

O-538-18

UK INTELLECTUAL PROPERTY OFFICE

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Tuesday, 31st July 2018

Before:

MR. GEOFFREY HOBBS QC
(Sitting as the Appointed Person)

In the Matter of THE TRADE MARKS ACT 1994

-and-

In the matter of consolidated Invalidity Applications
Nos.501864 and 501865 (the "Invalidity Applications") in the
name of ASPREY HOLDINGS LIMITED (the "Applicant")

- and -

In the matter of Opposition No. 409925 (the "Opposition") in
the name of UNITED HERITAGE LIMITED (the "Opponent")

*Computer-aided Transcript of the Stenograph Notes of
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MS. ANNA EDWARDS-STUART (instructed by **Dechert LLP**) appeared on
behalf of the **Appellant**

MR. AARON WOOD (of **Wood IP**) appeared on behalf of the **Respondent**

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APPROVED DECISION

THE APPOINTED PERSON: As you will have gathered, I am not going to give a full judgment. I am going to make some observations and deal with this in the way it would be dealt with if this was a hearing in the Master's corridor in the High Court.

The same materials are before me as were before the Hearing Officer. It is clear from the exchanges which have taken place between bench and bar just now that we are all in a difficult position for lack of explanation as to his reasoning and what weighed with him and what did not weigh with him. The impression I have, and it is a clear impression, is that what was called in the original counterstatement, "A master plan to rebuild the brand" -- and I am reading from the actual words of the counterstatement there -- described as, "A business plan without financials" -- it is clear to me that that is a document which, even though it is not exactly contemporaneous, explains from the respondent's own perspective what was done, why they did it and what they were hoping to achieve by having done it. I find that an inescapable inference as to what the nature of the document is. I am fortified in that view by the subsequent witness statement that was put in, in

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which the same narrative (albeit without furnishing it with the redacted copy of the relevant document) is put forward in general terms to establish good faith.

I have already observed, and I do not think that either side is dissenting from this, that what is under the microscope here is the business model of United Heritage Limited, in its particular application to this mark in this situation. I think, and it is my decision, that that document is relevant to the determination of the issues in the way the battle lines have been drawn. I think, and I will decide and direct, that the document should be placed on file by your side, Mr. Wood. That will be a filing of it with the registrar under -- I had better just check, but I believe it is rule 59. Yes. That will be a filing within the parameters of rule 59, which sets out the registrar's practice and procedure in relation to confidential documents. However, because the registrar is not entitled to have information that the opposite party is completely excluded from, I will direct that at the same time -- not exactly the same moment, but contemporaneously -- one copy of that document is supplied to, I will want named solicitors, two of them at Dechert's, on their undertaking to hold it confidential to themselves and respect the confidentiality regime prescribed by rule 59. It is to be for their eyes only in the first instance. That will give them an opportunity to

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see and assess the contents of the document for themselves. If so advised, they will be entitled to share sight of the document with independent counsel, that is Ms. Edwards-Stuart or whoever it might be. And, if so advised, they can make an application for wider disclosure or dissemination of the document if they feel that there is a need to do so for a just and fair conduct and determination of the proceedings. That is my decision on this appeal. Is that clear enough for you? If there are any issues about it, there will be a transcript available, or alternatively you can send a document and ask me to endorse it in formal terms, but I think I have made it clear what the regime should be. I am not encouraging an argument about costs on this appeal.

[Costs of the appeal to be treated as costs incurred in the registry proceedings and dealt with at the conclusion or earlier determination of the proceedings by the registrar's hearing officer in the usual way]