

1 THE PATENT OFFICE

Room A2,  
Harmsworth House,  
13-15 Bouverie Street,  
London, EC4Y 8DP.

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Monday, 9th October 2000

Before:

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THE APPOINTED PERSON  
(Mr. Simon Thorley QC)

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8 IN THE MATTER OF UK TRADE MARK APPLICATION NO: 2189191  
9 OF DR. GHAYASUDDIN SIDDIQUI

and

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IN THE MATTER OF OPPOSITION NO. 50126 BY  
DR. M.H.A. KHAN AS NOMINEE OF  
THE MUSLIM PARLIAMENT OF GREAT BRITAIN

and

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IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON  
UNDER THE TRADE MARKS ACT 1994 AGAINST THE DECISION  
OF THE HEARING OFFICER (MS LYNDA ADAMS)  
DATED 27TH JUNE 2000

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17 (Translation of the Stenograph Notes of Marten Walsh Cherer  
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20 MR. M. FOREMAN of Rouse & Co. Int'l appeared on behalf of  
21 Dr. Siddiqui

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MR. R. HILL of Wilson Gunn M'Caw appeared on behalf of Dr. Khan

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MR. M. KNIGHT (Principal Hearing Officer) appeared on behalf of  
23 the Registrar

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D E C I S I O N

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1 MR. THORLEY: This is an appeal from a decision of Lynda Adams,  
2 the officer acting for the registrar dated 27th June 2000.  
3 It arises in an opposition to the registration of application  
4 number 2189191 for the same trade mark in respect of various  
5 classes by Dr. Ghayasuddin Siddiqui. It is opposed by  
6 Mr. Khan, acting as a nominee for The Muslim Parliament of  
7 Great Britain.

8 The decision appealed from arose out of an application  
9 for an extension of time in which the opponent was to file  
10 evidence pursuant to the rules. The history of the matter is  
11 clearly set out in Ms Adam's decision. Neither party  
12 suggested it was in error and I do not intend to repeat it.  
13 In simple terms the period of three months prescribed for  
14 giving evidence under rule 17 was due to expire on  
15 3rd March 2000. On that date the agents acting for the  
16 opponent applied for an extension of three months and supplied  
17 written reasons in support of that request. The official  
18 letter from the registry dated 10th March indicated that the  
19 extension would be granted unless any objections were  
20 received. Objections were received by letter dated 23rd March  
21 from the agents acting for the applicant and I shall return  
22 to the details of that letter a little later.

23 Both parties before me today made it plain that there  
24 was a fundamental dispute between their respective clients as  
25 to the right of each of them to purport to act on behalf of  
26 The Muslim Parliament of Great Britain. It was also made

1 clear to me by Mr. Foreman, who appeared on behalf of  
2 Dr. Siddiqui, that at all times his client had made it plain,  
3 both to him and through him, to the opponent that no quarter  
4 would be asked or given in these proceedings and particularly  
5 that no extension of time would be granted. I should make it  
6 clear at the outset that I consider that to be of no relevance  
7 whatever to the question of whether or not on the facts an  
8 extension of time should be granted.

9 I turn then to consider the two legal questions which,  
10 to my mind, arise in this case. The first is the basis on  
11 which this tribunal should act when reviewing an exercise of  
12 discretion by the registry. Mr. Hill, who appeared on behalf  
13 of Mr. Khan, was minded to accept that I should only intervene  
14 if I considered that the discretion had been exercised  
15 incorrectly. I think it goes a little further than this.

16 In A.J. and M.A. Levy's Trade Mark [1999] RPC 291  
17 Matthew Clarke QC, sitting as the appointed person, said this  
18 at page 292, line 1: "It has to be borne in mind that in the  
19 present proceedings what we are concerned with is an appeal  
20 and not a rehearing of the merits or otherwise of the  
21 application for the extension. That means, in my view, that  
22 the Appointed Person is only entitled to interfere with the  
23 decision of the registrar if it can be demonstrated that the  
24 discretion has been exercised in, what might be described as,  
25 an unreasonable fashion."

26 My view coincides with his. My duty is to review the

1 decision and the reasons for it and, if satisfied, it is wrong  
2 to reverse it. The position of the appointed person in this  
3 tribunal is, to my mind, no different to that of the Court of  
4 Appeal in reviewing the exercise of discretion by a judge at  
5 first instance. There are many decisions on this but in the  
6 end they boil down, I think, to the simple proposition that  
7 one will only interfere where the exercise of discretion below  
8 was plainly wrong.

9 I think it is important in considering the exercise of  
10 discretion to bear mind that the officers at the registry have  
11 very great experience in regulating the proceedings before  
12 them and in principle they should be allowed to regulate  
13 proceedings as their experience directs and this tribunal  
14 should be slow to interfere in case management issues of the  
15 sort unless and until it is satisfied that the exercise of  
16 discretion was plainly wrong.

17 The second legal aspect I have to consider is the basis  
18 on which the registry should act in considering a request for  
19 extension. Again this has been considered by my colleagues,  
20 Matthew Clarke in the Levy case and Geoffrey Hobbs QC in  
21 Liquid Force Trade Mark [1999] RPC 429.

22 Mr. Clarke dealt with the matter briefly. In his case  
23 an extension of three months had already been granted and the  
24 request was for a further extension of three months. What  
25 Mr. Clarke said was this at page 292, line 11: "It seems to  
26 me that when an extension of three months has been granted it

1 is incumbent upon the party to whom it has been granted to  
2 ensure that, if any other extension is sought, strong and  
3 compelling reasons for such an extension are put forward.  
4 When the matter is opposed and there has to be a hearing, it  
5 is, in my view, essential that the applicant makes the best  
6 case for a further extension at that hearing. If that is not  
7 done and matters are left on an equivocal or uncertain basis,  
8 then it seems to me that the applicant must live with the  
9 consequences of that."

10 He concluded by saying this at page 293, line 8: "I  
11 should say that in my opinion, and contrary to what was  
12 submitted by Mr. Pennant, the remarks of Jacob J in R v.  
13 Registrar of Trade Marks, ex parte SAW Company SA [1996] RPC  
14 507 are equally applicable to the position in the present  
15 case, though it arises under the 1994 Act, as they were in  
16 relation to the 1938 Act, in particular his Lordship's  
17 statement that, 'Six months is a very generous period for  
18 filing of evidence'."

19 The reference to the SAW case was reference to an  
20 opposition under the 1938 Act where an automatic period of six  
21 months was granted. Jacob J in [1996] RPC 507 at 508 made it  
22 plain that this period of six months was introduced after  
23 consultation with the professional bodies and with a view to  
24 ensuring that proceedings were conducted in a proper and  
25 timeous manner.

26 In Liquid Force trade mark Mr. Hobbs considered the

1 matter at greater length. In particular he had regard to  
2 rule 62 which governs this application for an extension of  
3 time and drew a contrast between rule 62(1) and rule 62(5).  
4 Rule 62 provides at page 437, line 25: "(1) The times or  
5 periods: (a) prescribed by these rules other than the time  
6 or periods prescribed by the rules mentioned in paragraph (3)  
7 below, or.

8 "(b) specified by the registrar for doing any act or  
9 taking any proceedings, may, at the request of the person or  
10 party concerned, be extended by the registrar as he thinks  
11 fit, upon such notice to any other person or party affected  
12 and upon such terms as he may there direct.

13 .....

14 "(4) Subject to paragraph (5) below, a request for  
15 extension under paragraph (1) above shall be made before the  
16 time or period in question has expired.

17 "(5) Where the request for extension is made after the  
18 time or period has expired, the registrar may, at his  
19 discretion, extend the period or time if he is satisfied with  
20 the explanation for the delay in requesting the extension and  
21 it appears to him that any extension would not disadvantage  
22 any other person or party affected by it." Mr. Hobbs  
23 concluded: "On contrasting the language of subrule (1) to  
24 that of subrule (5) that the exercise of the registrar's  
25 discretion under rule 62(1) is not subject to the particular  
26 qualification specified in rule 62(5)."

1 He went on to conclude that the discretion conferred by  
2 the provisions of rule 62(1) was as broad as the discretion  
3 conferred by the provisions of then order 3, rule 5(1) of the  
4 Rules of the Supreme Court which stated: "The court may, on  
5 such terms as it thinks just, by order extend .... the period  
6 within which a person is required .... by these rules or by  
7 any judgment, order or direction, to do any act in any  
8 proceedings."

9 Mr. Hobbs cited from and applied the decisions in  
10 *Finnegan v. Parkside Health Authority* [1998] 1 WLR 411 and  
11 *Mortgage Corporation Limited v. Sandoes* [1996] TLR 751 in  
12 reaching his conclusion that the absence of a good reason for  
13 failure to comply with a time limit was not always in itself  
14 sufficient to justify refusal of an extension of time and that  
15 the true position was for the party in default to satisfy the  
16 court that despite his default the discretion to extend time  
17 should nevertheless be exercised in his favour, for which  
18 purpose he could rely on relevant circumstances.

19 I propose to apply Mr. Hobbs' criteria but I should  
20 emphasise the following:

21 1. It must always be borne in mind that any application  
22 for an extension of time is seeking an indulgence from the  
23 tribunal. The Act and the rules lay down a comprehensive code  
24 for the conduct of prosecution of applications and for the  
25 conduct of opposition. The code presumes a normal case and  
26 provides for it.

1           2. There is a public interest which clearly underlies  
2 the rules that oppositions and applications should not be  
3 allowed unreasonably to drag on.

4           3. In all cases the registry must have regard to the  
5 overriding objective which is to ensure fairness to both  
6 parties. Thus, it can grant an extension when the facts of  
7 the case merit it.

8           4. Accordingly, it must be incumbent on the application  
9 for the extension to show that the facts do merit it. In a  
10 normal case this will require the applicant to show clearly  
11 what he has done, what he wants to do and why it is that he  
12 has not been able to do it. This does not mean that in an  
13 appropriate case where he fails to show that he has acted  
14 diligently but that special circumstances exist an extension  
15 cannot be granted. However, in the normal case it is by  
16 showing what he has done and what he wants to do and why he  
17 has not done it that the registrar can be satisfied that  
18 granting an indulgence is in accordance with the overriding  
19 objective and that the delay is not being used so as to allow  
20 the system to be abused.

21           Jacob J made it clear in the SAW case that any  
22 perception that the registrar would grant extensions liberally  
23 was wrong and I take this opportunity to repeat that. In  
24 principle matters should be disposed of within the time limits  
25 set out in the rules and it is an exceptional case rather than  
26 the normal case where extensions will be granted.



1           I accept that this does place people with an obligation  
2 to file evidence by a given date with a dilemma. If the date  
3 is approaching and the evidence is not ready, plainly they run  
4 the risk by not filing the evidence in whatever imperfect form  
5 it is that they may be denied an extension of time. That is  
6 a dilemma which frequently faces parties in litigation. It  
7 is not unusual that where an application for extension for,  
8 say, a period above three months is applied for, that the  
9 officer exercising the discretion, whilst not minded to grant  
10 an extension of that period, will none the less grant an  
11 extension of a shorter period, let us say seven days, to  
12 enable such evidence as is available to be filed. That  
13 however is not and should not become a general rule.

14           I should take this opportunity to state that parties who  
15 seek an extension of time and whose application for an  
16 extension of time is opposed would be well advised when they  
17 come to the hearing of that application to bring with them  
18 such evidence as they have to hand so that that evidence can  
19 be filed forthwith if the hearing officer is minded not to  
20 grant an extension.

21           With that background I turn to the facts of this case.  
22 Each case must turn on its own facts and there can be no  
23 presumption that an extension will be granted. The facts of  
24 this case are set out in the decision. The reasons given in  
25 support of the request were as follows: "The opponent is  
26 experiencing difficulty in obtaining evidence in support of

1           the grounds of opposition under Section 5(4) of the Act.  
2       The reason that the opponent is experiencing difficulty is  
3       that the applicant, being a former leader of The Muslim  
4       Parliament of Great Britain is in possession of documentation  
5       relevant to the opponent's case under this section and is not  
6       willing to release this information to the opponent.  
7       Accordingly, the opponent is having to explore other routes  
8       by which this evidence can be obtained and this is necessarily  
9       taking some time. Accordingly, the Registrar is asked to  
10      exercise his discretion and allow the opponent a further  
11      period of three months in which to file their evidence in this  
12      matter. In deciding whether to exercise his direction, the  
13      Registrar is asked to bear in mind that both the applicant and  
14      the opponent are alleging that they are the rightful  
15      authorised nominee of The Muslim Parliament of Great Britain  
16      and as a result of this dispute which is being pursued  
17      elsewhere, evidence of the activities of The Muslim Parliament  
18      of Great Britain is not easily accessible. The opponent  
19      trusts that the Registrar will oblige him in this respect."

20           As I indicated above this was opposed. The letter of  
21      23rd March 2000 opposing the application stated as  
22      follows: "The opponent states in support of his application  
23      for an extension of time that he is experiencing difficulty  
24      in obtaining evidence to support the grounds of opposition  
25      under section 5(4) of the Act. The opponent states that the  
26      applicant is in possession of documentation relevant to the

1     opponent's case but is not willing to release this information  
2     to the opponent. This is not the case. The applicant has  
3     not received any requests for information from the opponent  
4     since August 1999 (requests made at that time were for  
5     financial information of a confidential nature). No request  
6     of any kind has been made since that date. The applicant  
7     therefore invites the opponent to disclose details of all such  
8     requests, together with evidence to show that his requests  
9     were refused.

10            "In addition the applicant is unaware of the 'dispute  
11     which is being pursued elsewhere' referred to by the opponent.  
12     The applicant therefore invites the opponent to provide  
13     details of this 'dispute which is being pursued elsewhere'.  
14     Accordingly, the Registrar is asked to refuse the opponent's  
15     request for an extension of time in which to file the evidence  
16     in this matter and also requests a hearing under rule 48(1)."

17            In response to this some written submissions were put in  
18     by the opponent's agents. These admitted that no requests to  
19     the applicant for information had been made since August 1999.  
20     It stated that attempts had been made to deal with the  
21     Charities Commission and that applications had been made  
22     through the courts to seek information. There was no  
23     amplification as to when the Charities Commission had been  
24     approached or as to the nature of the applications to the  
25     courts.

26            As will be seen, the concessions made in these written

1 submissions do suggest that the reasons given in support of  
2 the request in the letter of 3rd March 2000 were not wholly  
3 accurate. The hearing officer in her decision concluded on  
4 page 6, line 11: " .... that the opponent's submissions had  
5 some gaps in them which suggested that the exercise of any  
6 discretion should be measured accordingly." With this I  
7 wholeheartedly agree. There was no detail in the submissions  
8 which enabled the hearing officer to place any weight upon the  
9 suggestion that applications to the Charity Commission or the  
10 court were either necessary or had been pursued with due  
11 diligence. There was no evidence or submissions before the  
12 hearing officer as to the steps which the opponent had taken  
13 to prepare evidence within the time available or as to the  
14 state of the evidence which was available by that date.

15 Mr. Hill criticized the hearing officer for placing  
16 weight upon the statement that there had been steps taken in  
17 preparing the compilation of the evidence. She suggested the  
18 steps should have gone further. Mr. Hill suggested that she  
19 was being overly pedantic in referring to compilation as  
20 opposed to the actual provision of evidence. To my mind  
21 nothing turns on this. Plainly what the hearing officer was  
22 having regard to was the adequacy of the evidence or the  
23 submissions as to the work which had been done. By the date  
24 of the hearing before her no draft evidence had been provided  
25 nor had any statement been given as to the state of the  
26 evidence which had been provided. I do not think therefore

1 there is any substance in this criticism.

2 The hearing officer concluded on page 7, line 24 as  
3 follows: "Overall it seems to me that this is a case which  
4 may have some unusual features, but the opponents have not  
5 persuaded me that their actions and diligence in pursuing the  
6 evidence needed to support the grounds of opposition was  
7 likely to achieve any result, let alone in any particular  
8 timescale."

9 By this, as I understand it, the hearing officer was  
10 stating that she did not have material before her which  
11 enabled her to ascertain what had been done or indeed to  
12 ascertain clearly what it was that the opponent wished to do.  
13 The only excuses put forward for not having complied with the  
14 rule were the strange circumstances of the case, coupled with  
15 the applications to the applicant for information to the  
16 Charity Commissioners and to the courts.

17 So far as concerns the applications to the applicant,  
18 there had been no application since August 1999, a fact which  
19 does not come clearly from the letter of 3rd March 2000. To  
20 my mind, it should have done. It carries no weight that an  
21 application was made in August 1999 and was not pursued.

22 As to the Charity Commissioners and the courts, no  
23 information was forthcoming as to what was sought, when it was  
24 sought or as to the results of the application.

25 In my judgment in the face of this, the hearing officer  
26 was placed in the position that Mr. Hobbs foreshadowed in the

1 Liquid Force trade mark of an applicant who had not satisfied  
2 the court that he was not in default. Therefore, the sole  
3 question that arises is whether, despite that default, the  
4 hearing officer should none the less have extended time and  
5 the only possible reason for doing that would be on the basis  
6 of a public interest.

7 It is plain from the facts of this case that there is a  
8 significant private dispute between the parties. There was  
9 no material before the hearing officer suggesting that there  
10 was in any way a public interest which would be undermined if  
11 an extension of time was not granted. I do not believe  
12 therefore that she can be criticized for not having considered  
13 the wider public interest expressly.

14 In all the circumstances I have not been satisfied that  
15 her exercise of discretion was plainly wrong and in these  
16 circumstances I shall dismiss the appeal.

17 Do you wish to make any application?

18 MR. FOREMAN: I make an application for the costs in this matter.

19 MR. THORLEY: I thought you probably would.

20 Mr. Hill, do you have any objection to that?

21 MR. HILL: No.

22 MR. THORLEY: In accordance with the usual practice, the appeal  
23 having failed, I shall make an award of a fixed sum to the  
24 applicant and in this case I shall make it in the sum of  
25 £500. Is there anything further that arises? The hearing  
26 officer ordered that the opponent shall be deemed to have

1 withdrawn his opposition and I understand that that follows.

2 Is there anything further? (No response)

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