royal Mail tracking no item was signed for, she did supply a tracking number yesterday and having gone to the Royal mail depo today no one can find this document. therefore i am entitled to a hearing. end of.”

46) On 4 March 2011 an e-mail was received from Murgitroyd & Company continuing to object to the granting of an interim hearing. The e-mail commented that on a number of occasions Murgitroyd & Company had sent correspondence to Mr Knight which had been returned to it as Mr Knight had not signed for it. File notes of 4 and 9 March 2011 relate to telephone calls made by Ms Bashir. In the

latter telephone call she complained about the conduct of Mr Knight and accused the IPO of favouring him. A further file note dated 9 March 2011 from the line manager of the CWE records Ms Bashir complaining about the behaviour of Mr Knight and accusing the IPO of not acting impartially in the proceedings.

47) On 4 March 2011 Mr Knight sent an e-mail in which he wrote that he had already sent a copy of the letter he had sent to the Royal Mail. No letter is held by the IPO. On the same date Murgitroyd & Company requested a copy of that letter and a copy of the letter from Royal Mail in relation to the investigation of the matter. On the same date Mr Knight said Murgitroyd & Company could have a copy of his letter and that it takes time for the Royal Mail to investigate. On the same date Murgitroyd & Company wrote that it was happy to await the outcome of the Royal Mail investigation before the request for an interim hearing is considered. The letter again requested a copy of the letter from Mr Knight to Royal Mail and Royal Mail's response. (None of these letters have ever been sent to the IPO.)

48) On 8 March 2011 the IPO wrote to the parties advising that an interlocutory hearing would be arranged in relation to the objection to Mr Knight being granted a hearing re the extension of time granted to Ms Hendrick. The copy of the letter to Mr Knight was sent under recorded delivery no AH 2698 2655 2GB. On the same date an e-mail was received from Mr Knight stating that he believed a parcel from Murgitroyd & Company had been delivered to him.

49) On 9 March 2011 an e-mail was received from Mr Knight:

"Thank you for your attachment in regards to the interlocutory hearing i have requested against the Applicant i would like the hearing as soon as possiible as not to delay this matter any furthur.

I have spoken to Anne Bashir who is acting on behalf of the Applicant the lady is very arrogant in attitude and does not wish to make a time or date for this hearing.

i ask the hearing officer makes date with the next week as not cause any more delays.

Would both parties email with reciept of the email for our records."

50) On 14 March 2011 a letter was received from Murgitroyd & Company complaining about Mr Knight not copying documentation and complaining that the IPO was allowing him an interlocutory hearing in relation to his request to be heard.

51) On 21 April 2011 an e-mail was received from Murgitroyd & Company noting that a response to the letter of 14 March 2011 was still being awaited.

Invalidation

52) On 24 November 2009 Ms Hendrick filed an application for the invalidation of registration no 2518310 in the name of Too Fast To Live To Young To Die Apparel Co. Ms Hendrick states that she advised Too Fast To Live To Young To Die Apparel Co of her intention to file an application for invalidation on 22 October 2009. Under section 3(6) of the Act Ms Hendrick claims that the Too Fast To Live To Young To Die Apparel Co knew that the trade mark registration was her property and that the application to register the trade mark should not have been filed in its name. Ms Hendrick claims that the registration of the trade mark was contrary to section 5(4)(a) of the Act. She does not identify the sign upon which she relies under this head but the matter is dealt with under the grounds under section 5(4)(b) of the Act. Ms Hendrick claims that the sign upon which she relies has been used by her since 7 July 2008 throughout the United Kingdom, "product sold through e-Bay auction site". She claims that it has been use in relation to t-shirts. Ms Hendrick seeks the invalidation in respect of all of the goods of the registration. In relation to section 5(4)(b) of the Act Ms Hendrick claims the following:

"The SKULL Device which is included in the registered Mark is subject to copyright, being a graphic work, and the copyright belongs to the applicant for invalidity, being the author of the said work and not having transmitted it by way of assignment nor having it automatically transferred by virtue of a contract of employment or similar provision.

The image was created by the applicant for invalidity at least as early as June 2008 and was first published on the e-Bay auction site at least as early as July 2008.

It is the applicant's contention that the registrant took the image of the SKULL Device from e-Bay electronically and applied to register the Trade Mark in suit. Consequently, the registration offends against the provisions of Section 5(4)(b) of the Trade Mark Act 1994."

53) In a letter received on 7 December 2009 Ms Hendrick clarified the section 3(6) ground. She claims:

"1. The Applicant and Registered Proprietor are competing traders, especially through the eBay on-line auction site.

2. The Applicant for Invalidity designed the SKULL Device which is included in the registered Trade Mark in June 2007¹. Being the original author of the work, she owns copyright to it.

¹ In the letter accompanying the evidence of Ms Hendrick it was stated that this was a typographical error and that the work was created in June 2008.

3. At least as early as July 2008, the Applicant began using the SKULL Device on items for sale.

4. It is the Applicant's contention that the Registered Proprietor, being aware of the Applicant's use through eBay, copied the image of the SKULL Device and applied to register it as part of the Trade Mark registration in suit.

5. It is the Applicant's contention therefore that not only does the Registered Proprietor's actions of applying to register the Mark in suit contravene Sections 5(4)(a) and 5(4)(b) of the Trade Marks Act 1994, but this action also amounts to bad faith in contravention of Section 3(6) of the Trade Marks Act 1994 because the Registered Proprietor knowingly filed an application to register a Trade Mark that incorporated the Intellectual Property of the Applicant."

54) Mr Knight, on behalf of Too Fast To Live To Young To Die Apparel Co filed a counterstatement on 1 February 2010. The counterstatement is in the form of a copy of a letter that Mr Knight sent to the trade mark representative of Ms Hendrick. In this letter he states:

"I have just received your amended Tm28 form; I would like inform you that your client was not the original curator of the skull devise.

1- This design was created by me on 16-9-2002. I have the original rough sketch drawing. So we will ask section 3.6 of this form be thrown out.

2 – Some time people think they are first to produce a drawing but in fact they are not. I will be producing witness statements to prove my case, we have also downloaded the full content of your clients eBay account and find no item that bears this design, we have also downloaded the full content of Mrs Hendricks my space account to which there is no evidence.

3 – We also ask that section 54.ab, be thrown out as this is false claim made by client to infringe on my own trademark,

4 – On several occasions we have asked for copyright details in which you and your client have failed to supply, to which this left me to make a formal complaint into your practises.

5 – We therefore ask you and your client to withdraw your invalidation claim.

6 – We will also ask for costs to be submitted by your client."

55) On 12 March 2010 the registrar wrote to the parties. The periods for filing evidence and/or submissions were given. The applicant was granted until 12 May 2010 to furnish its evidence and/or submissions, the proprietor was granted two months from the date of receipt of the applicant's evidence to furnish its evidence and/or submissions, the applicant was granted two months from receipt of the proprietor's evidence and/or submissions to furnish evidence and/or submissions in reply.

56) On 12 May 2010 the evidence of Ms Hendrick was received. In the covering letter it was stated that the original application form had included the wrong date as to when the work was created; the claim is that it was created in June 2008, not June 2007.

57) On 16 June 2010 an official letter was sent to the parties giving a timetable for the filing of evidence and/or submissions. Mr Knight was allowed until 16 August 2010 and Ms Hendrick two months from the receipt of Mr Knight's evidence.

58) A file note on the file, dated 5 July 2010, states that Mr Knight had telephoned to say that he had not received evidence from Murgitroyd & Company. Mr Knight also said that he had sent some documents into the IPO. The case work examiner (CWE) advised that the documents could not be admitted into the proceedings as they were not in evidential form. The CWE stated that Mr Knight understood this and so it was agreed that the documents would be returned to him to put into proper evidential form. The CWE said that as Mr Knight had not received the evidence of Ms Hendrick the date for his filing of evidence would be reset from the date that it was sent to him.

59) On 6 July 2010 an e-mail was received from Mr Knight. Mr Knight stated in the e-mail that he had not received exhibits AJH10 – AJH1 from Ms Hendrick. He claimed that: "i have requested over 10 times direct from or the representative". A further e-mail of the same date was received; in relation to the application for invalidation, this re-iterated what had been written before.

60) A file note, dated 23 July 2010, states that the CWE had contacted Ms Bashir of Murgitroyd & Company. Ms Bashir advised that the evidence was sent by recorded delivery and returned as "not called for". Ms Bashir asked for confirmation of the address with Mr Knight in order that she could resend the evidence. The CWE said that she would contact Mr Knight.

61) A file note, dated 27 July 2010, states that the CWE had telephoned Mr Knight four times on his landline and twice on his mobile. She was unable to speak to Mr Knight and so left a voice mail. The e-mail states that the CWE emailed Mr Knight.

62) On 26 July 2010 an e-mail was received from Mr Knight which stated:

"i have still not had any information from the other party of the invalidation case 2518310 this now getting beyond a joke.

i have rang the other party 15 times in the past two weeks they fail to return my calls and I have also emailed them.

still no reponce"

63) On 27 July 2010 the CWE sent an e-mail in which he was advised that she had called his land line and left a message on his mobile phone. She stated that she had spoken to Murgitroyd & Company and needed to speak to Mr Knight. Mr Knight responded in the following terms:

"im not sure what number you phoned but my mobile has been on all day to day and yesterday and there is no message. by there is an issue with my phone so i will contact O2 in the morning"

64) On 27 July 2010 a facsimile transmission was received from Murgitroyd & Company. The facsimile transmission included a copy of the envelope sent by Murgitroyd & Company. The envelope bears the address of the proprietor, it bears a post mark of 5 July 2010 from Glasgow. A sticker on the envelope advises that the item had been returned by the Royal Mail as it had not been collected by the addressee. The facsimile transmission asked if Murgitroyd & Company should forward the evidence to the IPO or attempt to send it again to the registered proprietor. The letter asked that if the evidence was to be sent to the registered proprietor again, whether he would prefer it to be sent to another address.

65) A file note, dated 28 July 2010, advises that the CWE telephoned Mr Knight at 11.01 and left a message on the voicemail of his mobile phone. A further file note of 28 July 2010 states:

"I called Mr Knight on mobile number he gave me (15.00) and it would appear he has given me the incorrect number as a lady answered and confirmed she had my message but it isn't anything to do with her. I rang his landline again (no answer). I have now emailed him."

The e-mail of 28 July 2010 advises that the CWE has tried to contact him on the mobile telephone number that he supplied and that she had been advised that this was the incorrect number. The e-mail goes on to state that the CWE has tried to contact him on his landline but there was neither an answer nor an answerphone facility. It requested that Mr Knight contact the CWE.

66) A file note advises that on 29 July 2010 the CWE telephoned the landline of Mr Knight at 12.12 and that there was no answer. An e-mail from the CWE was

sent on 29 July 2010 at 15.17, again asking Mr Knight to contact the CWE to discuss the evidence matter.

67) A file note, dated 4 August 2010, advises that Mr Knight has not contacted the CWE further to her e-mail of 29 July 2010 and so she telephoned his landline at 10.50; there was no reply.

68) A file note, dated 6 August 2010, advises that Mr Knight telephoned re the evidence from Murgitroyd & Company. The CWE explained the evidence had been sent to him and returned by Royal Mail. The CWE said that she could not get involved as to how the evidence was sent by Murgitroyd & Company and he would need to speak to them, as he would like the evidence e-mailed to him. The CWE confirmed that she would be contacting Ms Bashir to ask her to resend the evidence and confirm to the CWE that this had been done, so the date for the filing of Mr Knight's evidence could be reset. The CWE advised Mr Knight that as his time period will be running from the date of the resending he would need to sign for it. Mr Knight asked where on the website he would find how to set out evidence. The CWE said she would e-mail him a specimen witness statement and exhibit sheet. The CWE said she would speak to Murgitroyd & Company and call him back. The CWE telephoned Ms Bashir who advised that as the evidence consisted of more than 300 pages it could not be sent by e-mail. Ms Bashir said she would resend the evidence the following week by TNT and copy the CWE in on the e-mails to Mr Knight.

69) On 6 August 2010 an e-mail was received from Ms Bashir. In this e-mail it was stated that attempts had been made to send the evidence by e-mail. The evidence, because of its volume, was split into two e-mails but despite a number of attempts the e-mails were "bounced back". The IT department of Murgitroyd & Company ascertained that this was because Mr Knight's Hotmail account was too small to accept e-mails of such a size. Consequently, the evidence was sent by recorded delivery; the tracking number of BR 8396 3093 1GB was given. Ms Bashir said that she noted that, therefore, the deadlines would be reset from the date of her e-mail.

70) A file note, dated 11 August 2010, states that Mr Knight had called to state that he had received the evidence from Murgitroyd & Company. Mr Knight said that he didn't need his evidence time period reset as he had nearly completed his evidence and would be sending it by recorded delivery on 12 August 2010. Mr Knight asked the CWE to e-mail him when the evidence had been received.

71) A file note, dated 9 September 2010, states that Ms Bashir had contacted the CWE. Ms Bashir was enquiring what was happening in the case as she was expecting a deadline to be set. The CWE advised that Mr Knight had sent in his evidence and confirmed that he didn't need his evidence period reset. Ms Bashir asked for a confirmatory e-mail as her client wanted an update. Ms Bashir stated

that she had not received the evidence of Mr Knight. The CWE asked Ms Bashir to e-mail her to confirm this.

72) A confirmatory e-mail was sent on behalf of Ms Bashir on 9 September 2010. In the e-mail Ms Bashir writes:

“I would be grateful if Mr Knight would write to the UKIPO copying me, confirming the date on which he sends the copy of his evidence to me, and detailing the method of dispatch used.”

73) On 13 September 2010 the CWE sent an e-mail to Ms Bashir in which it was confirmed that the evidence of Mr Knight was received by the IPO on 19 August 2010. The CWE stated that she would contact Mr Knight re Murgitroyd & Company not receiving a copy of the evidence.

74) On 13 September 2010 an e-mail was received from Mr Knight in which he stated that his evidence had been sent three times and that he would send it again on Friday.

75) On 14 September 2010 the CWE sent an e-mail to Mr Knight in which she noted that he had sent it on three occasions and that he would be sending it again on 17 September 2010.

76) A file note, dated 21 September 2010, advises that Ms Bashir had telephoned to say that she had received the evidence of Mr Knight but that she did not believe that it was a true copy of the evidence. Ms Bashir asked the CWE to copy the evidence received by the IPO to her. The CWE advised that she had made a copy ready to send. She said that she had to ensure that Mr Knight is told he has to send the evidence and to confirm this, before copies are issued. Ms Bashir thought that pages were missing from the evidence and challenges the counterfeit claims. The CWE advised that Ms Bashir needs to either put this in her evidence or write in and ask that it is struck out, which would be a matter for the hearing officer. The CWE sent a copy of the evidence by recorded delivery.

77) An e-mail from the CWE, dated 21 September 2010, was sent to Mr Knight. In the e-mail the CWE reminds Mr Knight that he had stated that he would resend his evidence to Murgitroyd & Company and of the CWE's e-mail in which she had requested that she be advised when this had been completed. The CWE asked that Mr Knight confirms that he resent his evidence to Murgitroyd & Company on 17 September 2010.

78) An e-mail from Ms Bashir, dated 21 September 2010, was sent to the CWE. Ms Bashir is concerned that she has not been provided with a true copy of the evidence of Mr Knight as the exhibit cover sheets are undated and exhibit TK6, a statement of Mr Martin Dunkley, is both unsigned and undated. Ms Bashir states that there is no explanation of the relationship between Mr Knight and Mr

Dunkley. Ms Bashir states that there is no witness statement from Mr Chris George; exhibit 4 contains only 2 pages, not the 4 to which reference is made. Ms Bashir writes that there may well be other discrepancies. Ms Bashir writes that she assumes that the evidence of Mr Knight has been checked and, therefore, she does not believe that she has been sent a true copy. Ms Bashir states that no covering letter was sent with the evidence. Ms Bashir expresses concerns regarding the invalidation application and other proceedings involving Mr Knight. She requests that the IPO forward to her all correspondence that it has and that it receives from Mr Knight.

79) An e-mail from Ms Bashir, dated 21 September 2010, was sent to Mr Knight and copied to the IPO. In the e-mail Ms Bashir writes that if Mr Knight has sent the evidence three times he can “feel free” to send proof of postage to either the IPO or Murgitroyd & Company. If he has not been sending evidence by recorded/registered delivery he is requested to do so in the future, in order that Murgitroyd & Company can track the postage and prove that it has received it. The e-mail states that it is not being questioned that Mr Knight has sent the evidence, it is only being stated that it has not been received. Ms Bashir comments that it would appear that the evidence is incomplete.

80) Mr Knight responded to Ms Bashir in the following terms:

“go away you sad person your company are liars please don’t email me any more have I made myself clear if you i will make formal compalint to greater manchester police.

now piss of”

81) A file note, dated 22 September 2010, advises that Ms Bashir had telephoned to say that Mr Knight had responded in an abusive fashion to her e-mail of 21 September 2010. Ms Bashir said that she no longer wished to correspond with Mr Knight and asked if the IPO could send all mail from Mr Knight to her and that anything she files with the IPO will be sent in duplicate for the IPO to forward to Mr Knight. Ms Bashir said that she was going to forward the abusive e-mail to the IPO. The matter was referred to the operations manager of tribunal section. He advised that the e-mail could be forwarded and that it would be brought to the attention of the hearing officer. The operations manager also agreed that correspondence could be copied to the other party, even though this is an issue between the parties.

82) An e-mail from Ms Bashir, dated 22 September 2010, was sent to the IPO and copied to Mr Knight, as requested by the IPO; despite Mr Knight’s request not to receive any further e-mails from Murgitroyd & Company. Ms Bashir writes that she has no fax number for Mr Knight and that postage between the parties has already proved problematic. Ms Bashir, therefore, reiterates her request that the parties provide the IPO with two copies of all correspondence and that the

IPO forwards it. Ms Bashir suggested that this should be the position in relation to correspondence relating to all proceedings between Ms Hendrick and Mr Knight.

83) An e-mail from Mr Knight, dated 22 September 2010, to Ms Bashir was forwarded by Ms Bashir to the IPO. In this e-mail Mr Knight writes:

“Dear

Madam i no what to expected from the ipo i do have over 10 years experince of trademark cases and iall information was sent your company and stewart Wallace the evidence originally was sent over 5 months previous to you taking over this cases so i suggest stop looking a fool and i have recorded slips also your client is a counterfieter and holds no copyright all sje does is syteal my and other fashion designs.

i hope i have made myself clear”

In the forwarding e-mail Ms Bashir suggested that the CWE might wish to ask Mr Knight to provide copies of the slips to which he makes reference to in his e-mail in order that Murgitroyd & Company can investigate why it is not receiving correspondence that is sent by recorded/registered delivery from Mr Knight.

84) On 24 September 2010 a facsimile transmission was received from Ms Bashir, it was addressed to the operations manager of tribunal section. It refers to a telephone conversation of 23 September 2010; there is no file note of the conversation. In the facsimile transmission Ms Bashir states that Mr Knight has made it plain that he does not want to receive any correspondence from her by e-mail, whether it be copied to him or sent to him directly. Ms Bashir has attached copies of some of the e-mails referred to above. In addition she has attached an e-mail from Mr Knight to her sent on 23 September 2010 in which he writes:

“God your boring me now please do not email infuture i require letters if you pursist to ignore my request i will make a formal complint to your company and ask the scottish police to investigate you for harassment

have i made myself clear you silly bitch.”

Ms Bashir states that she has copied her letter to Mr Knight by post and that as a precautionary measure, in case Mr Knight states that he has not received the letter, she has sent a copy of the letter so that the IPO can forward it to him.

85) Ms Bashir writes that the evidence previously received from Mr Knight was incomplete; in order to demonstrate this she has attached a full copy of what she received from Mr Knight. Ms Bashir writes that she has since received a full, true copy from the CWE. Ms Bashir goes on to write:

“Although, in this instance it was quite clear that what I had received was either not a true or complete copy, in future it might not be quite so clear which could result in a decision being issued erroneously because we have not been provided with a complete or true copy of what Mr Knight relies on in evidence and lodges with the UKIPO.”

86) Ms Bashir comments upon unnecessary delays in the application for invalidation and the opposition proceedings between the parties. In relation to the opposition proceedings the CWE had advised, in a telephone conversation, that Mr Knight had lodged his evidence with the IPO on 28 June 2010 but Murgitroyd & Company had, at the date of her letter, not received it. Ms Bashir writes that Murgitroyd & Company has been able to give proof of having sent correspondence to Mr Knight. She states that she believes that the same proof has been requested of Mr Knight but that he continually fails to provide it. Ms Bashir states that sending every item of correspondence by recorded/registered post significantly increases the costs for Ms Hendrick but that no effective sanction is made against Mr Knight.

87) Ms Bashir again suggests that the parties send two copies of all correspondence to the IPO and that the second copy is then forwarded. Ms Bashir notes the operation manager’s concern that rule 62 is adhered to. As an alternative Ms Bashir suggests that it is confirmed that the correspondence has been copied to the respective party by post but that two copies of correspondence are still provided to the IPO; to enable the IPO, as a precautionary measure, to forward each party with the additional copy. So that there is compliance with rule 62 and each party can be satisfied that it is receiving a complete copy of all correspondence timeously.

88) Ms Bashir writes that she only received a true and full copy of the evidence of Mr Knight on 20 September 2010, from the IPO, therefore, the time limits should be reset to reflect this.

89) A file note by the CWE dated 28 September 2010 states that she has spoken to the tribunal section manager re evidence from Mr Knight received on 18 August 2010. The file note ends with the comment: “The evidence can be admitted once Al Skilton has issued her letter”.

90) A copy of Ms Bashir’s letter was forwarded to Mr Knight on 30 September. He was requested to comment on Ms Bashir’s suggestion re the copying of evidence.

91) On 4 October 2010 Ms Bashir forwarded a copy of an e-mail from Mr Knight to the IPO. In this e-mail, of 2 October 2010, Mr Knight writes:

“Dear Madam

Just to keep you up to date Face book has now sent me full details of Alison hendricks claim and the content in this is surprising and we will be seeking legal advice to sue your client for defamation. we also passing this over to the ipo to show how callous your client is being.

Warn your client is she tries anything like this again i will take her to the high courts.”

92) Mr Knight sent an email to the IPO and Ms Bashir on 3 October 2010 in which he writes:

“Dear madam

please find attached email from facebook, they are now sending the letter this is passed to the courts to stop alison hendrick make false claim about trademarks she does not legally own.

if she carry on i will take her to court and this can be deemed as Harrassment which is a criminal offence and as you're her representative if you not inform her i will take action against you

forwarded to the ipo”

A thread of electronic correspondence then follows:

The first message reads:

“Material removed: Saint Artjunkie page

Why mistake: i own the fashion label saint artjunkie since 1994and you have removed my page from a woman i taking to court for counterfeiting of my brands

please visit www.artjunki.co.uk

this has to stop i have not broken a of your policies”.

93) There is an e-mail from user operations at Facebook. This advises that a complaint had been received in relation to a claim of alleged rights infringement, consequently, the content had been removed. Mr Knight is advised that if he believes that Facebook has made an error he should contact the complaining party directly. The e-mail details of Ms Hendrick are given. Mr Knight is advised that if both parties agree to restore the reported content, he should ask the complainant to send an e-mail with a copy of the agreement. He is advised that Facebook will not be able to restore the content unless it receives an explicit notice of consent from the complainant.

94) There follows an e-mail from Mr Knight to Facebook in which he writes:

“Dear Facebook

it is a legal requirement you provide me a copy of the claim form this person you if you dont we can obtain a court order. as i am the legal right onwer you have duty to carry out a full investigation and not take the owrđ of a single individual I will be seeking legal advice am also contacting the london metropolitan police to have facebook investigate.

it is unfair that as the legal right owner / trademark holder that i am being treated in this way.

tony knight owner of saint artjunkie clothing and trademark”

95) Part of the thread is identified as “Below please find a copy of the original report”. The forwarded e-mail is identified as coming from Ali Hendrick. It reads as follows:

“We own and operate the brand “Artjunkie LTD”, we are registered with HMRC and companies house and we are in legal proceedings at the moment suing Tony Knight of ‘Saint Artjunkie’ for passing off and counterfeiting.

Tony Knight is a well known counterfeiter who is being sued by Harris Tweed and Latimo, Milan, owners of Vivienne Westwood².

I have already reported this to facebook and it was taken down. The Artjunkie name and skull mark being to Alison Hendrick and Tony Knight is using theses illegally.

Tony Knight is under investigation by LONDON Metropolitan Police PCeU department for similar breaches and infringements, they have successfully taken down one of his websites already.

Please remove this as soon as possible.”

Following this is a url for a Facebook page. The following text appears:

“Every image is braching the IP of our brand as he is copying our log, designs and t-shirts.

How IP infringed

The logo is a direct copy of one of our hang tag labels from our clothing.

The skull is our Intellectual property as is the name ‘Artjunkie’.

² The case Dame Vivienne Westwood OBE v Anthony Edward Knight was the subject of a judgment in the Patents County Court by Judge Birss [2011] EWPC 8, the judgment can be found at the url:

<http://www.bailii.org/ew/cases/EWPC/2011/8.html>.

Every single image on this profile is breaching copyright and trademark laws.

Please remove.”

96) The thread indicates that Ms Hendrick made a complaint to Facebook, the terms of which are given above and Mr Knight responded to Facebook and to Murgitroyd & Company.

97) A file noted dated 15 October 2010 states that Ms Bashir had telephoned to ask about the evidence deadline as she was concerned that it was running. The CWE stated that she was waiting for a response to the official letter of 30 September 2010 and that in the absence of any comments the evidence would be admitted and her deadline set from the date of that letter. The CWE confirmed that Ms Hendrick would have two months to file evidence.

98) On 9 November 2010 the IPO wrote to the parties advising that the proprietor's evidence had been admitted into the proceedings. Ms Hendrick was allowed until 9 January 2011 to submit evidence and/or submissions in reply. Mr Knight's letter was sent under recorded delivery no AG 5882 2056 3GB. The letter was returned to the IPO on 30 September 2010 as Royal Mail stated that Mr Knight had not called for it. On 1 December 2010 the letter was again posted to Mr Knight but not on a recorded basis.

99) On 7 January 2011 a letter from Murgitroyd & Company was received by the IPO advising that an e-mail attachment contained witness statements by Ms Alison Jane Hendrick and Ms Joanne McCormack and that the complete witness statements with exhibits had been sent by facsimile transmission. The letter advised that unless advised otherwise the complete witness statements and exhibits of Ms Hendrick and Ms McCormack would be sent by registered post to Mr Knight. A copy of the letter was sent to two e-mail addresses of Mr Knight.

100) On 24 January 2011 the IPO sent a letter, under recorded delivery no AH 2698 9734 0GB to Mr Knight advising that the evidence rounds were complete. The letter noted that he had copied to the IPO documentation received by e-mail and a letter. Mr Knight was advised that if he wished for the documentation to be considered it was necessary for him to apply for leave to adduce the evidence into the proceedings. He was advised that he would need to state why the evidence was necessary and why it could not have been filed within the time already allowed for the filing of evidence. The documentation was returned to Mr Knight.

101) On 24 January 2011 the IPO wrote to Murgitroyd & Company to state that some of the pages of the exhibits were not clear and requesting that the original evidence should be filed on or before 7 February 2011. On 2 February 2011 the original copies of the evidence were received by the IPO. The accompanying

letter advised that the original copy of the evidence was also being sent to Mr Knight by secure mail.

102) On 4 February 2011 an e-mail was received from Murgitroyd & Company advising that the evidence that had been sent to Mr Knight had been returned by Royal Mail. A copy of the envelope was sent to the IPO. This shows that the letter was sent by Royal Mail special delivery on 10 January 2011 and was returned to Murgitroyd & Company on 2 February 2011 as it had not been called for by Mr Knight.

103) On 4 February 2011 an e-mail was received from Mr Knight in which he wrote:

“Dear Lara Hayes

know calling card was left from royal mail and my local depo has no details of this document. even though this information was sent it seems a postal error has occurred. could the lady please resend by special delivery instead of the recorded one.

my i remind all involved it up to them to make sue i receive all information not up to me and I suggest a different courier service infuture.

if not then not my fault.”

On 9 February 2011 an e-mail was received from Murgitroyd and Company in which the following was written:

“As agreed, we have taken all necessary precautions to ensure the hard copy of the evidence was sent to Mr Knight, and we have proved that we have sent it. Thereafter, contrary to Mr Knight’s assertions, it is his responsibility to prove that he didn’t receive it. His assertions alone are not proof of this. Therefore, I am assuming in accordance with the agreed procedure, that you will forward on any necessary correspondence to Mr Knight.”

104) On 14 February 2011 the IPO wrote to Mr Knight referring to the previous correspondence re the evidence sent by Murgitroyd & Company. The IPO sent a copy of the evidence to Mr Knight. On 17 February 2011 Mr Knight sent an e-mail to Murgitroyd & Company, copied to the IPO, in which he stated:

“Dear Bashir

I ams till waiting for all evidence to be submitted when can i expect thank you for the Opposition case and the Death before dishonor case.

Tony”

105) On 17 February 2011 the IPO received an e-mail from Murgitroyd & Company, copied to Mr Knight. In this e-mail Ms Bashir commented that Mr Knight was continuing to address his correspondence to her directly despite her seeing no reason for this. Ms Bashir stated that she had sent the evidence to Mr Knight and that it rests upon the IPO to provide a copy of it to Mr Knight.

106) On 18 February 2011 the CWE sent an e-mail to Ms Bashir advising that a copy of the evidence had been sent to Mr Knight by the IPO. On the same date Ms Bashir sent an e-mail to the CWE advising that she had received a copy of the letter of 14 February 2011.

107) On 11 March 2011 the IPO wrote to the parties advising that the evidence rounds had been completed and advising that, as per Tribunal Practice Notice 6/2009³, it was necessary for the parties to attend a hearing. The letter was sent to Mr Knight by e-mail and by recorded delivery, recorded delivery no AH 2698 5656 6GB.

108) A file note dated 11 March 2011 states that Mr Knight had telephoned to say that he had received the e-mail attaching official letter of 11 March 2011 but that he had not received the evidence in reply. Mr Knight stated that he was not blaming the IPO this time but Murgitroyd & Company. The CWE said that she would check the file and correspond with him by e-mail. The CWE sent an e-mail in the afternoon in which she stated that she confirmed that the evidence had been sent by Ms Bashir by special delivery on 10 January 2011 and proof of this had been provided. Mr Knight was advised that the IPO had also copied the evidence to him and that this was sent under recorded delivery no AH 2698 9994 1GB. Mr Knight was asked to check his records to see if he had received the evidence in reply.

109) On 11 March 2011 Mr Knight sent an e-mail:

“I spoke to droylsden depo who have no record of this parcel i have once again raised my concerns in regards to this matter.

i did how send mrs bashir an email asking her to send by a different courier service and she refused so please resend this information so i may look at the evidence before the hearing.”

110) The CWE responded to Mr Knight on 14 March 2011 in which she stated that as Royal Mail was unable to confirm that the letter of 14 February 2011 enclosing the evidence had been delivered to him a further copy of the evidence

³ This practice notice was born of the decision of the High Court that invalidation actions can give rise to estoppel.

would be sent to him by the IPO. On the same date an e-mail was received from Ms Bashir in which she wrote:

“I do not consider Mr Knight informing you that the Royal Mail have “no record of this parcel”, as evidence that a card was not left, and that Mr Knight merely failed to pick it up, again.

An alternative recorded mail service would put my client to unnecessary additional expense, which would be entirely unreasonable.

I note that you will send a further copy of the evidence to Mr Knight. Please be advised, that we consider our duty in copying the evidence to Mr Knight as duly and properly discharged. We will not therefore, put our client to any further expense in providing any further copy, unless Mr Knight is able to demonstrate by way of a written complaint to the Royal Mail, followed by their written confirmation that on these two occasions, cards were not duly left for Mr Knight. We require sight of both letters.”

111) Mr Knight responded by e-mail on the same date in which he states:

“As you Can see by Mrs Bashir Attitude that they failed to send evidence i did request an alternative courier due the problems i experienced with Royal Mail, some like

1 – TnT
2 – City Link
3 – Aps

but she refused i have requested this on several occasions. i therefore dont expect the ipo to supply evidence it up to the applicant to provide this and its up to them to sort out issue with royal mail.

i therfore put to it to the ipo that Anne Bashir is just awkward and it would not cost her client no more than 8 pound to resend the bundle.

sorry for any in convience on be half of the applicant failing to provide the documents.

i am also waiting for a response to my letter from royal mail as the letter is about my compalint on there service i suggest Mrs Bashir also files a letter.”

112) On 15 March 2011 an e-mail was received from Ms Bashir in which she wrote:

"I do not believe that under the agreed procedures that I am required to provide any further copy of this evidence, until Mr Knight can prove fully that Mr Knight failed to pick up the evidence. I have not had any copy of a letter addressed to the Royal Mail from Mr Knight, nor have I had a response. I have written to the UKIPO previously regarding Mr Knight's continuous refusal to pick up parcels that were properly sent and addressed to him."

Ms Bashir went on to write that Mr Knight had failed to furnish any evidence from Royal Mail. She stated that she had taken the precaution of alerting Mr Knight and the IPO that evidence was on its way by sending notice by way of facsimile transmission to the IPO and by e-mail to Mr Knight. Ms Bashir states that by demonstrating that the evidence had been sent her duty had been discharged. Ms Bashir looks forward to evidence from Mr Knight that a card was not left advising of the package.

113) On 18 March 2011 an e-mail was received from Mr Knight in which he wrote:

"As you know i have requested the information submitted to the IPO in the above the case to date i still waiting even though i have requested this evidence on no more than 10 occasion. can you please Ann Bashir to send the evidence not by royal mail but by means of another courier."

114) On 21 March 2011 an e-mail was received form Mr Knight in which he wrote:

"I would like to thank you for the letter today which was received by recorded mail in regards the upcoming hearing for sacred saint application.

i must also point i have still have no evidence in regards to the death before dishonor invaildation casse from anne bashir."

115) On 22 March 2011 letters were received from Murgitroyd & Company. In one letter Ms Bashir wrote that she enclosed the confirmation hard copy of the evidence, returned again from Mr Knight. Ms Bashir wrote that it appeared that again Mr Knight had not called for it. In the other letter Ms Bashir asked, owing to the cost factor, whether it was possible to challenge his evidence without cross-examination. Ms Bashir asked that if cross-examination was the only way of challenging the evidence, whether it would be possible, if it was not possible by video-link, for the hearing to take place in Glasgow. Ms Bashir wrote that Mr Knight was roughly equidistant from both Glasgow and London.

116) On 23 March 2011 two letters were returned to the IPO by Royal Mail as they had not been called for. The recorded delivery numbers are AH 2698 5656

6GB and AH 2698 9734 0GB (letters sent to Mr Knight on 24 January and 11 March 2011 respectively).

117) On 6 April 2011 the IPO wrote to Mr Knight advising that the two letters had been returned as not called for. A further copy of the evidence in reply was also sent under cover of the letter. The letter was sent under recorded delivery no AH 2698 5976 6GB.

118) On 13 April 2011 the hearings clerk wrote to Murgitroyd to state that cross-examination would need to take place in London as Mr Knight had refused to travel to Glasgow.

Opposition and invalidity proceedings – procedural hearing

119) On 26 April 2011 the operations manager of the tribunal section wrote to Mr Knight in the following terms:

“RE: Trade Mark Nos. 2512392/2512470 in the name of Alison J Hendrick and Opposition Nos.99437/99597 in the name of Mr. Tony Knight and Trade Mark No. 2518310 in the name of Too Fast To Live To Young To Die Apparel Co and Invalidity No. 83630 in the name of Alison J Hendrick

I am writing in respect of a number of procedural issues arising from the above proceedings which require your immediate attention.

Address for Service

The Registrar is concerned about the continuing complaints being made that you would still appear to be failing to comply with the requirement to copy all correspondence submitted by you to the Tribunal to Ms. Hendrick’s legal representatives. The Registrar is also concerned that your current address for service would appear to be ineffective as you do not seem to be receiving all of the correspondence addressed to it by both the Registrar and Ms. Hendrick’s legal representatives.

In view of this, the Registrar has decided that with immediate effect, any written communication submitted by you to the Registrar which has not been clearly identified as having been copied to Murgitroyd & Co, will be returned to you as not properly served and will not be admitted into these proceedings. In addition, given the unreliability of your current address for service, you are required within 7 days from the date of this letter to provide the Registrar with a new address for service. After which, the Registrar will send all correspondence to the address for service of record by both recorded delivery and by the standard postal service. The Registrar will take the view that proof of postage of any item of

correspondence will equate to proof of delivery of that item. In the event that any correspondence is returned by the Royal Mail to the Registrar, it will not be resent but merely placed on the appropriate case file.

Invalidity No. 83630

The Registrar has identified a number of irregularities in respect of the evidence that you have previously submitted into these proceedings. Firstly, the witness statements of both, Mr. Chris George and Mr. Martin Dunkley, have been submitted without any reference to their place of residence or, in the alternative, details of their business address and neither one contains a statement of truth. Furthermore, in respect of Mr. George's witness statement, there is no indication given as to his relationship with you. In view of these omissions, the Registrar will allow you 21 days from the date of this letter within which to resubmit new witness statements containing the information required, otherwise this evidence will be treated as inadmissible and it will be struck out from the proceedings. If you wish to challenge this decision, then you must request a hearing within 14 days from the date of this letter.

In respect of your request to file further evidence into these proceedings, you are no doubts already aware that Ms. Hendrick's legal representatives have informed the Registrar that they oppose your request, and in the event that it should be granted, they will be applying for an order for security for costs to be made in their favour. The Registrar has decided that both your request to submit further evidence and if granted, the applicant's intention to seek an order for security for costs to be made against you, will be addressed by the Hearing Officer at the forthcoming procedural hearing being arranged in respect of the above opposition proceedings.

At the hearing, the Hearing Officer will decide the following issues –

- Ms. Hedrick's legal representatives challenge to the Registrar's decision, dated 8 March 2011, to grant you a hearing to object to the preliminary view dated 11 February 2011 in respect of Opposition Nos. 99437 and 99597
- your opposition to the Registrar's preliminary view dated 11 February 2011 which granted the applicant an extension of time to file its evidence in respect of Opposition Nos. 99437 and 99597
- any request from you to challenge the decision to allow you 21 days within which to resubmit Mr. George's and Mr. Dunkley's witness statements
- your request to file additional evidence into the invalidity proceedings and the possible request for an order for security for costs to be made against you

I have asked the Hearings Clerk to arrange the hearing as a matter of priority.”

120) The letter was sent to Mr Knight under recorded delivery no AH 2698 6033 6GB. The letter was returned to the IPO on 11 May 2011 as it had not been called for.

121) A letter was also sent to Murgitroyd & Company. In that letter reference was first made to the opposition cases. It was stated that the hearing officer would consider the objection to Mr Knight having a procedural hearing in relation to the extension of time that had been granted in respect of the evidence of the applicant. In the letter it was stated that:

“It should be borne in mind that cross examination does not have to be exclusively undertaken in person, as it is perfectly possible for parties to submit written observations setting out the reasons why they believe that a witness’ evidence should not be believed. Further guidance on this issue is provided in Tribunal Practice Notice 5/2007”.

The letter also commented on the objection to Mr Knight filing further evidence in the invalidation proceedings and the intention to request security for costs if the request was granted. Ms Bashir was advised that if she wished to challenge the request she could challenge it at the procedural hearing.

122) A hearing date of 12 May 2011 was initially set. However, Mr Knight stated that he had suffered a bereavement. Ms Bashir agreed a postponement of the hearing. The hearing was rescheduled for 26 May 2011.

123) On 12 May the CWE examiner wrote to Mr Knight, under recorded delivery no AH 2698 6065 9GB, advising that if he wanted the additional evidence considered he would need to return it to the IPO on or before 19 May 2011. (The evidence had been returned to Mr Knight on 24 January 2011, see above.)

124) A letter was issued on 1 June 2011 in relation to the findings at the procedural hearing:

“The procedural hearing which took place before me on 26 May, by telephone, in relation to the above sets of proceedings, refers. At the hearing you represented yourself; Ms Hendrick was represented by Ms Anne Bashir of Murgitroyd & Company. The purpose of the hearing was to consider the issues outlined in the official letter of 26 April 2011.

As both parties were represented at the hearing and as Ms Bashir provided skeleton arguments in advance of the hearing, there is no need for me record the competing submissions here. At the hearing I gave my reasons for the approach I intended to adopt in relation to each of the

outstanding issues. I will, if I consider it necessary, comment further upon these issues in the substantive decisions. The issues discussed and my decisions were as follows:

Copying of correspondence

I drew your attention to the Law Practice Direction entitled “Inter partes proceedings before the Registrar” which reads:

“Practitioners are reminded that any correspondence they send to the Registrar in inter partes proceedings should also be copied by them to the other party at the same time. Confirmation that this has been done should be indicated on any such correspondence.”

Having done so, I reminded you that all correspondence in inter partes proceedings must be copied to the other side and must carry an indication that this has been done. Failure to do so will result in the consequences mentioned in the official letter of 26 April i.e. the correspondence will be returned as not properly served and will not be admitted into the proceedings.

Address for service

At the hearing you confirmed that you had not provided a new address for service, adding that you would prefer all correspondence to be sent to you by e-mail. Following discussion, I agreed to vary the approach adopted in the official letter of 26 April and henceforth the TMR will send all correspondence to you by recorded delivery, standard post and by e-mail. That said, I also drew your attention to section 7 of the Interpretation Act 1978 which explains what is meant by the words “serve”, “give” or “send” and its relevance to the matter under consideration. It reads:

“Where an Act authorises or requires any document to be served by post (whether the expression ‘serve’ or the expression ‘give’ or ‘send’ is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

Witness statements of Messrs. George & Dunkley

Following discussion, you confirmed that you do intend to resubmit the statements mentioned and I drew your attention to Practice Direction 32 of the Civil Procedure Rules this requires inter alia:

“18.1 The witness statement must, if practicable, be in the intended witness’s own words, the statement should be expressed in the first person and should also state:

(1) the full name of the witness,

(2) his place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer,

(3) his occupation, or if he has none, his description, and

(4) the fact that he is a party to the proceedings or is the employee of such a party if it be the case.

20.1 A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence; it must include a statement by the intended witness that he believes the facts in it are true.

20.2 To verify a witness statement the statement of truth is as follows:

‘I believe that the facts stated in this witness statement are true’.

20.3 Attention is drawn to rule 32.14 which sets out the consequences of verifying a witness statement containing a false statement without an honest belief in its truth.”

I allowed you 21 days from the date of the hearing i.e. until 16 June to resubmit the witness statements. Failure to do so will result in the evidence being considered inadmissible and it will be struck out.

Additional evidence

At the hearing I explained that I had not had sight of this evidence as it had not been returned to the TMR as requested in the official letter of 12 May 2011. However, because at the hearing you indicated that you were not concerned whether this additional evidence was admitted into the proceedings or not, I need say no more about it.

Ms Hendrick’s request for an extension of time

This required me to consider (i) whether in the light of the objection by Ms Hendrick you were entitled to be heard in relation to this issue, and if I

decided you were, (ii) your objection to the preliminary view to allow Ms Hendrick additional time in which to file her evidence in the consolidated opposition proceedings.

Insofar as (i) is concerned, having considered the parties' competing submissions it was clear that you had objected to Ms Hendrick's request as early as 29 December 2010. Having explained that the time period to request a hearing in such circumstances is administrative not statutory, I determined that you were entitled to be heard on this issue. Having then heard the competing submissions on the merits of the request, I determined having applied the guidance in a range of cases germane to this issue including *Liquid Force* [1999] RPC 429 and *Siddiqui's Application* (BL O/481/00), that Ms Hendrick's request should be allowed and her evidence admitted into the proceedings.

You now have 1 month from the date of the hearing to file any evidence in reply/written submissions you consider appropriate.

At the hearing I indicated that should either party wish to appeal any of the decisions I took at the hearing, they should do this as part of any appeal against the substantive decisions, which I indicated will also deal with the issue of costs.

In summary you have:

21 days from the date of the hearing to resubmit the witness statements of Messrs. George & Dunkley in the correct evidential format, and

1 month from the date of the hearing to file any evidence-in-reply and/or written submissions you consider appropriate in the consolidated opposition proceedings.

Finally, I explained that these proceedings would be heard consecutively on the same day. At the hearing the parties agreed 10 August 2011 as a suitable date. The Hearings Clerk will issue a letter confirming the arrangements for the hearing shortly.

A copy of this letter goes to Ms Bashir; both letters have been initially sent by e-mail; the originals will follow shortly."

125) At the hearing I emphasised that I did not wish to dwell on what had happened in the past but wanted to move matters on. The parameters in which my decisions were made were restricted by the letter that gave rise to the hearing.

126) Murgitroyd & Company has consistently challenged Mr Knight's copying of documentation. He has not answered this challenge by way of any documentary evidence. It has to be found that Mr Knight has consistently failed to copy evidence and correspondence to Murgitroyd & Company. Mr Knight has also, for whatever reason, decided not to sign for mail sent by Royal Mail or collect it when he has failed to sign for it. He has claimed that there are problems with Royal Mail and that he has complained. Murgitroyd & Company has asked for evidence of this on several occasions. Mr Knight has signally failed to furnish such evidence in the form of his letters to Royal Mail and, more importantly, in its responses. His view expressed at the hearing was that it was the problem of the party sending mail to make sure that he got it; placing an impossible burden on any person or party.

127) At the outset of the hearing I referred to the decision of Mr Simon Thorley QC, sitting as the appointed person, in BL O/440/99:

“10. Accordingly, in relation to opposition and revocation proceedings, the Registrar's officers cease to perform an administrative function and act solely in a judicial (or quasi judicial) capacity. The distinction is I believe an important one, particularly in the circumstances of the present case. When acting in an administrative capacity, the Registrar has to enter the debate with the applicant, has to reason with him and necessarily will engage in correspondence or in conversations with the applicant in order to seek to resolve any matters arising. If this can be done to the applicant's satisfaction, there is no need for a hearing.

11. Once the Registrar begins to perform his judicial function, the position is different. The Registrar or his officer is acting as a judge. The proceedings are adversarial, the issues are circumscribed by the pleadings and the parties are free to adduce the evidence and the arguments that they wish. It is the Registrar's duty to adjudicate upon the issues raised. It is not his duty and, indeed, it would be wrong for him, when exercising this function, to enter into a debate with either party as to the validity or otherwise of the contentions put forward on any of the issues raised in the proceedings. For reasons which I shall develop below I fear that, out of a natural and laudable desire on the part of the Registrar's officers to assist Mr. Gracey, a litigant in person, they may have lost sight of the judicial function the Act and rules requires them to perform in the present applications.”

128) Unfortunately, tribunal section has not always followed this line. It has tried to assist Mr Knight as he is a litigant in person. The problem in inter partes proceedings is that assisting one party is likely, with almost Newtonian effect, to have an adverse effect upon the other party. In this case Ms Hendrick is almost, at times, being penalised for having taking legal representation; she is having to pay for the responses to Mr Knight. Tribunal section tries to be helpful but as Mr

Thorley has made it clear there are very clear and limited parameters to what it can and should do. In inter partes, despite the current mantra, the tribunal does not have customers; it has litigants for whom the tribunal is merely the forum of their dispute. Tribunal section should furnish an efficient bureaucratic service but it must not cross the lines drawn out by Mr Thorley.

129) An example of tribunal section crossing the line was the copying of Mr Knight's evidence for the opposition to Murgitroyd & Company. Although Murgitroyd & Company itself was complicit in this matter to some extent by requesting, in its letter of 28 September 2010 that the IPO forward a copy of his evidence. Murgitroyd & Company had made it clear that it had not received the evidence. In the event that Mr Knight claimed that it had been sent by him, it requested proof of postage. No proof of postage was supplied. Under rule 64(6)(b)⁴ of the Trade Marks Rules 2008 evidence is only considered filed when it has been sent to all other parties to the proceedings. So by not sending a copy of the evidence to Murgitroyd & Company, Mr Knight had not filed evidence. In her evidence Ms Hendrick makes reference to an earlier case involving Mr Knight and Patrol Jeanswear Ltd. This case was subject of an appeal to Mr David Kitchin QC, sitting as the appointed person. In that case (BL O/426/02) Mr Kitchin stated:

“7. I would also note at the outset that no evidence was properly submitted by the Applicant in these proceedings. Although the Applicant submitted evidence to the Registrar, it was not copied to the Opponent. Despite a number of reminders from the Registrar, the Applicant failed to make the deficiency good and accordingly, in February 2001, the Registrar wrote to the Applicant notifying him that his evidence would not be admitted in the proceedings.”

So as well as the reminders and the requests for copying evidence and correspondence, Mr Knight knew from earlier experience what he was required to do; and still failed to do it. The proper approach was to have decided, as in the earlier case, that Mr Knight had not filed evidence; not for the IPO to furnish the evidence for Mr Knight.

130) At the beginning of the hearing I also drew an analogy with the courts attitude towards flouting “unless orders” as per the judgment of Ward LJ in *Hytec Information Systems Limited v Council of City of Coventry* [1996] EWCA Civ 1099:

“4. It seems axiomatic that if a party intentionally or deliberately (if the synonym is preferred), flouts the order then he can expect no mercy;”

⁴ “6) Under these Rules, evidence shall only be considered filed when—
(a) it has been received by the registrar; and
(b) it has been sent to all other parties to the proceedings.”

The requirements I was setting out were not “unless orders” but Mr Knight was being told that if he flouted the directions I gave in the hearing he could expect no mercy.

131) The position in relation to the serving of correspondence is highly unsatisfactory. A party must have an address for service as per rule 11 of the Trade Marks Rules 2008. It is a sine qua non that an address for service allows documents to be served. Mr Knight’s address does not allow this to happen, if for no other reason than Mr Knight refuses to sign for or collect mail. If documentation cannot be served it is difficult to see how a party can be judged as having an address for service. However, the hearing had to be held within the parameters of the letter of 26 April 2011 and so it was not possible to resile from that position. In order to keep matters moving I also agreed that the IPO would also send correspondence by e-mail. (There are inherent problems with using e-mail as although there is proof of sending there is no proof of receipt and there is a limit to the size of files that can be sent and received.)

132) Mr Knight complained, and has continued to complain, that the witness statements of Messrs George and Dunkley had originally been accepted into the proceedings. The statements are not in the proper form and so were incorrectly admitted into the proceedings. Under rule 64(2) “[a] witness statement may only be given in evidence if it includes a statement of truth”. The witness statements, amongst other failings, did not have statements of truth and so could not be given in evidence. Consequently, they had to be rejected. Under rule 62(1)(i) the registrar can exclude any evidence which he considers inadmissible. The statements being in an inadmissible form are clearly inadmissible. Mr Knight was given time to put the statements into the proper order. He was advised of the proper format and given details of these in the letter in relation to the procedural hearing. He was also advised that details as to the format of the witness statements could be found on the website of the IPO and that the practice direction of the Civil Procedural Rules could also be found on the Internet. Mr Knight was given 21 days to put the statements into the proper form.

133) Mr Knight’s challenge to the granting of the extension of time for the evidence of Ms Hendrick was made clear from an early stage. He did not request a hearing to challenge the decision in the time given but this time limit was an administrative rather than statutory. Taking into account his clear objection to the granting of the extension of time it would have been captious in the extreme to deny a hearing in relation to this matter.

134) In relation to the extension of time Mr Knight said and has continued to say that he furnished his evidence in the time initially allowed. The time period expiring on 12 April 2010 was set on 12 January 2010. A copy of the evidence was never sent to Murgitroyd & Company, so in fact he had never complied with the requirement under rule 64(6)(b). The evidence was not sent to Murgitroyd & Company until 1 October 2010, and then by the IPO. Consequently, Mr Knight

delayed the proceedings by his actions by nearly 6 months. (It could also be argued that by Mr Knight not sending a copy of the evidence to Murgitroyd & Company, rather than the IPO, the time period could not start running and so Ms Hendrick's evidence could not be late.) Mr Knight said that Ms Hendrick had continued her business despite the winter conditions. The extension of time relates not just to the actions of the applicant but also to what the representative could do. As Ms Bashir explained more thoroughly at the hearing, there was a knock on effect at Murgitroyd & Company owing to representatives having to cover for representatives who could not get into work. Her evidence for the hearing makes it clear that Glasgow suffered particularly severe winter conditions.

135) In *Liquid Force* [1999] RPC 429 Mr Geoffrey Hobbs QC, sitting as the appointed person, stated:

“It is confirmed in the passage from the hearing officer's decision I have quoted above that the registrar is reluctant to refuse an extension of time for the filing of evidence if the evidence is available to be filed when he comes to consider whether the requested extension of time should be granted. This generally accords with the observations of Laddie J. in *Hunt-Wesson Inc.'s Trade Mark Application* [1996] R.P.C. 233 at 241:

“An opposition may determine whether or not a new statutory monopoly, affecting all traders in the country, is to be created. Refusing permission to an opponent who files evidence late affects not only him but also may penalise the rest of the trade ... although the matter is not clear, it is probable that if the evidence is excluded and the opponent, as a result, loses then he will be able to return again in separate proceedings to seek rectification of the register. An advantage of allowing in the evidence ... is that it may well avoid a multiplicity of proceedings.”

However, I think it is necessary to bear in mind that these observations were made in the context of proceedings in which the parties were evidently intent on having their dispute determined on its merits. A different view may be taken when it appears that a party has failed to produce evidence capable of supporting his contentions because he is unable or unwilling to do so. That may involve an abuse of process. If so, it may be appropriate to let the default operate as a bar to further progress of the claims based on the unsupported contentions: *Grovit v. Doctor* [1997] 1 W.L.R. 640, HL at 647, 648 per Lord Woolf; *Arbuthnot Latham Bank Ltd v. Trafalgar Holdings Ltd* [1998] 1 W.L.R. 1426, CA at 1436. and even if the default does not appear to involve an abuse of process, it may yet be the case that the delay in producing such evidence is inordinate, inexcusable and so seriously prejudicial to the opposite party that no indulgence should be given to the party in default in accordance with the

principles laid down and reaffirmed by the House of Lords in *Birkett v. James* [1978] A.C. 297 and *Department of Transport v. Chris Smaller (Transport) Ltd* [1989] A.C. 1997.

For these reasons I consider that the natural reluctance of the registrar to refuse an extension of time for filing evidence which has belatedly come to hand cannot be elevated to the status of an invariable rule. In order to leave room for justice to be done I think it is necessary to recognise that a contested application for an extension of time to file evidence should not necessarily “follow the event” (*i.e.* succeed if the evidence is available at the hearing of the application and fail if it is not) and should not automatically succeed on the basis that refusal is liable to result in the commencement of another action between the same parties covering essentially the same subject matter. I nevertheless agree that these are important factors to be taken into account when deciding whether an extension of time should be granted or refused. In the present case the hearing officer took them into account without regarding them as determinative *per se*. I agree with that approach.”

Ms Hendrick clearly wants the oppositions judged upon their merits. Without her evidence they could not be so judged. The evidence she has furnished has been carefully and meticulously collated. Owing to Mr Knight’s claim to ownership and use of the trade marks this is clearly a matter that requires settling. To refuse to allow the evidence could have given rise to further applications and expense. The evidence could have been provided in a more expeditious manner, Mr Dabin was not instructed until 20 January 2011, after Ms Bashir had decided that she needed expert assistance. It is considered that allowing the evidence for Ms Hendrick into the proceedings is in line with the *Liquid Force* decision.

136) Mr Knight did not file any further evidence in reply in the opposition proceedings.

137) In relation to the application for invalidation, Mr Knight did file two witness statements from Messrs Dunkley and George. However, instead of filing the original statements regularised, the statements contained additional information. The statement of Mr Dunkley was not signed. Neither witness statement contained the statement of truth as per the Civil Procedure Rules Practice Notice, although this wording was included in the letter to Mr Knight of 1 June 2011. Murgitroyd & Company objected to the admission of the statements into the proceedings as it considered that they were additional evidence and no request to file additional evidence had been made and, indeed, at the procedural hearing Mr Knight had said that he did not wish to adduce additional evidence. I refused to allow the statements into the proceedings. Mr Knight was given the right to put forward arguments against the refusal as a preliminary issue at the main hearing.

138) At the main hearing I maintained my refusal. As stated above, the statement of Mr Dunkley was not signed. Neither statement contained the statement of truth as required. As Murgitroyd & Company correctly stated the evidence was additional evidence and no request had been made to file additional evidence. Mr Knight deliberately flouted directions that had been issued. At the procedural hearing he had been told that flouting of the rules and directions would be dealt with without mercy and he had still chosen to flout the direction in relation to the witness statements. It is not possible to see any basis for admitting the statements into the proceedings as they are not in the proper format, are additional evidence and represent a direct and deliberate flouting of a direction. (The two statements are dealt with de bene esse as an annex to this decision.)

139) Subsequent to the procedural hearing and the main hearing there has been a continuing flood of correspondence, mainly from Mr Knight. I consider that the only matter arising from this correspondence, that needs to be considered is Mr Knight's objection to me acting as the hearing officer. He has made a variety of comments about me, which include inter alia:

"inform the Hearing the officer that the witness statement made by Chris George and Martin Dunkley were signed and did meet requirements also can you mention to the hearing officer that i have vote of np confidence in the hearing officer he has not allowed vital evidence into this case are there feel i would not be getting a fair hearing therefore if the i request a new hearing officer in this case if the hearing officer is no replaced i will make a fomal compliant to the parlimentary obudsman to have the IPO investigated as you a keep a full track record all information sent to the ipo. i am not prepared to stand for the disgraceful attitude therefore i request a intrim earing with hearing officer to disguss my concerns.

it clearly Seems that mr landau is in favour of Mrs Bashir and clearly show he biased to wards me i would like to raise the case Armani v sunrich clothing where the hearing oficer and the ipo made mistakes in which the court overturned the ipo discission .

i also have the original letter from you that states all witness statements from M dunkley and c george met the requirments from the ipo."

I declined to recuse myself, and the head of inter partes also did not consider that I should be recused. The basis of the allegations and claims of Mr Knight are born of my making findings which are not in his favour. In inter partes proceedings it is inevitable that findings will be contrary to the desires of one of the parties; they are adversarial proceedings. Taking into account the judgments in *Paul Jonathan Howell and others v Marcus Lees Millais and others* [2007] EWCA Civ 720 and *Sir Alexander Fraser Morrison and Stephen John McBreirty v AWG Group Limited and AWG Shelf 11 Limited* [2006] EWCA Civ 6, I can see

no basis for my recusing myself. I would note that similar allegations were made by Mr Knight against Judge Birss in *Dame Vivienne Westwood OBE v Anthony Edward Knight* [2010] EWPC 16:

“In his communications before the hearing Mr Knight also submitted that the case should be heard by a different judge because he contended I was biased against him and have been rude and arrogant towards him. These allegations were taken extremely seriously and were considered carefully. However in my judgment they were baseless and Mr Knight had no grounds for making them. I refused the application for the case to be dealt with by a different judge.”

Evidence in relation to the invalidation

First witness statement of Alison J Hendrick

140) Ms Hendrick is a director of Artjunkie Limited which was incorporated in November 2009. Prior to that she was trading as a sole trader under the trading style Artjunkie. Her business is primarily apparel, including t-shirts, and is mainly conducted through eBay. She states that she designs a vast range of logos and ornamentation which are placed on the apparel. She states that one such design is her skull image, which is exhibited at AJH1 (this appears to be identical to the device part of trade mark registration no 2518310).

141) Ms Hendrick states that her inspiration for the design was the rap artist Kanye West, who around 2007 began wearing a style of sunglasses which, instead of lenses, had horizontal slats. These are referred to as shutter shades. She states that although this style of sunglasses had been around since the early 1980s, “the endorsement by Kanye West style reintroduced the style and it subsequently achieved a further degree of popularity”.

142) Ms Hendrick states that she began work on the skull image on 14 June 2008. She states that exhibit AJH2 shows the evolution of the skull image design and “respectively shows: a close-up photograph of Kanye West wearing the “shutter shades”; a “naked” skull image; an edit of the sunglasses from the first image; an enhancement of the sunglasses; a dot pattern used as the texture for the finalized Skull Image; a first draft/rough of the finalized composite image which shows the sunglasses a little higher and smaller than the finalized Skull design (all dated 14 June 2008); and lastly, the finalized Skull Image dated 15 June 2008”.

143) Ms Hendrick states that she had some screen printing carried out by Bar-One Limited, a company that she has been using since November 2004. She states that on 1 July 2008 she produced a high definition image of the skull image and a negative image of the same. She exhibits at AJH3 printouts of both these images. Ms Hendrick states that on 7 July 2008 these images were sent to Bar-One Limited by e-mail with an initial order for 40 items. She states that

between July 2008 and July 2009 she re-ordered on 6 occasions; “the final amount being ordered as 624”. She exhibits at AJH4 e-mail correspondence with Bar-One Limited, attachments and invoices sent to Art Junkie by Bar-One Limited. Copies of invoices are included in the exhibit, 2 of these are dated 22 and 24 July 2009. The first e-mail, from Ms Hendrick’s e-mail account to Bar-One Limited, is dated 7 July 2008. A further e-mail, dated 7 July 2008, advises that the artwork had not been attached and attaches it. The attachment is described as “Skullscreen”. It has been sent by “Jo”. A picture of the skull image is included in the exhibit, it is annotated as being the attachment for the e-mail of 7 July 2008. An invoice dated 18 July 2008 in relation to t-shirts is included in the exhibit, it refers to “skull”.

144) An e-mail from Bar-One Limited dated 7 July 2008 includes the following:

“Hi Jo/Ali

Thanks for the order. Nice, Hirst diamond skull with Kanye’s spec’s if I’m not mistaken? Its fine at 100% size, what colour would you like it printed?”

“Jo” replies that it is acceptable and requests “[b]lack print please”. An e-mail from Bar-One Limited dated 8 July 2008 refers to “a visual for approval”. A picture of a man wearing a t-shirt bearing the skull image is annotated as being an attachment to the e-mail of 8 July 2008.

145) An e-mail from Ms Hendrick to Bar-One Limited, dated 8 August 2008, relates to t-shirts for screen printing. An attachment is recorded as being “Skullscreen”. The e-mail refers to “artwork for a SECOND screen”. A picture of the skull screen is annotated as being an attachment to the e-mail, as is a picture of a t-shirt bearing the image. An invoice from Bar-One Limited to Art Junkie, dated 20 August 2008, is exhibited; it relates to t-shirts. An e-mail from Ms Hendrick to Bar-One Limited, dated 29 August 2008 is exhibited. It refers to “scrubbing” the last order and having another run of t-shirts using the “previous screen”. An invoice from Bar-One Limited, dated 5 September 2008, to Art Junkie is exhibited. An e-mail from Ms Hendrick’s e-mail account to Bar-One Limited, dated 1 December 2008, is exhibited; it relates to an order for “relabeling”. The e-mail makes reference to “KANYE SKULL PRINT”. The e-mail is from “Jo”. The reply from Bar-One Limited asks if the orders will have the “original “Art Junkie” label”. An invoice from Bar-One Limited to Art Junkie, dated 8 December 2008, is exhibited. E-mails from Ms Hendrick’s account to Bar-One Limited, in relation to orders, dated 5 February 2009, 10 March 2009 and 6 July 2009 are exhibited. In the e-mails there are references to “kanye Specs”, “KANYE/SKULL PRINT” and “Fluoro skull”. There are also references to Artjunkie labels. Copies of invoices from Bar-One Limited, dated 22 and 24 July 2009, are also included in the exhibit.

146) Ms Hendrick states that as much of her trade is through eBay, in August 2008 she took photographs of the t-shirts printed by Bar-One Limited for use on

the website. Exhibited at AJH5 are 4 examples of the photographs. These all show the skull device; artjunkie can also be seen on the t-shirts in the form of a sewn in label. Ms Hendrick states that in August 2008 she commissioned a promotional postcard bearing the skull image; with the intention of supplying a postcard to every purchaser of t-shirts bearing the skull image. Ms Hendrick states that in November 2008 she commissioned photographs of a model wearing t-shirts bearing the skull image. Exhibited at AJH7 are 5 pictures of a model wearing the t-shirts.

147) Ms Hendrick states that the t-shirts were placed for sale on eBay in July 2008. She states that she generally referred to the t-shirts as “ARTJUNKIE KANYE SKULL t-shirt[s]”. Ms Hendrick states that the t-shirts have been quite popular and 385 have been sold, at a total sales price of £9605.75. Exhibited at AJH8 is information from PayPal in relation to orders for the t-shirts. The purchasers’ personal details have been redacted; however, the eBay and transaction IDs are still present. The earliest PayPal record is for 2 September 2008 and the latest is for 24 August 2009. The documents are addressed to ARTJUNKIE.

148) Ms Hendrick states that, concerned for her intellectual property, she sought registration of the skull image. She states that she registered the skull image with The UK Copyright Service on 8 May 2009. Exhibited at AJH9 are documents relating to this. Copies of certificates for “Artjunkie Skull” and “Artjunkie Skull 2” are included in the exhibit. The exhibit also includes a copy of the work “Artjunkie Skull 2” sent by The UK Copyright Service.

149) Ms Hendrick states that for several years she has had a problem with another eBay trader, Mr Knight. She states that he uses a variety of guises and pseudonyms, including the registered proprietor in this case and Saint Artjunkie. Ms Hendrick states:

“It is my contention and solemn belief that Mr Knight has both stolen my designs for use on his own clothing, and has used the intellectual property system against me.”

150) Ms Hendrick states that eBay uses a system known as VeRO to prevent intellectual property infringement amongst the listings on the website. Exhibited at AJH10 are pages relating to the VeRO system. The following appears in the documentation:

“The information requested by the Notice of Infringement is designed to ensure that parties reporting items are either rights owners or authorised by the rights owners”.

151) Ms Hendrick states that Mr Knight had the listings for her skull image t-shirts removed by means of the VeRO system; it was this that made her aware of the registration.

Witness statement of Mr Tony Knight

152) Mr Knight states that he is the owner of "Death before dishonour, clothing".

153) He states that the shutter glasses skull design was created by him on 16 September 2002. Mr Knight states that exhibited at TK2 is a copy of the original drawing. This consists of one A4 page. On one half of the page is a picture of a skull wearing sunglasses. Written over this is "Shutter Glasses Skull design copy right 16.9.2002. Underneath the skull is written: "Saint Art Junkie All Rights Reserved". On the other half of the page Mr Knight has written: "copy of the original Rough Art Work which was created 16.9.2002 by Tony Knight". He states that he is also exhibiting "the computerized image and also the properties to when this image was saved on my computer using Windows 2000". Exhibit TK2A consists of an A4 sheet. On one half of the sheet a computerised picture of a skull wearing sunglasses appears. Above the skull the following is written:

"Shutter Glasses skull design for Death before dishonour"

At the bottom of the page "Saint Artjunkie Clothing" and "Copyright 16-9-2002" appear. On the other side of the page the following is written:

"this is a copy of the computer version taken from the original creation design by my self. this design has been part of my clothing label for many years prior to Mrs Ali Hendricks claims".

154) Exhibited at TK2BA is a picture of a computer file. In the description of the file the words "TTER GLASSES SKULL COPYRIGHT 16092002" appear. The file has a size of 6,001,432 bytes and on disk of 26,017,792 bytes. The file is recorded as being created on 16 September 2002 at 11.24.27 and last modified on 16 September 2002 at 11.24.52.

155) Mr Knight states:

"Now it seems to us Alison just copied our design and as Artist this wouldn't be very hard to do as she has copied other fashion houses trademarks and also sold them on eBay for financial gain evidence provided this included the trademarks brands Chanel, Destroy, Obey, Snow white, etc"

156) Exhibited at TK3 are pictures of a t-shirt showing what is described as "Miffy the buny" and the word OBEY. Mr Knight has written that Obey is a

registered trade mark and that the rabbit device was created by Dick Brown. He has written that the t-shirts were removed from eBay for "IPO theft". A picture is shown of a t-shirt bearing the interlocking reversed Cs of Chanel which are melting or bleeding. Mr Knight has written that the t-shirt infringed the Chanel trade mark and that Ms Hendrick had sold these t-shirts through eBay. A picture of a t-shirt bearing the word Destroy and a picture of Snow-White is exhibited. The exhibit also includes a Disney picture of Snow-White. Mr Knight has written:

"Alison Hendrick sold over 75 them on Ebay until Disney Coperation had them removed IPO theft."

Mr Knight states:

"We also have information from Alison Hendricks Co worker / Partner which she sent in a eBay response to eBay member Pekinpie 12."

This is exhibited at TK5. This e-mail, including its source code, is dealt with in the summary of the evidence of Ms McCormack.

Second witness statement of Ms Hendrick

157) Ms Hendrick denies that the shutter glasses skull design was created by Mr Knight on 16 September 2002. She has reviewed the copy of the original rough sketch, the computerised image and also the properties which Mr Knight purports demonstrates when the image was saved on his computer using Windows 2000.

158) Ms Hendrick notes or gives evidence to the following points:

- The contents of exhibit TK2 are hand-drawn and, therefore, could have been drawn at any time. She questions the authenticity of the drawing as an original drawing created on 16 September 2002.
- In relation to exhibit TK2A, one does not normally create an image which includes a date actually in the body of the image. She questions the authenticity of the image as an original computer image created on 16 September 2002.
- The process involved in creating the final image is not shown. She notes that the image was modified only once, within seconds of its creation.
- Exhibit AJH11 comprises the original file containing the detailed design of "her" skull image.
- The inspiration for the design was the diamond skull of Damien Hirst, which was created in 2007, 5 years after Mr Knight states he conceived the skull design.
- Exhibited at AJH14 are pages relating to Kanye West and shutter shades. A Wikipedia entry claims:
-

“In 2007, Shutter Shades Inc emerged, patented the current sleeker plastic design, coined and trademarks the term “Shutter Shades” and branded the sunglasses internationally.”

The entry states that these types of sunglasses were first available in 1927.

- The time line of the shutter shades and the Damien Hirst diamond skull coincide with her own time line rather than that of Mr Knight.
- In exhibit TK2BA Mr Knight refers to the image as “SHUTTER GLASSES SKULL COPYRIGHT”. It is unlikely that Mr Knight would have coined the same name for the type of sunglasses.
- She contends that she is the original creator of the skull image. She made up the design in Adobe Photoshop and has attached the original elements. Mr Knight has not produced similar detailed artwork because he copied the design from Ms Hendrick.
- She is an artist and artists often parody “existing popular icons”. She was unaware of trade mark law and passing-off. She combined the Miffy logo with the brand OBEY to create something new. The Chanel logo was created “as an innovative new design and parody”. “Combining a “hardcore” label such as DESTROY with Disney’s Snow White was intended to create an unusual juxtaposition”. As soon as she was aware that she “may have breached copyright, and that the parody went beyond what may be acceptable in legal terms, I removed these items for sale”.
- Mr Knight comments upon the discrepancy in relation to the date on which Ms Hendrick states she created the image and the date she registered it for copyright purposes. There is a greater discrepancy between the date that Mr Knight states he created the image and the date he filed an application for registration of the trade mark.
- No items of clothing bearing the image prior to 2008 have been produced by Mr Knight.
- Exhibited at AJH16 are pages from *The Look* in relation to “Mr Knight’s questionable activities”.
- Exhibited at AJH17 are pages from Facebook on the activities of Red Planet Clothing Company, a company connected to Mr Knight. “[T]here is, in my view, a clear intention to deceive customers into believing the goods are genuine Vivienne Westwood clothing.”
- Exhibited at AJH18 is a page from Mr Knight’s website artjunki.co.uk. The page states that a formal complaint has been made to the IPCC against the Metropolitan Police for “bulling tactics and taking down my Site for no reason, we are also suing Vivienne Westwood and Alison Hendrick for stealing and using our trademarks and for claiming copyright on things they dont own”.
- Exhibited at AJH19 is e-mail correspondence between Ms Hendrick and Mr Olly Burt which “demonstrated that he was encountering the same problems with Mr Knight that I had and continue to encounter. As you will see from the correspondence, Mr Burt makes clear that the

ARTROCKERS Mark was used by him in his business until Mr Knight filed an application to register it, and then used the eBay Vero procedure to endeavour to stop Mr Burt from continuing his legitimate business.”

- Exhibit AJH20 comprises excerpts from Wikipedia about the mudflap girl:

“The mudflap girl is an iconic silhouette of a woman with an hourglass body shape, sitting, leaning back on her hands, with her hair being blown in the wind. The icon is typically found on mudflaps, clothing, and other items associated with trucking in the United States. The image is sometimes also known as **trucker girl, trucker lady or seated lady**.

This famous design was created in the 1970s by Bill Zinda of Wiz Enterprises in Long Beach, California, to promote his line of truck and auto accessories. It was modeled on Leta Laroe, a famous exotic dancer at the time.

The Mudflap Girl is a registered trademark in the United States.”

“Mr Knight appears to have copied it outright and is using it in respect of his Let It Rock line of clothing.” Exhibit AJH21 includes pages from Facebook for Let It Rock clothing which show the image.

- Exhibit AJH22 shows details of two Community trade mark registrations in the name of Latimo SA and “pages from Facebook showing Mr Knight using Latimo’s marks, as his own”.
- Exhibit AJH23 is a copy of an e-mail sent from the Red Planet Clothing Group on 8 June 2009 to Ms Hendrick which states:

“we are informing you we are now taking legal against you for copyright theft of skull shutter glasses design which is copyright registered and has been for over 10 years.

we are also seeking damages.

A gibson legal team”

Witness statement of Joanne McCormack exhibited as AJH23 to the witness statement of Ms Hendrick (as identified in the official letter of 11 March 2011).

159) Ms McCormack is a personal friend of Ms Hendrick. She states that she has not been employed by Ms Hendrick or Artjunkie Limited but has given administrative support in her business in her capacity as a friend.

160) Ms McCormack states that exhibit JM1 contains a copy of the e-mail

“demonstrating the actual question asked by Pekinpie12 and my actual response of 23 November 2009. Also included in Exhibit JM1 is the message source code of the actual question asked by Pekinpie12 on 21 November 2009, and the actual message source code of my reply to

Pekinpie12 dated 23 November 2009. Finally JM1 also contains the email as amended by Mr Knight with my annotated comments on it.

4. I deny ever sending the response set out in Exhibit TK3 of Mr Knight's Witness Statement. I deny ever making the statement "... we are not the right owner/creator we are not permitted to sell the design" and I contend that the contents of my Exhibit JM1 demonstrate that the email contained in Mr Knight's Exhibit TK3 is not authentic.

5. I refer to **Exhibit JM2**, which contains an email addressed to eBay from Alison Hendrick and the response from eBay. I contend that the content of my Exhibit JM2 demonstrates that Pekinpie12 is an alias of Mr Knight.

6. It is interesting to note that Mr Knight has not provided the full message source code of the e-mail contained in his Exhibit TK3, which would demonstrate the true contents of that e-mail."

The source code shows that the first message, from pekinpie12, reads:

"Dear artjunkie!,
hi i was just wondering why you blocked me from buying this item
- Pekinpie 12"

The reply by Ms McCormack from Ms Hendrick's e-mail account was as follows:

"Dear pekinpie 12,
Hi there,
Ebay may may have mistaken you for another user, Can you tell me your name and address and I'll see if I can access the blocked list and check what's going on?
Thanks,
Jo
-artjunkie!"

The version exhibited by Mr Knight reads as follows:

"Dear artjunkie!,
hi i was just wondering if you have this in large.
- pekinpie12"
"Dear pekinpie 12,
Hi there,
Thank you for your email in regards to the skull glasses t shirt, we dont sell the glasses skull design any more, we were notified by the rights owner, and as we are not rights owner/creator we are not permitted to sell this design.
Thanks,
Jo
- artjunkie!"

The manipulation of the e-mail also includes changing the title of the e-mails, changing the picture of a t-shirt and the description of the t-shirt. The version of the e-mail supplied by Mr Knight also includes a respond button, that does not exist on the original.

Evidence in relation to the oppositions

161) On 6 August 2011 Ms Bashir advised the IPO that she had not received a copy of one of the two witness statements which Mr Knight had furnished as evidence in reply; a witness statement that deals with the evidence of Mr Dabin. The IPO sent Ms Bashir a copy of the witness statement following her contact. The indices listing the evidence were sent to Murgitroyd & Company on 19 July 2011. The indices identified two witness statements as evidence in reply from Mr Knight. As Mr Knight had sent at least one of the witness statements to Murgitroyd & Company it would be difficult, if not impossible, to establish that he had not sent both. In the circumstances, it must be accepted that Mr Knight copied both witness statements to Murgitroyd & Company. However, I take note, in relation to Mr Knight’s evidence in relation to Mr Dabin, a comment that Ms Bashir made at the hearing about Mr Dabin’s previous relationship with Mr Knight.

Evidence of Tony Knight

162) Mr Knight describes himself as being of Saint Artjunkie.

163) Mr Knight states that he was the founder of the company Saint Apparel in 1994. He states that “the trade mark” has been used since March 1994 in relation to footwear, headgear and clothing. Parts of Mr Knight’s evidence have been considered by an investigator for Ms Hendrick. These parts are included in the table below with the analysis of the investigator and the comments of Mr Knight in response to the analysis. In her evidence Ms Hendrick deals directly with many of the statements made by Mr Knight and challenges them and/or puts him to proof.

	Nature of evidence	Evidence of Timothy William Dabin	Response of Mr Knight
Page 5	A copy of a delivery note which shows the name of Fire Star Merchandising and the delivery addressee as being Saint Artjunkie (FAO Tony Knight). It is for 5 assorted t-shirts.	This document is a photocopy of a delivery note that appears to be reduced in size and referred to in large type as <i>Evidence 3 Delivery notice for items published 29-2-1999</i> . The photocopy is not of good quality and it is virtually impossible to make out the	Once Again I have no control over this company on how it trades or where is premises are or who owns it Etc just because a Mr LOVATT owns the building doesn’t mean he

	<p>The note bears a despatch date of 29 February 1999. (It is noted that in 1999 there was no 29 February.)</p>	<p>year of despatch. Mr Dabin presumes, from the statement above, that the date is 29 February 1996 (sic). The document refers to the supply of t-shirts by Fire Star Merchandising, Lower Mayer Street, Hanley, Stoke on Trent ST1 2EA to SAINT ARTJUNKIE (FAO TONY KNIGHT) 58, HAMNETT STREET, DROYLSDEN, MANCHESTER M43 6LW. There is a large gap between the word DELIVERY NOTE and the addresses of the supplier and the customer below as if text or an image is missing. The words SUPPLIED BY oddly appear in the left hand corner of the document above the height of the words DELIVERY NOTE whereas the words DELIVERY ADDRESS appear directly above the address of the customer. The names and addresses of the supplier and the customer are adjacent to one another but whereas the name and address of the customer is in upper case and the address of the supplier is not. The delivery note does not bear the telephone or facsimile number of the supplier and neither does it bear a VAT number or company registration number. In a box directly below the names and addresses of the</p>	<p>doesn't LET or RENT the building out. And all the information from the land registry show who owns the building nothing else. all I know I bought some t-shirt they arrived and I paid for them end of and Mr Dabin Cannot prove otherwise if he could he would of done so he also cant disprove the invoice. Loads of small companies start from home most fail in there first year so he comments don't say that as he has not done a form of proper investigation. Mr Dabin goes on to say that all companies must be registered with Companies House this is also un true. he goes on to say the details are incorrect it's a delivery note its common practice done By Littlewoods and other Company selling products they send a delivery note to say what items</p>
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		<p>supplier and customer only one in five entries has been completed, as follows: A/C CODE: VAT REG. NO : DELIVERY NO : DESPATCHED DATE : 29/02/1999 SALES ORDER NO: The despatched date 29/02/1999 is oddly smaller in size to any other text on the page. The delivery note does not state that price of the goods per unit and/or the total cost or any details of how the customer is to pay or has paid, ie whether cash, credit card, cheque or account. “On the basis of the anomalies referred to above I believe that there are reasonable grounds to question the authenticity of the Delivery Note. With regards to Fire Star Merchandising I found no record of a company of this name registered at Companies House (which included a search of dissolved companies) or a business (non-limited company) on the Dun & Bradstreet database. An Internet search did not locate any current or historical references to Fire Star Merchandising. No business of this name was found listed with Yellow Pages or BT Phone Book. However, it was noted that the BT Phone Book has the following residential listing –</p>	<p>has been despatched and if any are outstanding and normally the payment invoice follows afterwards. so the delivery would not have full information like pricing. I take it this man has never done Catalogue shopping or bought from t-shirt supplier. I assume his wife does things like that. The delivery invoice I sent to the claimant was a scanned in Copy and printed out on half size this commonly done as people in these cases like to make comments beside the image. I would like to ask the IPO is it against the law to send a smaller Version of a image I think not. So once again this Gentleman observation are unfounded. And I suggest he does some online shopping.”</p>
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		<p>D Lovatt, 28 Lower Mayer Street, Stoke on Trent ST1 2EA. Tel: 01782 857861. A call to this number found that it is not in use.</p> <p>A search of records held by Land Registry, Birkenhead Office, revealed that David Andrew Lovatt had registered freehold proprietorship of 28 Lower Mayer Street, Hanley, Stoke on Trent, Staffs ST1 2EA on 6 February 1995 (Title No. SF309091. A charge is registered against the property dated 4 December 2006 in favour of Mortgage Express.</p> <p>A search of Companies House filings did not locate any appointments held in the name of David Andrew Lovatt and neither did a search of the Dun & Bradstreet database locate any businesses registered in the name of David Andrew Lovatt.</p> <p>A search of the Creditsafe credit reference database (creditsafeuk.com) revealed that David Lovatt was last registered on the electoral roll in 2000. His duration of residency at 28 Lower Mayer Street is shown as 1996-2008.</p> <p>On the basis of my findings above I would suggest that document Page 5 is unlikely to be authentic.”</p>	
Page 5a	A payment invoice marked CASA FNA. It is headed payment invoice for apparels.	Page 5a is a photocopy of a “Payment Invoice for Apparels” that appears to be reduced in size and referred	“CASA FINA – Mr Dabin comments again and it seems he is clutching at

<p>The invoice is addressed to Tony Knight Saint Artjunkie Apparel Co. It is for 100 hoodies and 90 unidentified items. It includes a payment of 17.5% and states that a cheque is attached. Mr Knight states that it is a payment invoice from Simon Madden who, it is stated, purchased menswear to sell in male boutiques in Malaysia and New Zealand. It bears a date of 14 May 2002.</p>	<p>to in large type as – <i>Evidence 3a</i> This is payment invoice from 2002 from Simon Madden who purchased our brand of menswear to sell in there male boutiques in Malyasia and new Zealand. They have also provided witness statement.</p> <p>“I am not sure what a payment invoice is and particularly in the context of this document as without the description ‘Payment Invoice for Apparels’ the document would appear to be an invoice from CASA FINA, which is the company/business name at the head of the document, in relation to clothing sold to FAO Tony Knight, Saint Artjunkie Apparel Co, 58 Hamnett Street, Droylsden, Manchester, England M43 6LW, except for the fact that the document claims – ‘Cheque attached’.</p> <p>At the foot of the document is an address – No 9, 10 Lot 588 Jalan Meru 41050 klang Selangor Darul Ehsan, indicating that CASA FINA is located in Malaysia. My research has revealed that klang should be spelt with a capital K. (<i>Klang</i> (pronounced/’kloen/; Chinese:), formerly known as Kelang, is the royal city and former capital of the state of Selangor, Malaysia. It is located within the Klang District in Klang Valley. It is located about</p>	<p>minor errors let me explain Simon – Aaronson, Madden is originally from the UK I have known for many years before he moved abroad to Malaysis to be with his partner who is Malaysian. Simon as always loved my clothing and designs and he and his partner opened a boutique in Malaysia. So he Purchased my clothing it is Up to Mr Aaronson Madden to how he sends Money, design his paper work, pronounces words in written format..... So does Mr Dabin Expect everyone to have perfect English and spelling even computers make mistakes. This part of the statement is pure nonsense and if this would have court trail his evidence would be thrown out of court on grounds that he statement is just his impression or interpretation and that means</p>
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	<p>32km to the west of Kuala Lumpur and 6 km east of Port Klang). It is noted that the country name Malaysia does not form part of the address providing an indication that the document was issued by a Malaysian based company.</p> <p>It is odd that the document carries an address in Malaysia as it provides a strong indication that the transaction is between two UK companies. The price of the goods is in GBP and includes 17.5%, which I am aware was the prevailing rate of UK VAT in 2002 and payment was made by cheque, rather than an electronic transfer made between supplier and buyer in two different countries.</p> <p>It is noted, as it appears odd, that the first two references in the main body of the document, that is to say, 'Date 14/05/2002' and 'Payment Invoice for Apparels' are printed in much larger type than the invoice number and address for FAO Tony Knight that follow and the headings 'Date', 'Description', 'Qty', 'Size', 'Unit Cost' and 'Total Cost' that appear directly below also appear to be of a size that does fit in with the size of text in the lower half of the document.</p> <p>It is noted that the document does not bear the telephone or facsimile number (or website or email address) of</p>	<p>nothing.”</p>
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		<p>CASA FINA although it appears to be issued by that entity and neither does it bear a VAT number or company registration number.</p> <p>On the basis of the anomalies referred to above I believe there are reasonable grounds to question the authenticity of the Payment Invoice for Apparels.</p> <p>With regards to CASA FINA I found no relevant record for a company of this name registered at Companies House (which included a search of dissolved companies) or as a business (non-limited company) on the Dun & Bradstreet database.</p> <p>An Internet search and also a search of online databases and media sources did not locate any references to CASA FINA as the name of a male boutique either in the UK or Malaysia. No business of this name was found listed in UK Yellow Pages or BT Phone Book or in Malaysia Yellow Pages or Malaysia telephone directories.</p> <p>A search of Companies House filings and the Dun & Bradstreet database did not locate any relevant records in the name of Simon Madden in relation to the name CASA FINA.</p> <p>The translation of CASA FINA from Spanish/Portuguese to</p>	
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		<p>English language is fine home/fine house. A search of the Dun & Bradstreet database located several home furnishing/furniture businesses trading as CASA FINA.</p> <p>Our searches located details concerning Amfloor Sdn. Bhd., distributors of wood floors, whose website www.amfloor.com.my provides the address of their Klang branch, as follows: No. 9/10, 11, KPK Furniture Mall, Lot 588, Jalan Meru, 41050 Klang Selangor. This address is almost identical to that which appears on the CASA FINA document. We placed a call to the head office/showroom of Amfloor Head on 0060312 690 3161 and upon making enquiries were put through to the manager. We were informed that the company's Klang branch had closed a year ago and prior to then had traded for two years. The manager informed us that he did not know which company had traded from the Klang branch address prior to Amfloor.</p> <p>Further research located references to other businesses trading from Lot 588, as follows:</p> <ul style="list-style-type: none">a) Homelife Factory Outlet, KPK Furniture Mall, Lot 588/13, Jalan Meru, 41050, Klang – a retailer of home furnishings.b) Vilano Design, Lot	
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		<p>588, Unit 7, Jalan Meru, Klang 41050 Selangor – classified as a supplier of office furniture & equipment.</p> <p>On the basis of my findings above I would suggest that document page 5a is unlikely to be authentic”.</p>	
Page 5b	<p>A copy of a letter from ntl. It bears a date of 1 July 2005 and is addressed to Saint Artjunkie Co.</p>	<p>“Page 5b is a photocopy of a letter that appears to be reduced in size and referred to in large type as – <i>Evidence 3b This is a correspondent from a telecommunications company we used in the past.</i> The photocopy is of poor quality and it is difficult to read the text. The letter appears to be dated 1st July 2005 from ntl: Customer Concern, Concord Business Park, Threadwood Road, Wythenshaw, Manchester M22 0BA addressed to Saint Artjunkie Co, 58 Hamnett Street, Droylsden, Mtr (I was unable to read this line in the address which appears to be some sort of abbreviation for the word Manchester and looks like Mtr), M43 6lw. Phone : 0845 045 0244. The ntl address in the top right hand corner of the document appears to overlay or underlay the ntl: trade mark/logo.</p> <p>My research confirmed that both the ntl address and the telephone number above are genuine and were in use by ntl: Customer Concern on</p>	<p>“We all no mistakes happen it called human error or the companies like to call computer error. but the Ombudsman and myself was happy with the outcome so who cares if the letter overlapped and Mr Dabin remarks are so unfounded. Mr Dabin goes on to say the exhibits he supplied are from the internet so he has know actually proof theses are genuine letters and I believe one is from Belfast and one from Swansea these are two completely different complaint dept as NTL had over 50 Different Complaint department throughout the UK and Ireland for each area and every one works</p>

	<p>1st July 2005. It is difficult to comment on the authenticity of this document without seeing the original. Generally speaking the document looks as if it could be genuine but if ntl were using pre-printed headed stationery it is highly unlikely that the company address details would overlay or underlay the logo. As examples of ntl letters I located two on the Internet, which I produce as Exhibit TD/4 and TD/5 (Page 1). I believe it is unusual for a business letter:</p> <ul style="list-style-type: none">a) To be dated such as 1st July 2005 as commonly the date would appear as 1 July 2005 or 01 July 2005.b) To contain a typographical error whereby the postcode is typed in a mixture of upper and lower case (i.e. M43 6lw)c) To contain an abbreviation of a city's name in the recipients address details i.e. Mtr. It is understood that the following are commonly used abbreviations: Man, M, MC or M/C. <p>On the basis of the anomalies referred to above there are reasonable grounds to question the authenticity of the letter.</p>	differently.”
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<p>Page 5c</p>	<p>A delivery note from College Sewing Machine Parts Ltd. It bears a VAT number and a company registration no. Date of supply is identified as 5 May 2009. It is addressed to Saint Art Junkie.</p>	<p>“This document is a photocopy of a ‘Delivery Note’ that appears to be reduced in size and referred to in large type as – 3c <i>Invoice from company who supplies our Industrial machine needles.</i> The photocopy is of poor quality and it is difficult to read the text.</p> <p>The delivery note dated 6 May 2009 concerns the supply of needles from College Sewing Machine Parts Limited to Saint Art Junkie, 58 Hamnett Street, Droylsden, Manchester M43 6LW. Having checked the College Sewing Machine Parts Ltd website www.college-sewing.co.uk I can confirm that the company name type set on the delivery is identical to that which appears on the website. (<i>College Sewing Machine Parts Limited was established in 1971 and is a leading UK supplier of sewing machine parts, sewing machine needles, scissors and sewing accessories</i>).</p> <p>It is difficult to comment on the authenticity of the document without seeing the original. Generally speaking the document looks as if it could be genuine, but oddly it does not bear the delivery address, telephone or facsimile number (or website and/or email address) of the supplier.</p> <p>On the basis of the</p>	<p>“Once Again this just a company that I order machine parts from it really up to them how they do there paper work. Mr Dabin had already admitted this company exists but he fails to no the different between a delivery note which show what items have been sent by the company and that of a payment invoice. As long as my order is correct and they don’t over charge me I don’t worry about, things minor errors on delivery notes. but Mr Dabin sounds like he has a bit of OCD. But I will contact the above company and pass over Mr Dabins Remarks as I always pay by Debit card what the problem.”</p>
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		anomalies referred to above I believe there are grounds to question the authenticity of the letter.”	
Page 6	A copy of an order confirmation from Rocket Badge Company. The date of “15 th June 2000” appears upon the order. It is addressed to Saint Artjunkie Apparel and is for “Die Stamped cufflinks with Saint Artjunkie logo”.	<p>“THIS DOCUMENT is a photocopy of an ‘Order Confirmation’ that appears to be reduced in size and referred to in large type as – <i>Evidence 4 Copy of confirmation of order dated 15 June 2000.</i> The photocopy is of poor quality and it is virtually impossible to read the text.</p> <p>The document dated 15 June 2000 refers to the supply of cufflinks by Rocket Badge Company to Saint Artjunkie Apparel, 58 Hamnett Street, Droylsden, Manchester M43 6lw (<i>The Rocket Badge Company has been a leading UK supplier of badges and key rings since 1987.</i>)</p> <p>It is noted that the lower case lw in the post code is identical to that which appears in the address for Saint Artjunkie Co in the letter sent by ntl: Customer Concern to Saint Art Junkie, referred to above at paragraph 2.26b.</p> <p>It is difficult to comment on the authenticity of the document without seeing the original. Generally speaking the document looks as if it could be genuine, but oddly the description of goods, i.e. ‘Die Stamped cufflinks with Saint Artjunkie logo’, is of a type size that is much larger than the text surrounding it</p>	<p>“Once again Mr Dabin cannot distinguish a Confirmation order form and that of Payment invoice this put its doubt the Credibility of this person. The Confirmation order form was sent to Rocket Badges to produce our cufflinks this is there normal practice so I kept a copy of this form for my records and the original was sent back to Rocket to they could start production. Nothing more nothing less. And its clearly dated 2000 4 years prior to the Applicant claim she started up art junkie.</p>

		<p>and gives the impression that it superimposes any existing text.</p> <p>It is noted that the document does not bear a VAT Number or a company registration number.</p> <p>On the basis of the anomalies referred to above I believe there are reasonable grounds to question the authenticity of the letter.</p>	
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164) In his evidence in reply Mr Knight states:

“Mr Dabin Statement is very Vague and for some one who claims to be an investigator he not a very good one and he has not provide any information which disproves any thing in regards to my saint art junkie brand.”

Mr Knight goes on to state, inter alia:

“and I think he is just a cruntal customer as I have noticed he bought items of my site in 2010 I also now recall he sent me abusive emails due to the fact that I informed Mr Dabin he carried harassing me I would bring Criminal Proceeding against him for harassment if he did not leave me alone..... I also have the Harrasing emails he sent me and The pay pal receipt for his purchase so therefore its seems to me that Mr Dabin is nothing more than a liar who claims a lot but proves nothing. And I am now also going to pass his documents over to Greater Manchester Police and start legal proceeding against this person for Harassment and defamation of Character

I therefore Put it to the IPO that his observation are nothing more than pure fabrication.

If you Require a copy of the emails and the pay pal receipt I will gladly post them to you. To show what he purchased and when.”

(As per the comment above re this evidence in reply; Ms Bashir stated at the hearing that having received the second witness statement from the IPO she contacted Mr Dabin who advised that he was the investigator in the Dame Vivienne Westwood. She supposed that he had made trap purchases on behalf of Dame Vivienne.)

165) Page 3 consists of a highly crumpled, worn and torn business card. Written upon the card in clear bright ink are the names Tony Knight Saint Art Junkies and

a validity date of 28 February 2000. Mr Knight states that this a is a copy of a business discount card that was issued in 2000 from an undertaking that he states supplied t-shirts, shirting and fabric for sweatshirts.

166) Page 4 is a copy of a promotional leaflet that Mr Knight states was used on “our” market stall in 2003. The leaflet bears the name Saint Artjunkie and a crowned skull and bones device. It refers to limited edition clothing. Written upon the top right hand side of the leaflet are the words “10% Off with this leaflet until the end July 2003”. Various tops are identified as being from Saint Artjunkie.

167) Mr Knight states, in relation to promotion of his trade mark:

“Amount of around 15.000 due to most of our custom has been word of mouth from customers. And we also do most of our advertising in house.”

168) Mr Knight states:

“We refer to your attention Exhibit 4b pages 16c right through to 16c 17 this clearly show the applicant and partner buying there own items to push up there feedback and to deceit eBay Members
Alison Hendricks eBay accounts – 1 – artjunkie! 2-rougue_zebra
Joanne McCormack eBay account 1- Jomac17”

169) Page 5d of the statement is identified by Mr Knight as being a receipt for a retail unit in Affleck Palace, Manchester. It is addressed to Tony Knight, Artjunkie. It is from Afflecks Ltd. It bears a date of 21 July 2009 and states that it relates to the payment of a licence fee of £110 plus VAT.

170) Page 5e consists of a copy of a bill from BT for Internet services. It bears a date from February 2010 and is addressed to Saint Art Junkie c/o Tony Knight. The bill states that this is the first bill for the account.

171) Page 5f consists of a copy of what is described as a fan base on the Facebook website. Owing to the size of the print it is difficult to make out the details. It bears a date of 13 February 2010.

172) 5G consists of a picture of what is stated to be a shopping bag. This bears a crowned skull and cross bones and the name Saint Artjunkie. Underneath a cityscape the words “Saint Artjunkie brand name and logo is owned by the Saint artjunkie apparel Co since 1994”.

173) Pages 6A – 6E consist of pages from 2fasttolive.co.uk. The pages bear a date of downloading of 18 March 2010 and so emanate from well after the material date.

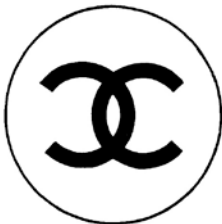
174) Page 6G consists of a shield device in which the words University of Saint Artjunkie and the device a crowned skull and cross bones appear. Handwritten on the page are the words “Emblem designed on the 18th April 2000 and is own and managed by Tony Knight of Saint Artjunkie clothing and copy right as from this day”.

175) Page 6H consists of a picture of details of a computer file. Typed into one box is St artjunkie universityemblem copyright 18042000. The size of the file is identified as being 24.7mb. The size on disk is identified as being 26,017,792 bytes. A created date of 18 April 2000, a modified date of 18 April 2000 and an accessed date of 18 April 2000 appear. The time between creation and final modification of the file is 6 seconds.

176) Mr Knight states:

“We refer you exhibit 2 pages 6G and 6H this evidence show a copyright drawing of university shield bitmap image design and also the computer properties to which show the date of design was constructed. Once again this clearly 4 years before applicant claims to have started her eBay online trading.”

177) Page 8 is a picture of a t-shirt. The t-shirt bears an image as below (without the circle):



From the inverted c's drips emanate, as if a tin of paint had been thrown upon them. Underneath this picture Mr Knight has written:

“this is t-shirt offered for sale on the eBay auction site by Alison Hendricks as you can see this a counterfeit product of Chanel one of the most famous fashion brands in the world. Chanel lawyers were informed and all listing were removed, before removal Alison Hendricks had listed over 100 for sale and sold about 90 pieces so in total 190 were on the eBay auction.”

178) Page 10 is a picture of t-shirt with a device of a stylised rabbit and the word OBEY beneath it. Mr Knight has written that this infringes two trade marks: Miffy the bunny and Obey registered trade mark.

179) Page 12 consists of a picture of a jacket upon which the crowned skull and cross bones appears underneath of which the word Saints appears. Mr Knight has written that "When we contacted All Saints and provided them with the document All Saints had the listing removed for infringing on there trademark...We also have email from All saints thanking us for our help." (In her evidence Ms Hendricks states that the image reproduced has been manipulated by Mr Knight. She exhibits at AJH14 the listing. The references to customisation by Artjunkie/Ali Hendrick are not present in the version exhibited by Mr Knight.)

180) Page 14 consists of a picture of a t-shirt. Mr Knight has written that the item infringed his two skull jeans trade mark and he had the listing removed.

181) Page 15 a picture of a t-shirt bearing an image of Snow White and the word Destroy. Mr Knight has written that the t-shirt was offered for sale by Ms Hendrick and removed from eBay at the request of Disney. Mr Knight also writes:

"this copy of the IPO reg for the clothing brand Destroy in which Alison Hendricks clearly uses there brand name on her t-shirts without the consent on the owner, this is once again more evidence in Alison attempts to mislead consumers, when we informed the owners they also had all listing removed from eBay."

182) Page 15c is a picture of a t-shirt bearing the word love, which is melting or bleeding. Mr Knight has written that this infringes his graffiti love logo copyright 810323438, which is now a registered trade mark.

183) Page 15e is a picture of a t-shirt upon which a cross and the word sacred appear. Mr Knight has written that the name sacred is owned by Patrol Jeanswear. The details of the registration supplied show that the trade mark registration expired on 18 November 2009.

184) Page 15i has a picture of a t-shirt bearing the trade mark that is the subject of the application for invalidation.

185) Page 15j is a picture of a t-shirt under which is written: "This was another item removed from ebay due to infringing our trade mark Devine youth".

186) Page 16 is headed feedback manipulation. On page 16a the following appears:

"In this section we would like to show that feedback shown does not clearly show to what items were sold on the eBay auction site and the items that have been highlighted clearly show
1- Artwork, photographs, prints
2- items purchased by other members by Alison Hendricks.

3 Item bought by both Alison Hendricks under her other eBay account Rogue_zebra and Joanne McCormack eBay account Jomac 17 to push up Alison art junkie account.

4 – the clothing sold which states T-shirts, but we ask our selves as there has been so much counterfeiting of other brands by the applicant we can only determine that these are the counterfeit t-shirts.”

187) Under section 4a printouts from eBay in relation to artjunkie (Ms Hendrick) as a buyer are given. On page 16 B 1 the feedback profile of artjunkie is given. It is difficult to see the relevance of the profile of a buyer. This shows that in the previous 12 months artjunkie’s feedback had been 99.9% positive. In the previous 12 months 4149 responses had been positive, 8 had been neutral and 4 had been negative.

188) On page 16c onwards there are printouts from the eBay profile of artjunkie as a seller. The earliest date of feedback is 19 November 2004. Again the seller is shown as having a 99.9% positive profile. Mr Knight has annotated the printouts to show where feedback has emanated from rogue_zebra, jomac17 and artjunkie! ie eBay accounts of Ms Hendrick or Ms McCormack. At 16c 4 et seq are printouts from eBay in relation to the feedback profile of rogue_zebra. At 16c 6 et seq are printouts from eBay in relation to the feedback profile of jomac17. At 16D et seq are further printouts from the feedback profile of artjunkie! The printouts relate to the period from 19 November 2004 to 10 March 2005; where the products sold are identified, they are paintings/artwork or photographs. Pages 16D 6-16 are again printouts from the feedback profile of artjunkie. (The eBay pages also show the crowned skull and cross bones.) The feedback covers the period from 11 March 2005 to 27 May 2005 and relates to 79 transactions. Goods identified in the feedback include: jacket, t-shirts, shirts, clothes, tops, jeans, paintings and artwork. Pages 16D 17-27 are further printouts relating to the feedback profile of artjunkie!; again, where the goods are described they are a mixture of clothing and artwork. The feedback relates to the period from 26 September 2005 to 12 December 2005. On page 26 Mr Knight has written “not very clear to what items have sold on this page”. However, the feedback, inter alia, identifies t-shirts, a shirt and jeans. Pages 16D 28-37 consists of further printouts for the feedback profile of artjunkie!, for the period from 12 December 2005 to 10 February 2006. The feedback, where it identifies the products, relates to artwork and clothing.

189) At page 18 of exhibit 5 a “to whom it may concern letter” from a Mr K Angus of Middleton, Manchester is exhibited. The letter states:

“I have been a long time friend of Mr Knight going back 25 years, and I can remember him coming to me in around late 1993 to early 1994 showing me his designs for his new Saint Artjunkie fashion brand.

I was taken back with quality of his products and the unique logo, to which I assisted Mr knight to promote his brand by holding clothing parties, his brand went down a storm and has been very successful.

To allow in my opinion the registration of Artjunkie would cause massive confusion to Mr knights brand Saint art junkie, there fore I feel the applicant application should be refused.”

190) At page 19 of exhibit 5 is a “to who it may concern” letter from a Mary Parker of Salford. The letter states:

“I have been a customer of Saint Artjunkie clothing since 2003 and have bought many items for my son who is a massive fan of this brand, from there market stall and now from there online website. I would like to say as average consumer by allowing the applicant (Alison Hendricks) to register art junkie myself and my son believe this would cause confusion to customers like me and my son.

To also allow this would damage the hard work and reputation of Saint Artjunkie clothing brand.”

191) At page 20 is a copy of an e-mail which is headed as being sent from Info@allsaints.com. It is dated 4 January 2008 and is headed “Fake items”. The e-mail reads:

“Than you for getting in touch, at All Saints we don’t allow any individual or company to use our brands in anyway that misleads the consumer. This includes keyword spamming.

We have received large number of complaints from other ebay members in regarding this member known as artjunkie on the eBay auction site in using our brand name.

we will take the appropriate action against this individual and thank you for informing us.

For any urgent enquiries please contact 0870 458736.

Customer Service Team”

192) At page 21 is an e-mail exchange between Mr Knight and chanel@kmwlaw.com.

193) The first e-mail is dated 30 March 2009 and reads:

“Dear sir madam there is member on ebay called artjunkie (Alison Hendricks) who is selling over 100 t-shirt with your company trademark logo i have reported to ebay but they have asked me to contact you, this member is making money of your trademark (2 c logo) i feel this undermining your brand.

the items numbers are listed below

310130874598

150334407673 qty 25
310130945008 qty 25
150334408828 qty 25
310130945826 qty 25

they have made so much money from your trademark is unbelievable and they dont care. so fair they sold 200 t-shirts>
hope this information helps”

The response is also dated 30 March 2009 and reads:

“Thank you for your information submitted in regards to Alison Hendricks who goes under eBay I.D. artjunkie!

We have now filed a Noci form eBay and thank you for bringing this to our attention.”

194) Mr Knight states that:

“The Applicant has long history of counterfeiting and stealing other companies Logo and brands for her own financial gain”.

195) At page 22 is an e-mail from Mr Simon Madden at the e-mail address simonzeus3@hotmail.com. It is directed to Mr Knight and dated 12 February 2010. It is addressed to “to whom it may concern” and reads:

“It has been brought to my attention from my managment team that your client has been using the Saint Artjunkie Logo and brand name. I would like to say that I have been dealing with this company supplying my boutiques in Asia, Australia and new Zealand. with there Saint Artjunkie clothing since 2002 and there brand has been a massive success.

I have looked at both of the marks and I can see every reason for Mr Knight actions and I do believe that if this women Alison Hendricks was able to register her mark this would cause great confusion for mine and Mr knight customers.

I ask that your actions cease and the Intellectual Property Office refuse your clients application.

I am a director of many companies in Australasia and Asia and i regard this company and its owner in very high esteem.

Regards

Simon Madden

Casa Fna Malaysia

Australasia and Hong Kong.”

Witness statement of Joanne McCormack

196) Ms McCormack states that she is a personal friend of Ms Hendrick.

197) Ms McCormack confirms, in response to the comments of Mr Knight re goods that she purchased from eBay, and the subsequent feedback or reviews,

that her personal account identity is Jomac 17. She states that she has used this account to purchase many items on eBay for herself, her friends and family. She states that the reviews to which Mr Knight refers appear to be reviews from the recipients of the gifts.

Evidence of Timothy William Dabin

198) Mr Dabin is a principal at Prialux Associates, a corporate investigations company. Mr Dabin is a full member of the Institute of Professional Investigators, a full member of the Association of Certified Fraud Examiners (CFE) and an associate member of the Institute of Trade Mark Attorneys. Mr Dabin has over 34 years experience as an investigator in the commercial and public sectors, including almost 9 years criminal law enforcement with the London Borough of Croydon Trading Standards Department, over 9 years heading the British Phonographic Industry's anti-piracy unit and 16 years as an international corporate investigator.

199) At the London Borough of Croydon Trading Standards Department, Mr Dabin held the positions of technical assistant from October 1976 to July 1978, consumer protection officer from August 1978 to November 1979 and investigating officer (special investigations) from December 1979 to March 1985. At the British Phonographic Industry's anti-piracy unit, Mr Dabin held the positions of chief investigator from April 1985 to April 1987, anti-piracy co-ordinator from May 1987 to June 1993 and head of anti-piracy from July 1993 to November 1994. From December 1994 to November 1995, Mr Dabin ran his own corporate investigations business called Prialux Associates. The firm specialised in investigating intellectual property infringement and fraud. Between November 1995 and May 2001, Mr Dabin worked for Carratu International Group Limited, an international corporate investigations company, where he held the positions of consultant from November 1995 to April 2000, senior consultant from May 2000 to August 2000 and head of intellectual property division from September 2000 to May 2001. In June 2001, Mr Dabin was running his own corporate investigations business called Prialux Associates, which he has carried on to date. He has continued to specialise in investigating intellectual property infringement and fraud.

200) On 20 January 2011, Mr Dabin was instructed by Murgitroyd & Company to investigate and comment on the authenticity of five documents which are numbered page 5, page 5a, page 5b, page 5c and page 6, which he understands were tendered as evidence by Mr Tony Knight and to also determine how long Mr Knight had been trading under the name SAINT ARTJUNKIE. He exhibits a copy of the report.

201) Part of the evidence of Mr Dabin is considered above, with the evidence of Mr Knight.

202) Mr Dabin states that it is known that Dame Vivienne Westwood (and her holding company, Latimo SA) has been involved in an ongoing dispute with Anthony Edward Knight (aka Tony Knight) due to his manufacture, distribution and sale of items of clothing such as t-shirts, hoodies, bags and belts bearing trade marks that infringe various United Kingdom and Community trade marks owned by Dame Vivienne (Latimo SA). Mr Knight has traded under various business names such as Red Planet Clothing Company and Too Fast To Live Too Fast To Die Clothing Company, claiming that he designed the latter label and Vivienne Peters designed the former label, and has included the names 'Vivienne' and 'Westwood' in descriptions of various items of clothing eg "Red Planet Westwood TOO FAST scarf by Vivienne May".

203) Mr Dabin states that Mr Knight owns a number of domain names and has operated a number of websites:

redplanetclothingcompany.co.uk,
saintart.co.uk,
toofasttolivetoyoungtodie.co.uk,
toofasttolivetoyoungtodie.com,
letitrock.co.uk,
2fasttolive.co.uk.

204) He states that Mr Knight also has a website blog: <http://saintartjunkie.blogspot.com> (last updated on 2 December 2009).

205) Mr Dabin states that Mr Knight has been actively selling on eBay under several identities, including Saint Artjunkie. He identifies the following identities, none of which are currently registered users:

redplanetwestwoodcompany,
saintartjunkie,
toofasttolivetoyoungtodieapparelco,
toofasttolivetoyoungtodieshop.

206) Mr Dabin states that Mr Knight t/a Saint Artjunkie/Saint Artjunkie Apparel/Saint Artjunkie Clothing/Too fast to live to young to die clothing company, Too Fast To Live To Young To Die Apparel Co, is the owner of the following United Kingdom trade mark registrations/applications:

Saint Artjunkie Apparel:

Trade mark no	Mark text	Type	Date	Status	Classes
2531904	Devine youth	WO	17.11.2009	Registered	25
2539192	ARtRockers By Saint Artjunkie	DW	16.02.2010	Registered	25
2548086	Sacred Heart	WO	21.05.2010	Registered	25

Saint Artjunkie Clothing:

Trade mark no	Mark text	Type	Date	Status	Classes
2555661	Red Planet Westwood	WO	12.08.2010	Registered	25
2515322	Saint by Saint artjunkie	WO	05.05.2009	Withdrawn	25

Tony Knight:

Trade mark no	Mark text	Type	Date	Status	Classes
2288080	RED PLANET Clothing. Co	WO	12.12.2001	Registered	25
2437947	RED PLANET	DW	08.11.2006	Registered	18, 25
2463129	Destroy Red planet jeans company	DW	26.07.2007	Withdrawn	25
2485853	RED PLANET JEANS	DW	24.04.2008	Registered	25
2499397	DESTROY JESUS	DW	06.10.2008	Refused	25
2503668	Worlds End Apparel clothing	SW	29.11.2008	Advertised	25

Too fast to live to young to die clothing company:

Trade mark no	Mark text	Type	Date	Status	Classes
2532728	Death before dishonor	WO	26.11.2009	Registered	25
2568231	Death by Disco	WO	04.01.2011	Advertised	25
2568500	BAD Clothing Est 1995	SW	06.01.2011	Awaiting advert	25

Too Fast To Live To Young To Die Apparel Co:

Trade mark no	Mark text	Type	Date	Status	Classes
2513398	2 skull jeans	DW	01.04.2009	Registered	25
2518310	Death before Dishonour	DW	11.06.2009	Registered	25
2522821	LOVE	SW	04.08.2009	Registered	25
2527075	Sacred Saints	DW	28.09.2009	Advertised	25
2558988	LONDON Skull London	DW	19.09.2010	Registered	25

207) Mr Dabin states that Mr Knight's current website is artjunki.co.uk on which the home page reads as follows:

“Customer service/sales 07717624213

Let it rock Apparel

Worlds End Apparel

Death Before Dishonour

Devine Youth

Artrockers

Red Plant Westwood

To all our Customers due to Victimisation from Vivienne Westwood company and the London Met PCeU unit our site was taking down without our consent but we are fighting back against the westwood company and legal action is in progress.

We have to stop these larger designer thinking they own everthing even though they own fuck all and lets stop them trying to push us smaller designers out of buisness, by making rediculous claims.

We have now filed a formal complaint with IPCC against the london Met Police for bulling tactics and for taking down my Site for no reason, we are also suing Vivienne Westwood and Alison Hendrick for stealing and using our trademarks and for claiming copyright on things they dont own we need to stop all the organisation trying to put small companies like us out of business.

We apologise for the inconvenience this may have caused.

TOO FAST TO LIVE TO YOUNG TO DIE CLOTHING COMPANY T/A SAINT ARTJUNKIE All trademarks and logos, copyright 1990-2010”.

208) Mr Dabin states that the main menu displays a Saint Arjunkie logo. He states that the “About Us” page reads as follows:

“Saint Artjunkie Clothing was established in 1994 and are based in Manchester, England.

We own and mange the following Registered Trademarks, therefore no individual or company are permitted to sell or use any of our brand names or logos with out consent of us. under the trademarks act 1994. even if the individual try to alter the spelling this still an infringement and legal and civil action will be taken and criminal prosicution action.

1 – Saint artjunkie

3- Divine Youth

5 – Grafiti Love

7 – Artrockers

9 – Red planet jeans

11 – Death before dishonour

2 – Let it rock apparel

4 – 2skull Jeans

6 – Worlds end apparel

8 – SAINT by Saint Artjunkie

10 – Red planet

12 – too fast to live to young to die

you can now leave us feedback or comments on our testimonial page this will us improve our service to you our customers.

thank you from Saint artjunkie”

209) Mr Dabin states that the Saint Artjunkie Apparel page features numerous Saint Artjunkie branded garments, many of which bear the Saint Artjunkie logo.

210) Mr Dabin states that the registrant details for the domain name artjunki.co.uk are as follows:

Registrant: redplanet clothing.

Registrant type: UK individual.

Registrant's address: The registrant is a non-trading individual who has opted to have their address omitted from the WHOIS service.

The domain name was registered on 6 September 2010 and was last updated on that date.

211) Mr Dabin states that prior to artjunki.co.uk, Mr Knight had sold Saint Artjunkie branded clothing from the website address 2fasttolive.co.uk; which he states was virtually identical in content and design to the website artjunki.co.uk. Mr Dabin states that Mr Knight had also been the registrant of the domain names 2fasttolive.co.uk and 2fasttolive.com.

212) Mr Dabin states that Mr Knight has used Facebook and My Space to display his various brands of clothing, including Saint Artjunkie, but that none that are still in existence have been updated for some time.

213) Mr Dabin states that in *The Look* Internet magazine dated 2 June 2009 the following appears:

“..a series of designs bearing striking similarities to key McLaren and Westwood creations have been trademarked without their knowledge by a company unconnected with either of them”.

He states that the article goes on to state that:

“The business behind this activity is Red Planet, most recently trading on eBay as Saint Art Junkie but previously known by a variety of names, including Too Fast To Live To (sic) Fast To Die Clothing Company.”

214) Mr Dabin states that his searches, including Internet, online databases and media sources have not located any evidence to suggest that Mr Knight had been using the name Saint Artjunkie prior to early 2009.

215) Mr Dabin states that Taylor Wessing, a firm of solicitors acting for Dame Vivienne Westwood, have in the last week lodged amended particulars in the Patents County Court in preparation of a trial between Dame Vivienne and Mr Knight.

216) Mr Dabin states that details of Mr Knight's opposition to an application by Latimo SA are available on the data base of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM). He exhibits details at TD/8. The trade mark opposed is LET IT ROCK, in relation to which Mr Knight claims that he has an earlier non-registered trade mark.

Witness statement of Alison Jane Hendrick

217) Ms Hendrick states that she is a director of the company Artjunkie Limited, which was incorporated on 6 November 2009. She states that before 6 November 2009 she was a sole trader. As a sole trader she had been trading under the trading style Artjunkie since November 2004. Ms Hendrick states that she first used the trade mark Artjunkie on artwork including prints in November 2004. She states that she attached sticky labels bearing the trade mark Artjunkie to the back of the artwork/prints. Ms Hendrick states that in January 2005 she began customising t-shirts and sold them under the trading style Artjunkie. In the beginning she used her business cards as hang ticket labels for the clothing. Ms Hendrick states that her business is primarily clothing, including t-shirts, and is primarily conducted via the online auction site eBay. This has evolved from her initial foray into selling her artwork by this means. The name Artjunkie refers to the intense love of or addiction to Ms Hendrick's artwork. Ms Hendrick first worked with acrylic on canvas before she had the idea of transferring her designs to the more profitable Artjunkie customised second hand branded clothing, and finally in the present incarnation as a t-shirt and clothing design business and designer brand in its own right. She states that this is why the brand is called Artjunkie and not t-shirtjunkie.

218) Ms Hendrick states that she creates a large number of logos and ornamentation for her apparel. She states that exhibit AJH2 contains examples of her first Artjunkie business card, dating back to 2004, and photographs of apparel dating from 2005. Pictures included in the exhibit show a jacket, jeans and t-shirts. Artjunkie can be seen on the garments and upon swing labels attached to the garments. Ms Hendrick states that she first commenced use of the name Artjunkie on 11 November 2004, which, she states, is clearly demonstrated in evidence attached to the witness statement of Mr Knight. Ms Hendrick states page 16b 1, exhibit 4a, and 16c 1, exhibit 4b, attached to the witness statement of Mr Knight, which consists of "Feedback Profile", shows the eBay feedback profile for her Artjunkie business, which shows her eBay membership commenced on 11 November 2004. She states that from page 16b 1 it can be seen that in the 12 month period terminating in March 2010, she had received 4,149 positive ratings, 8 neutral ratings and 4 negative ratings. Ms Hendrick states that pages 16c to 16c 5 of exhibits 4b and 4c to the statement of Mr Knight, show consistent feedback starting from December 2004.

219) Exhibited at AJH3 is a printout from WHOIS which shows that the domain name artjunkie.co.uk was registered on 26 January 2005 and that Ms Hendrick is

the registrant. Also included in the exhibit is an invoice to Ms Hendrick in relation to the website. The invoice is dated 15 April 2005 and shows the website being registered, initially, from 26 January 2005 to 26 January 2007.

220) Ms Hendrick states that exhibit AJH4 shows how her logo evolved. She states that the first document contained in the exhibit is the first skull and cross bones image that she created and used on t-shirts. She states that this dates back to 2005. The second document is a picture of one her caps, also dating from early 2005, which bears the same image. Ms Hendrick states that by the middle of 2005 she had altered the image by replacing the crosses on the top of the skull with a single star in the middle of it. Ms Hendrick states that the third and fourth images are photographs of an Artjunkie branded t-shirt bearing the updated image, dating from the middle of 2005. Ms Hendrick states that in November 2005 she came across the image of a crown, which inspired her “to Crown my Skull & Cross Bones Image”. She states that the fifth image in the exhibit is the inspiration for the crown. Ms Hendrick states that the crowned skull and cross bones image was completed in November 2005 using Photoshop software. She states that the pictures of a t-shirt and hooded top bearing the crowned skull and cross bones image, exhibited at AJH4, both date from early 2006.

221) Ms Hendrick states that exhibit AJH5 contains the original computer file for the crowned skull and cross bones image. She states that exhibit AJH6 includes a screen print for the crowned skull and cross bones logo. Ms Hendrick states that exhibit AJH7 consists of various photographs placed on eBay and on MySpace. She states that documents 1 to 8 are copies of photographs placed on eBay, MySpace or both. Document 9, Ms Hendrick states, shows a full range of the caps she sold under the Artjunkie brand in late 2005. She states that it depicts various skull and cross bones images, including the final image on cap 1. Document 10, Ms Hendrick states, is a copy of sticker that she used as an advertisement on eBay and MySpace in 2008 as a result of her becoming aware that Mr Knight was copying her work. Ms Hendrick states that document 11 is a copy of a photograph of a badge that she provided to customers when they bought her apparel in 2006.

222) Ms Hendrick states that her turnover that is attributable to the sale of Artjunkie branded goods in the previous 6 years is:

2005	£22,183
2006	£21,121
2007	£27,017
2008	£93,625
2009	£132,175

223) Ms Hendrick states that the “figures are approximate within a 10% tolerance”. She states that after she had conceived the crowned skull and cross bones logo

in 2005, her goods were sold under both the name Artjunkie and in combination with the logo. Consequently, the turnover figures relate to both trade marks. Ms Hendrick states that in 2004 the approximate turnover attributable to the Artjunkie word was £4,804. She states that as the logo was only created in November 2005, the majority of the turnover for the year 2005 relates to the use of the trade mark Artjunkie and older versions of the logo. Ms Hendrick states that the figures relate to artwork and apparel. In 2004 she sold exclusively artwork. In 2005, 70% of the turnover related to the sale of artwork and 30% to the sale of clothing. In 2006 60% of the turnover related to clothing, 75% in 2007, 95% in 2008 and 99% in 2009. Ms Hendrick states that she rarely sells artwork now.

224) Ms Hendrick states that the amount spent, solely attributable to the Artjunkie word and the crowned skull & cross bones logo, on promotion in the United Kingdom over the previous 6 years has been:

2005	£1,500
2006	£2,500
2007	£4,000
2008	£12,000
2009	£17,000

225) She states that these figures are approximately within a “10% tolerance”. Ms Hendrick states that the promotional costs relate to obtaining photographs for placing promotional listings on eBay and MySpace and for placing those listings. The costs also include promotional merchandising and packaging bearing her trade marks, including stickers.

226) Exhibited at AJH8 are copies of pages relating to payments via PayPal. The first payment date is 26 April 2005. It is addressed to Artjunkie and is for an Artjunkie t-shirt. The last page is dated 25 February 2011. The goods are described by reference to Artjunkie or Artjunkie skull. Primarily the goods are t-shirts, however, there are also orders for jeans, hooded sweatshirts and jumpers. The names and addresses of the purchasers are given.

227) Exhibited at AJH9 are copies of Vistaprint invoices for business cards, along with examples of the cards. The earliest invoice is dated 2 February 2005. The invoice bears an image of the card and one of the cards is attached. The card refers to Artjunkie and describes the business of Ms Hendrick and Artjunkie as being pop-art and abstract painting. None of the business cards refer to the business of clothing. Also included in the exhibit are what appears to be a sewn-in label bearing the name artjunkie and a swing ticket bearing the name artjunkie in cursive script next to the crown and skull and cross bones device. Attached to the latter swing label is a swing label that advises that the product, to which it is to be attached, is 100% cotton and should be washed at 30 degrees. The cards, the subjects of the invoices of 6 May 2005, 13 May 2005, 7 February 2006, refer

to original artwork or Artjunkie studios. The crowned skull and cross bones can be seen on a business card the subject of an invoice dated 4 January 2008.

228) Exhibited at AJH10 are copies of invoices issued to Ms Hendrick. All but one of the invoices refers to Artjunkie. The earliest invoice is dated 11 May 2005; it is a VAT invoice from Vistaprint and is addressed to Ms Hendrick at Artjunkie. An invoice dated 8 May 2006 is for 100 self seal t-shirt bags. An invoice from Air Sea Scotland Ltd, dated 12 December 2006, relates to the importing of garments from Jia Xing in China.

229) Ms Hendrick states that she first became aware of Mr Knight using Saint Artjunkie and the crowned skull and cross bones logo in the middle of 2009. Exhibited at AJH11 are copies of correspondence from her then solicitor and e-mail correspondence between herself, Ms Lisa Sinclair, her solicitor and Angela Nocture for Vero/eBay in relation to her dispute with Mr Knight. Included in the exhibit is a copy of a letter from the solicitors of Ms Hendrick, dated 17 June 2009, to Mr Knight which is specifically identified as being "without prejudice"; consequently, its contents have neither been read nor considered. (It may be that despite the heading it is not covered by the without prejudice rule.)

230) Ms Hendrick exhibits at AJH12 a copy of her witness statement in reply in relation to the invalidation application, a summary of which appears above.

231) Ms Hendrick states that she contacted a representative of Latimo in Italy who stated that Latimo was aware of Mr Knight's activities and that they were causing it concern.

232) Ms Hendrick denies that Mr Knight founded Saint Artjunkie in 1994 and puts him to strict proof of this claim. She states that as far as she is aware Mr Knight has only traded via eBay, or other online sites, yet, despite various attempts, she has been unable to find a single online document that shows that he traded under the trade mark Saint Artjunkie or used that trade mark as a brand for clothing before 2009. She states that the domain name www.artjunki.co.uk was only purchased in 2009.

233) Ms Hendrick states that she has been advised that Saint Artjunkie is not a legal entity. Ms Hendrick states that Mr Knight claims that "we are a fashion house", which suggests that he is not a sole trader and that she has been advised that a partnership is not a legal entity under English law. It is not clear if the legal entity is Tony Knight t/a Saint Artjunkie but that the reference to "we" and "fashion house" suggest that this is not the case. Ms Hendrick puts Mr Knight to strict proof of the legal standing of Saint Artjunkie and to strict proof that any goodwill in respect of the purported use of Saint Artjunkie accrues to Mr Knight.

234) Ms Hendrick refers to paragraph 4, which relates to evidence 1, of Mr Knight's witness statement. She states that the discount card appears to be faded and looks to be old, the handwritten words "Tony Knight" , "Saint Art Junkies" and "28/02/2000" stand out as if only written recently. Ms Hendrick states that she has grounds for disputing the authenticity of this item and puts Mr Knight to strict proof of its authenticity. She asks that he produces the original.

235) Ms Hendrick refers to the promotional leaflet that Mr Knight states was used to promote a market stall in 2003. She states that none of the goods shown on the leaflet have any reference to the trade mark Artjunkie or Saint Artjunkie and she denies that in 2003 a copy of the leaflet was in fact available. Mr Knight is put to strict proof of his statement in relation to this matter.

236) In relation to the documents considered by Mr Dabin in his witness statement, Ms Hendrick puts Mr Knight to strict proof of the authenticity of the documents or an explanation of the discrepancies outlined by Mr Dabin.

237) Ms Hendrick comments on the illegibility of certain documents filed by Mr Knight and states that, consequently, they should be disregarded. She also notes that various documents relate to matters arising after the date of the filing of the applications.

238) Ms Hendrick states that the picture at 3G, page 5G, of Mr Knight's statement is not sufficiently clear as a photograph of a shopping bag and should be disregarded unless a better photograph is supplied. She notes that there is no compelling documentary evidence as to when the bag was ordered. The fact that the bag bears the date 1994 does not show when it was ordered.

239) Ms Hendrick considers that it is unacceptable that Mr Knight should rely upon poor quality scanned copies of documents. She considers that the original documents should be provided. If he cannot provide them, she considers that he should not be able to rely upon them.

240) Ms Hendrick denies the "implicit allegations" made by Mr Knight in paragraph 4 of page 16a of his witness statement. Ms Hendrick states that her Rogue_zebra and Ms McCormack's Jomac 17 are their personal eBay accounts. These have been used to buy presents for friends and family who, she states, have been kind enough to give them positive feedback. In relation to paragraph 11, exhibit 4c pages 1-37 of Mr Knight's witness statement, she does not understand the relevance of the fact that she buys goods from others on eBay.

241) Ms Hendrick states that the computer image, paragraph 13, exhibit 2 pages 6G and 6H of Mr Knight's statement, could have been mocked up at any time. She, therefore, questions the authenticity of the image as an original computer image created on 18 April 2000.

242) In relation to exhibit AJH12, Ms Hendrick specifically makes reference to paragraphs 12 and 13 in relation to the allegations of Mr Knight. She states that paragraphs 18 to 25 and exhibits 16 to 23 relate to the behaviour of Mr Knight. Ms Hendrick states that Mr Knight has been unable to find a single piece of evidence of a direct copy/counterfeit or an item of clothing that was “genuinely intended” to be passed off as the goods of others emanating from her

243) Ms Hendrick states that Mr Knight accuses her of acting inappropriately, whilst he appropriates the trade marks of others. She refers to paragraphs 18, 19, 20, 21, 22, 23, 24 and 25 of exhibit AJH12 and to the exhibits therein. In relation to the Snow White Destroy parody design, Ms Hendrick states that Disney has never contacted her to ask for the removal of the parody. Consequently, Mr Knight’s assertion in relation to this matter is false. Ms Hendrick believes that Mr Knight had contacted eBay to have the listings removed.

244) Ms Hendrick states that, in relation to the statement of Mr Knight, that she referred to the garment as being an All Saints jacket as it was a genuine second hand branded All Saints jacket that she had customised with an Artjunkie design. Ms Hendrick states that the original listing for the article included wording that made this clear and that the listing in Mr Knight’s evidence had had this description removed. She states that, unfortunately, owing to the time that has lapsed since the listing was put on eBay she cannot obtain a copy of the message source without reverting to eBay, which she has not had time to obtain. Ms Hendrick states that she puts Mr Knight to strict proof that this listing has not been altered by him. Ms Hendrick refers to exhibit AJH13 which contains a witness statement from Ms McCormack and exhibit JM1 which show that Mr Knight has previously altered documents in the manner alleged in her statement. She refers to exhibit AJH14 which comprises the original listing complete with the description.

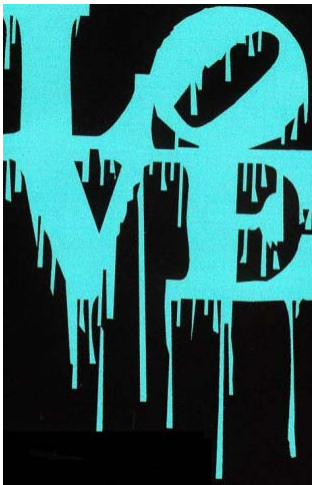
245) Ms Hendrick states that in relation to evidence 17 page 15e of the statement of Mr Knight, she used SACRED on her t-shirt in good faith. She had no knowledge that Patrol Jeans had a registration of the trade mark SACRED. She first became aware of Patrol Jeans through Mr Knight asking for her listing of her SACRED t-shirt to be removed. Ms Hendrick refers to exhibit AJH15 which she states comprises evidence from eBay showing Mr Knight’s eBay ID and confirmation that the eBay ID referred to is that of Mr Knight.

246) Ms Hendrick states that, in relation to evidence 22 page 15J of the statement of Mr Knight, she first used DIVINE YOUTH in early 2009. Mr Knight filed an application to register it only after he became aware that she was using it but spelt it DEVINE. She states that if Mr Knight had shown the date of this listing, it would clearly predate the date of the United Kingdom trade mark. Exhibited at AJH16 are details of the invoice for the sale of Ms Hendrick’s first

DIVINE YOUTH t-shirt; the invoice is dated 19 May 2009 and includes the full details of the purchaser.

247) Ms Hendrick believes that it is relevant to demonstrate Mr Knight's activities in appropriating the rights of others. She refers to paragraph 22 of exhibit AJH12.

248) Ms Hendrick states that exhibit AJH17 contains details of United Kingdom trade mark registration no 2522821 LOVE, which was filed on 4 August 2009 by Too Fast To Live To Young To Die Apparel Co; Mr Knight was listed as the address for service. The details of this trade mark registration are not included in the exhibit. The exhibit also contains details of the LOVE sculpture by the American artist Robert Indiana. The image was first designed as a Christmas card for the Museum of Modern Art in 1964 and first exhibited as a sculpture in New York in 1970. The original sculpture has been exhibited in Indianapolis Museum of Modern Art since 1975. The United States Post Office has issued a stamp bearing the image and it has appeared in various guises on the covers of records. The artist D*Face produced a parody using the word HATE, whilst the artist Eddy Gabriel created a parody using the word LOST. The trade mark that is registered is for:



The sculpture is in the form:



249) Also included in the exhibit is an e-mail confirming registration of the copyright in her melting LOVE design dated 11 May 2009 under no 302758, prior to the filing of Mr Knight's trade mark application. Exhibited at AJH18 is an image which Ms Hendrick states was produced in early 2009. She states that t-shirts bearing this logo were also sold by her in early 2009. The image and that of Mr Knight's trade mark appear to be identical save for colour; that of Ms Hendrick being red on a white background. Ms Hendrick states that she had the idea of showing iconic images melting in the same way as the Chanel logo in early 2009.

250) Ms Hendrick refers to the accusations made in page 15J of Mr Knight's statement. She can confirm that the skull logo to which he refers is her Kanye West skull logo, the subject of the application for invalidation.

251) Ms Hendrick exhibits at AJH19 her first witness statement in respect of the application for invalidation.

252) Ms Hendrick exhibits at AJH20 an e-mail dated 1 February 2008 from Danielle Greigg, a long time customer. Ms Hendrick states that the skull logo attached to the e-mail had only just been finalised when the e-mail referring to it was sent. She states that Mr Knight applied to register this logo as the two skulls logo, the subject of United Kingdom registration no 2513398:



2 skull jeans

253) Ms Hendrick states that in relation to the use of the skull logo, which Mr Knight alleges she counterfeited, this was her own design. Having filed the application to register the trade mark, he used the eBay Vero procedure to stop her using it. Ms Hendrick states that she cannot fight Mr Knight for every design of hers that he has copied. She has to concentrate her efforts on the logos and brands that are important to her.

254) Ms Hendrick states that Mr Knight has continually appropriated her designs by infringing her copyright and passed them off or registered them as his own.

She states that the trade mark Artjunkie and the crowned skull and cross bones logo are only two examples of this. He then accuses her of being a counterfeiter. Ms Hendrick states that the parodies of Robert Indiana's work show only too clearly how close the line is between acceptable parody and infringement.

255) Ms Hendrick disputes the authenticity of the e-mails purportedly from All Saints and Chanel to Mr Knight. Both contain grammatical errors and are written in a similar style as adopted by Mr Knight. Ms Hendrick puts Mr Knight to strict proof of the authenticity of these e-mails purporting to be from representatives of All Saints and Chanel. In particular, she asks that he provides the message source codes for them.

256) Ms Hendrick states that she has never been contacted by Disney, Destroy, Obey, Chanel or Miffy. Chanel and Miffy did use the Vero procedure to have her listings removed. In relation to Disney, Destroy, Obey and Patrol Jeans, Ms Hendrick believes that Mr Knight contacted eBay to have her listings removed. She knows this because she is entitled to obtain a copy of the complaint against her. Ms Hendrick, in relation to Patrol Jeans, does not believe that Mr Knight is authorised to act on its behalf, as is clear, she states from the opposition and appeal decisions in relation to the trade marks TK Patrol and World Patrol (an opposition brought by Patrol Jeanswear Ltd against Mr Knight and which Patrol Jeanswear Ltd was successful as first instance and on appeal – BL O/426/02)

257) Exhibited at AJH21 are examples of marketing and advertising of the trade marks of Ms Hendrick. Certain of these relate to the decoration of a car with the crowned skull and cross bones and the Artjunkie name; the first e-mail in relation to this matter is dated 18 July 2007. An e-mail, dated 10 April 2005, in relation to wholesale purchase of items has no reference to Artjunkie or the crowned skull and cross bones device. Pages from the Artjunkie blog have references to Artjunkie t-shirts and hats from 27 November 2007 to 18 April 2008.

Second witness statement of Tony Knight – being evidence in reply

258) Mr Knight comments that Ms McCormack may be in a personal relationship with Ms Hendrick. He refers to two PayPal transactions which show them residing at the same address. Mr Knight states:

“So we put to the IPO that Joanne's statement is nothing more than pure fiction to assist her Lover in making False claims to the IPO.”

259) Mr Knight states that Ms McCormack states that the feedback she left on Ms Hendrick's eBay account “for purchases were for Gifts. Why would you buy items of some ones eBay Account in you live in the same house so we put it to Joanne that she never actually bought any items but just made false claims that she did.”

The probity of the evidence

260) The parties have accused each other of previously infringing trade marks and consider that this should be taken into account in these proceedings. Mr Knight also accuses Ms Hendrick of manipulating feedback on eBay.

261) At the hearing Ms Bashir made reference to the judgment of Judge Birss in *Dame Vivienne Westwood OBE v Anthony Edward Knight* [2011] EWPC 8 in which Dame Vivienne was successful in her action against Mr Knight for infringement of various of her trade marks. Mr Knight submitted that this judgment should not be taken into account as he had appealed against it. At the same time he submitted that the actions of Ms Hendrick in using the trade marks of others should be taken into account. Whether Mr Knight has appealed or not the judgment currently stands. There is no evidence that any action has been taken against Ms Hendrick for trade mark infringement. They are both in the position that they have been accused of trade mark infringement. These proceedings must be decided upon the evidence that has been presented and the findings arising from that evidence; not on previous behaviour, as both parties have been accused of trade mark infringement, although only one is the subject of legal proceedings, it is difficult to see how their past behaviour can be taken into account in reaching decisions in these proceedings.

262) Ms Bashir wanted the possible manipulation of an e-mail by Mr Knight in *Dame Vivienne Westwood OBE v Anthony Edward Knight* to be taken into account. In that judgment Judge Birss stated:

“25. A further matter arose in relation to the emails from OHIM once the submissions on the merits of the case were complete. Amongst the emails was a further copy of the 7th February 2011 email which was already before the court. The message was from Andrea Di Carlo of OHIM to Mr Tony Knight and is marked 07.02.11 at 10:31:12. The email related to efforts by OHIM to trace through the Spanish and UK postal system, the notification of the decision sent by OHIM to Mr Knight. The two versions of what was obviously the same email differed. In the one from OHIM the email included a statement that OHIM knew that the notification had reached the UK on 6th October 2010 and provided detailed information giving the "status of the sending" with a serial number and other data. The other version had been sent by Mr Knight to Taylor Wessing and a copy was in the trial bundle. The statement that OHIM knew the notification had reached the UK and the sending data was absent. The claimant submitted that Mr Knight should provide an explanation for the discrepancy. The clear suggestion by the claimant was that Mr Knight must have altered the email sent to Taylor Wessing by deleting the information. Mr Knight could not explain the matter and suggested that it was the claimant who must have altered the email (since the copy in the trial bundles was of the email to Taylor Wessing). Mr Knight said he was not lying and asked to go into the witness box. Mr Ward submitted that nothing would

be served by that since Mr Knight had explained his position orally in any case and it was clear what Mr Knight's position was. I decided no purpose would be served by putting Mr Knight in the witness box on this issue.

26. On 9th March, after the trial, I received an email from Mr Knight dealing with this matter saying that all Mr Knight had done was forward the email to Taylor Wessing and stating that he can only assume there was some form of error. He said it would not be the first time this had happened and he had had "issues" with Taylor Wessing when certain attachments and email would not open on his system. It is right to record that Mr Knight had indeed raised problems with emails before. He was apparently having trouble opening attachments."

However, in the following paragraph Judge Birss stated:

"27. In my judgment it is neither necessary nor appropriate to embark on trying to resolve the email issue. Tampering with emails and evidence is an extremely serious matter, however it would be disproportionate to allow this trial to be side tracked into addressing the issue. I will make no finding one way or the other on the OHIM email."

As Judge Birss came to no finding in relation to this matter, it is totally inappropriate to draw any inference from the events in the above case.

263) There are two direct pieces of evidence in relation to the alteration of documents by Mr Knight. AJH23, a witness statement of Ms McCormack, compares the version of eBay correspondence supplied by Mr Knight in his evidence with that Ms McCormack supplies. In support of her claim that Mr Knight has manipulated the evidence Ms McCormack has furnished the source code, which supports her version. The manipulation by Mr Knight is such that what he has submitted bears no resemblance to the original. At the hearing Mr Knight attacked this evidence. If he wanted to attack the evidence he should have furnished counter evidence. Even without the substantiation of the claim from the source code, the manipulated evidence of Mr Knight raised issues. Who is pekinpie12? Ms Hendrick believes it is Mr Knight. If someone thought they were infringing another's intellectual property would they send a "confession" to an unknown third party: "as we are not rights owner/creator we are not permitted to sell this design". All of the details of the source code are consistent with the version that Ms McCormack states is true. It is found that Mr Knight has falsified evidence in relation to the documentation exhibited at AJH23.

264) Exhibit AJH14, unchallenged by Mr Knight, also shows the falsification of evidence by Mr Knight.

265) On his website Mr Knight says that he is suing Dame Vivienne Westwood, when the opposite is the case. He makes unsubstantiated accusations against

Mr Dabin in relation to claims that he is harassing him. Taking into account Mr Dabin's curriculum vitae and the nature of his work, claims that must be considered to be incredible. At the hearing Mr Knight submitted that in the case involving Patrol Jeanswear Ltd he had come to an amicable settlement:

"She also relates to another case in which I had with Patrol Jeanswear back in the early-90s. The reason we didn't pursue that case or supply any witness statements or evidence, is because we spoke to the owner, a Mr Weir, and we came to an arrangement that I would stop using 'Patrol', because he proved to me that he had prior use. I did write to the IPO office to tell them that I was withdrawing the case, and that's it. It's a simple case and there is no need for the IPO to reach more into that."

It is difficult to see how this tallies with the opposition by Patrol Jeanswear Ltd and Mr Knight then appealing against the decision when the opposition was upheld.

266) In considering the evidence filed in these proceedings the findings of Mr Richard Arnold QC, sitting as the appointed person, in *Tripp Limited v Pan World Brands Limited* BL O/161/07 are pertinent:

"33. *Phipson on Evidence* (16th ed) states at paragraph 12-12:

In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases as it does in criminal. In general the CPR does not alter that position.

This rule [sic] serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficulty in submitting that the evidence should be rejected.

However the rule is not an inflexible one...

34. The authority cited in support of this statement of the law is the decision of the House of Lords in *Browne v Dunn* (1894) 6 R 67. The relevant passages from the speeches are set out in the judgment of Hunt J in *Allied Pastoral Holdings v Federal Commissioner of Taxation* (1983) 44 ALR 607, the material parts of which are quoted in the judgment of the Court of Appeal in *Markem Corp v Zipher Ltd* [205] EWCA Civ 267, [2005] RPC 31 at [59]-[60].

35. In my judgment the learned editors of *Phipson* are correct to say that the rule is not an inflexible one. There are at least two well-established exceptions to it. The first is that, as the speech of Lord Herschell LC in

Browne v Dunn makes clear, it may not be necessary to cross-examine on a point if the witness has been given full notice of it before making his statement. As I pointed out in *BRUTT Trade Marks* [2007] RPC 19 at [23], this may be significant in registry proceedings where evidence is given sequentially. The second is that a court is not obliged to accept a witness's evidence in the absence of cross-examination if it is obviously incredible: see *National Westminster Bank plc v Daniel* [1993] 1 WLR 1453.

36. Where, however, evidence is given in a witness statement filed on behalf of a party to registry proceedings which is not obviously incredible and the opposing party has neither given the witness advance notice that his evidence is to be challenged nor challenged his evidence in cross-examination nor adduced evidence to contradict the witness's evidence despite having had the opportunity to do so, then I consider that the rule in *Brown v Dunn* applies and it is not open to the opposing party to invite the tribunal to disbelieve the witness's evidence."

267) In this case Ms Hendrick has adduced evidence contradicting the evidence of Mr Knight.

268) The evidence of Mr Knight has been challenged and put to proof, upfront and clearly. The natural response to the comments of Mr Dabin in relation to the possible manipulation of documents by Mr Knight was to adduce the original documents. Instead, Mr Knight has attacked the probity of Mr Dabin. Ms Hendrick even puts Mr Knight to strict proof of the authenticity of the discount card by producing the original.

269) The evidence of Mr Knight is tainted. He has furnished "to whom it may concern" correspondence from Ms Parker, Mr Angus and Mr Madden. This is hearsay evidence. Owing to the conduct of Mr Knight in these proceedings in relation to the evidence, it is not considered that any weight can be given to this hearsay evidence.

270) Ms Hendrick has through her evidence substantiated the claim that Mr Knight has falsified evidence. This is obviously a serious matter and one that will be considered in relation to the award of costs.

Invalidation

271) I wrote to the parties prior to the hearing re the legal status of the registered proprietor:

"In relation to the invalidation the registration is in the name Too Fast To Live To Young To Die Apparel Co, this does not appear to be a legal entity. Only a legal entity can hold property and only a legal entity can be a party in proceedings. It is noted that there is now a registered company

with the name Too Fast To Live Too Young To Die Ltd but this has a date of incorporation of 12 November 2010, so cannot have been the applicant for registration; the application having been made on 11 June 2009. It would appear, therefore, from all of the correspondence and evidence, that Too Fast To Live To Young To Die Apparel Co is a trading name of Mr Knight and should be treated as such. (It is also noted that in the statement of grounds in respect of opposition no 99437 Mr Knight states that he owns and manages the Death Before Dishonour brand.) The parties are invited to make submissions on this matter at the hearing.”

At the hearing Mr Knight accepted that Too Fast To Live To Young To Die Apparel Co was him. Mr Knight will be treated as the registered proprietor and Too Fast To Live To Young To Die Apparel Co as a trading name. (A non-legal entity could neither apply for a trade mark nor defend an application for invalidation.) This means that Mr Knight is a party to the invalidation proceedings and will be liable for any costs award made against him.

Findings of fact

272) Ms Hendrick is an artist, so someone who can and does create images. Her business started as one selling art works and then developed into one selling clothing in which her designs were the attractive force for customers. Ms Hendrick explains and substantiates evidence re the genesis of the design which she identifies as being completed on 15 June 2008. The evidence relating to Bar-One Limited demonstrates, in the context of the other evidence, the use of the skull image from 1 July 2008 on t-shirts. Exhibited at AJH8 is information from PayPal in relation to orders for the t-shirts. The purchasers' personal details have been redacted; however, the eBay and transaction IDs are still present. The earliest PayPal record is for 2 September 2008 and the latest is for 24 August 2009. Ms Hendrick has adduced evidence from third parties who are clearly identifiable and clearly at arm's length from her in relation to the production and sale of t-shirts bearing the skull image.

273) Mr Knight states that the skull design was created by him on 16 September 2002. Mr Knight states that exhibited at TK2 is a copy of the original drawing. This consists of one A4 page. On one half of the page is a picture of a skull wearing sunglasses, written above this is "Shutter Glasses Skull design copy right 16.9.2002". Underneath the skull is written: "Saint Art Junkie All Rights Reserved". On the other half of the page Mr Knight has written: "copy of the original Rough Art Work which was created 16.9.2002 by Tony Knight". The nature of the drawing is somewhat odd. It is on A4 paper but only half of the page has been used, leaving Mr Knight to write comments upon the other side. The actual drawing has been made on lines that have been drawn onto the page, as if it has been copied from another image. The second image also only occupies one half of the A4 sheet, leaving Mr Knight to write comments upon the other half. Written above the skull design is a reference to shutter glasses. Mr

Knight has written upon the image "Copyright 16-9-2002". However, Ms Hendrick has furnished evidence to show that even though the type of glasses has been available for many years, they were not referred to as shutter shades until 2007. Mr Knight exhibits a picture of a computer file. The first thing that is striking is that the title only contains the end of the file name. If the file was opened the beginning of the file name would be seen and the end not seen. If a person had simply overwritten the file name then the end of the file name would be seen, if the cursor was not returned to the beginning. This suggests that the file name has been overwritten and then a picture taken of it; this would mean that the other details of the file would not be altered. It is also noticed that the size on disk of the image (if not the size) is exactly the same as that for the image of the crowned skull that he has put into evidence; 26,017,792 bytes. The creative process for the production of the image was very rapid. The period between creation and last modification was 5 seconds. There is no evidence what was actually on the file.

274) There is nothing to suggest that Mr Knight is an artist or has a training in art. None of the evidence shows any of the creative process. Unlike Ms Hendrick, he has adduced no clear evidence from third parties who are clearly at arm's length eg eBay details or PayPal details. There is not a shred of evidence to show any sales or business in relation to the image prior to 15 June 2008. This despite Mr Knight using the Internet for sales, which by its nature produces documentary evidence of sales. Details of past web pages are regularly filed in proceedings by way of the Wayback Machine; as Ms Hendrick has done in the opposition proceedings.

275) In addition to this, there is the evidence of falsification of evidence by Mr Knight.

276) It is not within the bounds of probability that Ms Hendrick and Mr Knight created the skull image separately and co-incidentally. One person created the image and another copied it.

277) From the evidence before me, I find that the image of the skull with the shutter shades or glasses was created by Ms Hendrick on 15 June 2008 and that Mr Knight has copied that image.

Section 3(6) of the Act

278) 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."

The material date for bad faith is the date of the filing of the application for registration; in this case 11 June 2009. Bad faith cannot be cured by some

action after the date of the applicationⁱⁱ. Consequently, the issue of bad faith must be considered solely at the date of application, although action after the date of application may cast light upon the application. Bad faith is specifically excluded from the acquiescence provisions under section 48 of the Act. (Acquiescence cannot come into play in relation to the grounds of invalidation as the trade mark had not been registered for 5 years at the date of the filing of the applicationⁱⁱⁱ.)

279) Bad faith includes dishonesty and “some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examined^{iv}”. Certain behaviour might have become prevalent but this does not mean that it can be deemed to be acceptable^v. It is necessary to apply what is referred to as the “combined test”. It is necessary to decide what Mr Knight knew at the time of making the application and then, in the light of that knowledge, whether his behaviour fell short of acceptable commercial behaviour^{vi}. Bad faith impugns the character of an individual or collective character of a business, as such it is a serious allegation^{vii}. The more serious the allegation the more cogent must be the evidence to support it^{viii}. However, the matter still has to be decided upon the balance of probabilities.

280) At the time of making his application Mr Knight knew of the work of Ms Hendrick. He knew that she had created it. By filing for the registration of the trade mark he was not only using an image to which he had no right but also potentially depriving Ms Hendrick from using that image both as an image and as a trade mark. I have no doubt from the evidence in these proceedings, that it was Mr Knight’s intention to so deprive Ms Hendrick of the fruits of her labour.

281) It is difficult to conceive of a more cut and dried case of bad faith. It is such a clear case of bad faith that I do not consider it necessary to consider the other grounds of invalidation.

282) The registration was made in contravention of section 3(6) of the Act and in accordance with section 47(6) of the Act the registration is deemed never to have been made.

Opposition no 99437

283) Mr Geoffrey Hobbs QC, sitting as the appointed person, in *Lee Alexander McQueen v Nicholas Steven Croom* BL O/120/04 held:

“45. I understand the correct approach to be as follows. When rival claims are raised with regard to the right to use a trade mark, the rights of the rival claimants fall to be resolved on the basis that within the area of conflict:

- (a) the senior user prevails over the junior user;
- (b) the junior user cannot deny the senior user's rights;
- (c) the senior user can challenge the junior user unless and until it is inequitable for him to do so."

284) As noted above, exhibit AJH14, which has not been challenged, shows that page 12 of Mr Knight's evidence has been falsified.

285) Mr Knight states that "the trade mark" Saint Artjunkie has been used by him since March 1994 in relation to footwear, headgear and clothing. Mr Knight's own evidence, pages 16D 6-16 section 4C shows the use of Artjunkie by Ms Hendrick in relation to clothing from at least 11 March 2005. Ms Hendrick states that in 2004 she sold exclusively artwork. In 2005, 70% of the turnover related to the sale of artwork and 30% to the sale of clothing. In 2006, 60% of the turnover related to clothing, 75% in 2007, 95% in 2008 and 99% in 2009. She has given the following turnover figures in relation to sales for Artjunkie:

2005	£22,183
2006	£21,121
2007	£27,017
2008	£93,625
2009	£132,175

286) Exhibited at AJH8 are copies of pages relating to payments via PayPal. The first payment date is 26 April 2005. It is addressed to Artjunkie and is for an Artjunkie t-shirt. The last page is dated 25 February 2011. The goods are described by reference to Artjunkie or Artjunkie skull. Primarily the goods are t-shirts, however, there are also orders for jeans, hooded sweatshirts and jumpers. The names and addresses of the purchasers are given. It is established that Ms Hendrick was using the name Artjunkie in relation to clothing from at least 26 April 2005 and she has established a goodwill in relation to that trade.

287) Mr Knight needs to establish that Ms Hendrick is not the senior user. Consequently, the consideration of the evidence will concentrate on the earliest date that Mr Knight can establish use of the trade mark Saint Artjunkie, if he can establish use.

288) Mr Dabin states that his searches, including Internet, online databases and media sources have not located any evidence to suggest that Mr Knight had been using the name Saint Artjunkie prior to early 2009. As Mr Knight states that he has been using the trade mark since 1994 and as he uses the Internet for business purposes, this in itself is surprising.

289) Mr Dabin considered parts of the evidence and considered that it was likely that they had been falsified. Those parts of the evidence which fall after 26 April 2005 will not establish a basis of senior use and so will not be dealt with here.

290) Mr Dabin makes comments about the copy of a delivery note which shows the name of Fire Star Merchandising; although he does not note that it is dated for a day which in 1999 did not exist (1999 not being a leap year). The simple answer to Mr Dabin's comments was to file the original delivery note so that it could be scrutinised. Mr Knight did not do so. Taking into account the comments of Mr Dabin, the nature of the document, the non-existent date and the establishment of Mr Knight's falsifying evidence, no weight is given to this exhibit.

291) Mr Dabin comments upon the payment invoice marked CASA FNA. Mr Knight is unable to explain why a foreign company would be making a payment of 17.5%, the only reasonable explanation being that this relates to VAT, which would not be payable on export items. Mr Knight is unable to give an explanation of how a foreign undertaking would or could make a cheque payment. An export order would involve documentation relating to despatch and a custom's declaration; no such supportive documentation has been furnished. Mr Knight did not take the opportunity to file the original document. Taking into account the comments of Mr Dabin, the nature of the document and the establishment of Mr Knight's falsifying evidence, no weight is given to this exhibit.

292) The veracity of the order confirmation from Rocket Badge Company has been challenged by Mr Dabin. Again, the reasonable response would have been to have filed the original document. Taking into account the comments of Mr Dabin, the nature of the document and the establishment of Mr Knight's falsifying evidence, no weight is given to this exhibit.

293) The copy of the letter from ntl is dated 1 July 2005. However, it would relate to services supplied prior to that date and so is considered herein. Again, the reasonable response would have been to have filed the original document. Taking into account the comments of Mr Dabin, the nature of the document and the establishment of Mr Knight's falsifying evidence, no weight is given to this exhibit.

294) Ms Hendrick challenged the veracity of the highly crumpled, worn and torn business card. It is not possible to understand how the card could be in such a poor condition but the hand writing upon it is so pristine and bright. Taking into account the challenge by Ms Hendrick, the nature of the document and the establishment of Mr Knight's falsifying evidence, no weight is given to this exhibit.

295) Page 4 is a copy of promotional leaflet that Mr Knight states was used on "our" market stall in 2003. The leaflet bears the name Saint Artjunkie and a crowned skull and bones device. It refers to limited edition clothing. Written upon the top right hand side of the leaflet are the words "10% Off with this leaflet until the end July 2003". Various tops are identified as being from Saint

Artjunkie. Whilst Ms Hendrick produces invoices from printers for business cards and for the printing of designs on her t-shirts, Mr Knight produces no such arm's length verification in relation to the leaflet. Ms Hendrick has challenged the veracity of this document. Taking into account the challenge by Ms Hendrick, the lack of confirmatory evidence and the establishment of Mr Knight's falsifying evidence, no weight is given to this exhibit.

296) 5G consists of a picture of what is stated to be a shopping bag. This bears a crowned skull and cross bones and the name Saint Artjunkie. Underneath a cityscape the words "Saint Artjunkie brand name and logo is owned by the Saint artjunkie apparel Co since 1994" appear. Ms Hendrick challenges the veracity of this document. Mr Knight has produced no confirmatory evidence in relation to the production of this shopping bag ie an invoice from the producers of the bag clearly identifying it. There is no evidence that there were any such bags. The wording underneath the brand name and logo is somewhat unusual. Mr Knight could have produced actual bags and the invoices relating to their production, after being challenged as to the authenticity of the evidence. He did not do so. Taking into account challenge by Ms Hendrick, the lack of confirmatory evidence and the establishment of Mr Knight's falsifying evidence, no weight is given to this exhibit.

297) Page 6G consists of a shield device in which the words University of Saint Artjunkie and the device a crowned skull and cross bones appear. Handwritten on the page are the words "Emblem designed on the 18th April 2000 and is OWN and managed by Tony Knight of Saint Artjunkie clothing and copy right as from this day". It is somewhat bizarre that all this wording appears beneath the emblem, it gives the impression that it was specifically produced for these proceedings. Page 6H consists of a picture of details of a computer file. Typed into one box is St artjunkie universityemblem copyright 18042000. The size of the file is identified as being 24.7mb. A created date of 18 April 2000, a modified date of 18 April 2000 and an accessed date of 18 April 2000 appear. The actual contents of the file have not been produced. It is noted that the file size on disk (if not the actual size) is exactly the same as that of file size of the image the subject of the invalidation proceedings; 26,017,792 bytes. It would be easy enough to have overwritten the name of the file and produced a picture of the file, as would appear to be the case with the computer file picture produced in the invalidation proceedings. The creative process for the image is not shown. The time between the creation of the image and its final modification is 6 seconds, which does not indicate a process of creative development. Ms Hendrick has challenged the veracity of these 2 documents. Taking into account the challenge by Ms Hendrick, the nature of the documents and the establishment of Mr Knight's falsifying evidence, no weight is given to these two exhibits.

298) In relation to his claims re the use of Saint Artjunkie there is a noticeable absence of evidence from third parties at arm's length. Mr Knight does not provide any evidence of use by reference to third parties at arm's length eg

PayPal payments and eBay purchase details. He has not furnished any evidence from the Internet to show his use prior to Ms Hendrick, evidence that can be obtained from the Wayback Machine, evidence that Ms Hendrick has provided in relation to her own use. Despite the claim that he has been using the name Saint Artjunkie since March 1994 and has used it in relation to export sales he has furnished no tax records, no VAT records and no customs records.

299) Ms Hendrick has established that she is the senior user of the name Artjunkie in relation to clothing. The ground of opposition under section 5(4)(a) of the Act is dismissed.

Having decided that Ms Hendrick is the senior user of Artjunkie, the ground of opposition under section 3(6), which is inextricably linked to the ground under section 5(4)(a) of the Act is also dismissed.

Opposition no 99597

300) There has been no dispute that the trade mark the subject of Ms Hendrick's application and the work which Mr Knight claims to have created are substantially the same. The only clear difference being the presence of a star on Ms Hendrick's skull. It is beyond the bounds of probability that two persons could have coincidentally come up with such similar images. One person has copied the work of another person to a substantial extent.

301) Ms Hendrick states that in November 2005 she came across the image of a crown, which inspired her "to Crown my Skull & Cross Bones Image". She states that the fifth image in the exhibit is the inspiration for the crown. Ms Hendrick states that the crowned skull and cross bones image was completed in November 2005 using Photoshop software. The crowned and skull and cross bones can be seen on a business card the subject of an invoice dated 4 January 2008. Ms Hendrick explains the genesis of the image and exhibits material relating to the creative process. Page 57 of AJH7 consists of a page relating to a search conducted on the Wayback Machine in relation to Ms Hendrick's artjunkiestudios MySpace account. This shows one page created on 29 August 2007 and one created on 18 January 2008. The following pages exhibit the contents that were created. These pages show the image the subject of the application. Ms Hendrick states that pages 39 and 40 of exhibit AJH4 are of a t-shirt and a hooded top dating from early 2006. Ms Hendrick states that page 55 of AJH7 is a copy of a sticker that she used as an advertisement on eBay and MySpace in 2008, when she became aware of Mr Knight copying her work. The sticker shows, inter alia, the crowned skull and cross bones. (She also states that she became aware of Mr Knight using "Saint Artjunkie and the Crowned Skull & Cross Bones Logo in the middle of 2009". This of itself is ambiguous. It could mean that in 2009 she became aware of Mr Knight's use of both signs, already being aware of the use of one sign. It could mean that in 2009 she became aware of the use of each sign. However, taking into account her

statement re the sticker, the former interpretation is the more consistent.) The wording states, inter alia:

“This is the only place you can purchase genuine artjunkie
Accept no imitations.
All items come with a signed certificate of authenticity.”

Ms Hendrick states that page 56 of AJH7 consists of a photograph of a badge that she provided to customers who bought her clothing in 2006. The badge consists of the image the subject of the application, underneath which artjunkie in italicised form appears. Ms Hendrick states that she used the crowned skull and cross bones image from early 2006.

302) Mr Knight claims that his crowned skull and cross bones image has been in constant use since 1994.

303) In relation to opposition no 99437 it has already been decided that no weight can be given to the promotional leaflet, the shopping bag or the University of Saint Artjunkie evidence. Mr Knight does not deny that Ms Hendrick has been using the trade mark the subject of the application on clothing since late 2005, as per her witness statement. He has filed no evidence that can be taken into account that shows use prior to this. As with the other opposition there is an absence of evidence from at arm’s length third parties.

304) Ms Hendrick used the trade mark the subject of the application in relation to clothing prior to Mr Knight’s use of the sign upon which he relies. She is the senior user. Ms Hendrick is the author of the work the subject of the trade mark. Mr Knight has not established that he authored the work he claims prior to Ms Hendrick’s authorship. Consequently, it is decided that Mr Knight copied the work of Ms Hendrick. The grounds of opposition under sections 5(4)(a) and (b) of the Act are dismissed. The ground of opposition under section 3(6) of the Act is inextricably linked to the other grounds and is, therefore, dismissed.

Costs

305) Ms Hendrick having been successful in all three cases is entitled to a contribution towards her costs. Ms Bashir considered that owing to the behaviour of Mr Knight the costs awards should be outwith the scale. Tribunal Practice Notice 4/2007 states:

“5. TPN 2/2000 recognises that it is vital that the Comptroller has the ability to award costs off the scale, approaching full compensation, to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour. Whilst TPN 2/2000 provides some examples of unreasonable behaviour, which could lead to an off scale award of costs, it

acknowledges that it would be impossible to indicate all the circumstances in which a Hearing Officer could or should depart from the published scale of costs. The overriding factor was and remains that the Hearing Officer should act judicially in all the facts of a case. It is worth clarifying that just because a party has lost, this in itself is not indicative of unreasonable behaviour

6. TPN 2/2000 gives no guidance as to the basis on which the amount would be assessed to deal proportionately with unreasonable behaviour. In several cases since the publication of TPN 2/2000 Hearing Officers have stated that the amount should be commensurate with the extra expenditure a party has incurred as the result of unreasonable behaviour on the part of the other side. This "extra costs" principle is one which Hearing Officers will take into account in assessing costs in the face of unreasonable behaviour.

7. Any claim for cost approaching full compensation or for "extra costs" will need to be supported by a bill itemizing the actual costs incurred.

8. Depending on the circumstances the Comptroller may also award costs below the minimum indicated by the standard scale. For example, the Comptroller will not normally award costs which appear to him to exceed the reasonable costs incurred by a party."

The Civil Procedure Rules considers the criteria that have to be considered in relation to an award of costs on an indemnity basis:

"Rule 44.4(3)—Costs on the Indemnity Basis The Court of Appeal declined to give guidance to judges intending to make orders for costs on the indemnity basis. There was an infinite variety of situations that might go before a court justifying the making of such an order. The court could do no more than draw the judge's attention to the extensive width of the discretion provided in CPR Pt 44. Issues of costs ought to be left to a judge's discretion following the rules provided in the CPR. The words of the CPR should not be replaced or supplemented with guidance notes from the Court of Appeal. The making of a costs order on the indemnity basis would be appropriate in circumstances where the facts of the case and/or the conduct of the parties was such as to take the situation away from the norm: *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Ham Johnson and Betesh & Co v Salisbury Hammer Aspden & Johnson* [2002] EWCA Civ 879. Following *Excelsior Commercial and Industrial Holdings* it is appropriate to award costs on the indemnity basis where the conduct of a party has taken the situation away from the norm. It is not always necessary to show deliberate misconduct, in some cases unreasonable conduct to a high degree would suffice. The claimant's refusal of two reasonable offers to settle would have been enough in itself

to warrant an order on the indemnity basis (Franks v Sinclair (Costs) [2006] EWHC 3656 (Ch) David Richards J.). Where the court is considering whether a losing party's conduct is such as to justify an order for costs on the indemnity basis, the minimum nature of the conduct required is, except in very rare cases, that there has been a significant level of unreasonableness or otherwise inappropriate conduct in its wider sense in relation to that party's pre-litigation dealings with the winning party, or in relation to the commencement or conduct of the litigation itself. In a case where a counterclaiming defendant alleged fraud which was shown to be deeply flawed from the very commencement of the counterclaim, and where the allegation rested on an assumption which was so improbable as to be far fetched, the court made an order for costs on the indemnity basis: National Westminster Bank Plc v Rabobank Nederland [2007] EWHC 1742 (Comm), Sir Anthony Colman. A losing claim where the claim had a solid basis and was not a frivolous one, and where the claimant's pre-action activity had not overstepped the mark, did not result in an award of costs on the indemnity basis. The claimant's expert evidence however, was deficient and led to unnecessary costs being incurred by the defendant. The court ordered that the costs incurred in respect of counsels' and solicitors' attendance on specific days, and the costs attributable to dealing with the expert evidence were to be assessed on the indemnity basis. Balmoral Group Ltd v Borealis (UK) Ltd [2006] EWHC 2531 (Comm) Christopher Clarke J. Following Excelsior v Salisbury the suggestion that an award of costs of an interlocutory application had to follow the event unless the matters specially set out in r.44.3(4) took the case outside the general rule was rejected: Lifeline Gloves Ltd v Richardson [2005] EWHC 1524, Ch, Pumfrey J. An order for indemnity costs does not enable a claimant to receive more costs than he has incurred, its practical effect is to avoid the costs being assessed at a lesser figure. Even on the indemnity basis the receiving party is restricted to recovering only the amount of costs which have been incurred. (Petrotrade Inc v Texaco Ltd [2001] 4 All E.R. 86; [2002] 1 W.L.R. 947 (Note), CA). A party who has acted throughout on professional advice is not guilty of conduct such as to merit an award of indemnity costs. There is no sound reason why parties litigating on issues of costs should be more vulnerable to an order for costs on the indemnity basis: Zissis v Lukomski [2006] EWCA Civ 341. When considering an application for the award of costs on the indemnity basis the court is concerned principally with the losing party's conduct of the case rather than the substantive merits of the position. The Guide to the Summary Assessment of Costs helps to clarify the distinction for the purposes of CPR Pt 44 between proportionality and reasonableness. Proportionality concerns the relationship of the costs claimed for such things as the amount of money at stake in the proceedings, the importance of the case, the complexity of the issues and the means of the parties. Whether the costs, proportionate or not, were reasonably incurred is therefore a different question. Although

the two may overlap, the object of an indemnity costs order is to take proportionality out of the picture and to place on the paying party the burden of persuasion as to reasonableness: *Simms v Law Society* [2005] EWCA Civ 849; (2005) 155 N.L.J. 1124. The Court of Appeal has held that it is incorrect for a judge to be guided by the many pre CPR cases. The award of costs on the indemnity basis is normally reserved to cases where the court wishes to indicate its disapproval of the conduct in the litigation of the party against whom the costs are awarded: *Reid Minty v Gordon Taylor* [2001] EWCA Civ 1723; [2002] 2 All E.R. 150, CA. In group litigation where the defendants mounted a full frontal attack on medical evidence underpinning field research programmes which they themselves had helped to set up, the judge found that the defendants' experts, had lost intellectual and professional credibility. The court found that the decision to continue the challenge through the defendants' experts after the claimant's experts had completed their evidence amounted to unreasonable conduct of the litigation. Therefore on the generic medical issues it was directed that the defendants should pay the costs on the indemnity basis, whereas in respect of all other issues, in the cases where the claimants succeeded, costs should be on the standard basis: *The British Coal Respiratory Disease Litigation, Re*, January 23, 1998, unrep., Turner J. Where cross-examination of a claimant took the form of a totally uncalled for personal attack, the court made an order for costs on the indemnity basis in favour of the claimant for that portion of the trial, *Clark v Associated Newspapers Ltd* [1998] 1 W.L.R. 1558; *The Times*, January 28, 1998, Lightman J. Where a party to litigation acted in a way that could be described as disgraceful or deserving of moral condemnation an order for costs on the indemnity basis could be made: *Wailes v Stapleton Construction & Commercial Services Ltd*; *Wailes v Unum Ltd* [1997] 2 Lloyds' Rep. 112, Newman J. Where claimants brought proceedings for an account of the defendant's dealings with the estate of the deceased and abandoned 9 out of 13 claims for damages during the course of the proceedings, the remainder of which were lost, it was held to be appropriate to order costs on the indemnity basis. *Mahmey Trust Reg v Lloyds TSB Bank Plc* [2006] EWHC 1782, Ch, Evans-Lombe J. A judge was wrong to award costs on the indemnity basis against a claimant who had not acted improperly in availing himself of the opportunity presented by statute to apply to the court. The claimant had made an application under the provisions of s.263 of the Insolvency Act 1986. The application had failed on the basis that the claimant had no sufficient interest to make the application. The Court of Appeal found the claimant had not acted improperly and that the costs should be on the standard basis; *Raja v Rubin* [2000] Ch. 274; [1999] 3 W.L.R. 606, CA. If a judge considers that a party has acted unreasonably in connection with the litigation in breach of a direction of the court, it might be appropriate to make an order for costs on the indemnity basis against that party, or to exercise the power to award interest on damages at a much higher rate than usual. *Baron v*

Lovell [2000] P.I.Q.R. P20; The Times, September 14, 1999, CA. The decisions of the Court of Appeal in *Raja v Rubin and Baron v Lovell* (above) show that the court had been concerned with some part of the paying party's conduct of the litigation which merited the disapproval of the court. The usual order on the standard basis should be made unless there is some element of a party's conduct of the case which deserves some mark of disapproval. It is not just to penalise a party for running litigation which it has lost. Advancing a case which is unlikely to succeed or which fails in fact is not a sufficient reason for an award of costs on the indemnity basis: *Shania Investment Corp v Standard Bank London Ltd* November 2, 2001, unrep. Failure by a claimant to send a letter before action to the defendant, or to give any other warning of the intention to commence proceedings resulted in an order for costs on the indemnity basis against the claimant. The court stated that the letter before action is at least as necessary under the CPR as under the former rules: *Phoenix Finance Ltd v Federation Internationale de L'Automobile* [2002] EWHC 1242 (Ch), Sir Andrew Morritt V.-C. A party who presented a petition to wind up a company without first presenting a statutory demand in circumstances, where the petitioner knew there was a serious dispute over the quality of the goods supplied, was ordered to pay the costs on the indemnity basis. The presentation of a petition in those circumstances was an abuse of process (*Company* (No.2507 of 2003), *Re* [2003] EWHC 1484 (Ch)). A claimant who sought to "park" the proceedings, while attempting to negotiate a settlement, by pursuing the hopeless appeal was ordered to pay costs on the indemnity basis as the claimant's conduct was an abuse of process: *Sodeca SA v NE Investments Inc* [2002] EWHC 1700 (QB), Toulson J. Where a judge made an order for costs on the indemnity basis, having been misled as to the status of a Pt 36 offer the Court of Appeal intervened to substitute an order for costs on the standard basis: *Nash (t/a Elite Carcraft) v Daniel* [2002] EWCA Civ 1146. The court also had the power, in attempting to achieve pragmatic fairness, to order that interest on costs should run from a date before the principal judgment in the action. The court could find no power in CPR to adjust the rate of interest that fell to be awarded: *ABCI v Banque Franco-Tunisienne (Costs)* [2002] EWHC 567 (Comm) HHJ, Chambers QC. If a (commercial) party embarks upon, or brings upon itself and pursues, large scale litigation which results in a resounding defeat involving the rejection of much of the evidence adduced in support of its case that provides a proper basis on which to award costs on the indemnity basis. In the particular case the claimant had conducted itself throughout the relevant events on the basis that its commercial interest took precedence over the rights and wrongs of the situation and it was prepared to risk the outcome of the litigation: *Amoco UK Exploration Co v British American Off-Shore Ltd*, November 22, 2001, unrep., Langley J. Accountants who successfully defended an action sought to rely on a clause in the claimant's articles of association, indemnifying auditors of companies against any liability incurred in

defending any proceedings, as entitling them to an order for costs on the indemnity basis in those proceedings. The court held that any contractual right which the defendant might have was not formally an issue in the proceedings and they were not therefore entitled to their costs on the indemnity basis: *John v PricewaterhouseCoopers (formerly Price Waterhouse)* [2002] 1 W.L.R. 953, Ferris J.; *Gomba Holdings Ltd v Minorities Finance*, [1993] Ch. 171, CA, distinguished. Following the above judgment the defendants submitted that they were contractually entitled to be indemnified from the assets of each of the companies against the costs incurred in defending the proceedings. The court refused the application since no such application had been made at the time the judgment had been handed down. As to deferment of the issue of costs the court's jurisdiction under s.51 of the Supreme Court Act 1981 [Text] was exhausted. It was open to the defendant to seek to recover the costs in separate proceedings: *John v PriceWaterhouseCoopers (Costs)* [2002] 1 W.L.R. 953, Ferris J.”

306) Mr Knight has constantly flouted the rules and directions. He has falsified evidence. His behaviour throughout the proceedings is such that an award of costs on an indemnity basis is considered appropriate.

307) Consequently, Murgitroyd & Company have three weeks from the date of this decision to give a breakdown of the costs incurred by Ms Hendrick in these proceedings. If possible the costs in relation to the application for invalidation and the consolidated oppositions should be separated. However, if this is not possible an estimate as to the proportion of costs relating to the application for invalidation and the opposition proceedings should be given.

308) A copy of the breakdown should be sent to Mr Knight, who will have two weeks from the date of sending of the breakdown to comment upon the quantum of costs and the quantum of costs only. Owing to the problems that have arisen with the sending of correspondence and documentation to Mr Knight, the copy of the breakdown should be sent by e-mail, ordinary post and recorded delivery.

309) Once the time for Mr Knight to comment upon the quantum of the costs has expired a supplementary decision will be issued in relation to the costs. The appeal period for the substantive decision will run from the date of the issue of the supplementary decision.

Proceedings involving Mr Knight before the IPO

310) Taking into account my findings in relation to the evidence of Mr Knight, I consider that in any other proceedings involving Mr Knight, or undertakings in which Mr Knight is the controlling mind, that evidence on his behalf should be by means of affidavit or statutory declaration. Any material exhibited in support of the affidavits or statutory declarations should be original documentation; the IPO

can then copy this documentation, for the copy of the evidence it holds, and return the original documentation to Mr Knight. At the time that Mr Knight sends his evidence to the IPO he must send a copy to the other party. The evidence furnished to the IPO and the other party should be firmly bound together with a top document listing all of the enclosed documents. (As per rules 62 and 64 of the Trade Marks Rules 2008.)

Dated this 01 day of September 2011

**David Landau
For the Registrar
the Comptroller-General**

ⁱ *Hotpicks Trade Mark* [2004] RPC 42 and *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH* Case C-529/07 paragraph 35.

ⁱⁱ *Nonogram Trade Mark* BL O/367/00.

ⁱⁱⁱ “48. - (1) Where the proprietor of an earlier trade mark or other earlier right has acquiesced for continuous period of five years in the use of a registered trade mark in the United Kingdom, being aware of that use, there shall cease to be any entitlement on the basis of that earlier trade mark or other right-

(a) to apply for a declaration that the registration of the later trade mark is invalid, or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,

unless the registration of the later trade mark was applied for in bad faith.

(2) Where subsection (1) applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark or, as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trade mark or right may no longer be invoked against his later trade mark.”

Sunrider Corporation t/a Sunrider International v Vitasoy International Holdings Limited [2007] RPC 29 Warren J:

“102 Returning, then, to the 1994 Act and construing it in the light of the Directive, section 40(3) does not, I consider, lead to the result that the 5 year period specified in section 48 can run at any time prior to actual registration of the later mark. In my judgment, reference in section 48 to the use of a registered trade mark means use whilst the mark is actually registered and not use of a mark which is actually not registered but one the date of registration of which is deemed to be the date of application for registration.”

This judgment can be found at the url:

<http://www.bailii.org/ew/cases/EWHC/Ch/2007/37.html>

^{iv} *Gromax Plasticulture Limited v Don and Low Nonwovens Ltd* [1999] RPC 367.

^v *Harrison v Teton Valley Trading Co* [2005] FSR 10. Full judgment to be found at the url:

<http://www.bailii.org/ew/cases/EWCA/Civ/2004/1028.html>

^{vi} (1) *Barlow Clowes International Ltd. (in liquidation)* (2) *Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* [2005] UKPC 37 to be found at the url:

<http://www.bailii.org/uk/cases/UKPC/2005/37.html>

and *Ajit Weekly Trade Mark* BL O/004/06.

^{vii} See *Royal Enfield Trade Marks* BL O/363/01.

^{viii} *Re H (minors)* [1996] AC 563.

Annex

The excluded witness statements of Messrs George and Dunkley

a) As stated above neither witness statement contains the appropriate statement of truth and the statement of Mr Dunkley is unsigned.

b) In his statement Mr Dunkley states that he has worked with Mr Knight since 2002. He states that he saw Mr Knight roughly sketch “his new emblem” on 16 September 2002. That Mr Dunkley can recall this exact date nearly 9 years later must be considered to be obviously incredible as per *Tripp Limited v Pan World Brands Limited*. Mr Dunkley then goes on to give his opinion on the law of copyright, on computers, on how Ms Hendrick created her image and on his view of Ms Hendrick’s claims. He also gives comments on “shutter shades”; missing the point that Ms Hendrick’s evidence was not directed to the existence of this type of eyewear but on the coining of the term.

c) Consequent upon the above, Mr Dunkley’s evidence would have had no effect upon the proceedings if it had been admitted.

d) Mr George states that that he has known too fast to live too young to die clothing company since March 2003 when it had a market stall in Middleton near Rochdale. Mr George comments upon Mr Knight being a very talented designer and as far as he is aware the creator of the shutter glasses skull emblem. Mr George states that he was wearing t-shirts with the shutter glasses skull emblem on them in 2003 and 2004. He exhibits two copies of photographs, one bearing a date of 15 August 2003, showing a t-shirt with the shutter glasses skull, and one showing a tie with the crowned skull device, bearing a date of 28 January 2004. Owing to the manipulation of other evidence by Mr Knight the dates appearing

upon the photographs cannot be considered significant, the date and time on a camera can be altered at will. It is also noted that the photograph showing the tie bears a time of 20.50 on 28 January 2004, however, from the windows in the background it appears to be light outside. Mr George ends his statement with paragraphs that encompass both the incredible and the bizarre:

“I have cut the pictures down as I don’t like having my face on pictures being sent to strangers but if the IPO wish to see the full picture I will send the IPO office only full copy pictures under Data Protection this my legal and civil right in which all parties must respect my wishes.

6 – I feel that Mrs Hendricks claims should be dismissed.

7 – I hope this information will support that of Tony knight case all images of me are private and confidential and that this case is over all images must be destroyed by everyone if these imagines are found to be on any material public or private including internet site or blog or put in the public domain name by any of the parties involved in this case including Tony Knight then legal action may be taken against the individual or company I only consent to sharing these pictures for the purpose of supporting Tony Knight case.

Therefore if my wishes are not respected I will contact the information commissioner and legal action will commence.”

On the basis of the evidence of Ms Hendrick and the fabrication of evidence by Mr Knight, the evidence of Mr George would have had no effect upon the proceedings.