

TRADE MARKS ACT 1994.

IN THE MATTER OF:

OPPOSITION No. 49435

IN THE NAME OF THE GILLETTE COMPANY

TO APPLICATION No. 2,137, 569

TO REGISTER A TRADE MARK IN CLASSES 9, 16, 24 AND 25

IN THE NAME OF NICHOLAS DYNES GRACEY

AND IN THE MATTER OF:

APPLICATION No. 11654

IN THE NAME OF NICHOLAS DYNES GRACEY

FOR REVOCATION OF TRADE MARK No. 1,226,399

REGISTERED IN CLASS 16

IN THE NAME OF THE GILLETTE COMPANY

DECISION

Opposition No. 49435

1. On 1st May 1997 Nicholas Dynes Gracey (“Mr. Gracey”) applied under number 2,137,569 to register the following sign as a trade mark for use in relation to a wide variety of goods in Classes 9, 16, 24 and 25:



The Class 16 goods specified in the application for registration were as follows:

“Cards, tapes, labels, tags, posters, notepaper, diaries, charts, calendars and playing cards, paperweights, paint brushes, stationery, packaging items and materials, decalcomanias, printed matter, photographs, postcards, pens, pencils, printed periodical publications, ink and ink cartridges, table cloths, serviettes, paper plates, display apparatus.”

2. In grounds of opposition filed on 3rd February 1999 The Gillette Company (“Gillette”) contended that the application for registration in Class 16 should be refused or restricted to a narrower specification of goods: (i) on the basis that the application contemplated unauthorised use of the relevant mark within the area of protection afforded to a number of Gillette’s “earlier trade marks” by Section 5(2) of the Trade Marks Act 1994; (ii) on the basis that use of the relevant mark as contemplated by the application would be actionable under Section 56 of the Act; (iii) under Section 5(4) of the Act on the basis that use of the relevant mark as contemplated by the application would be actionable in passing off. Nine “earlier

trade marks” were cited by Gillette in support of its objection under Section 5(2) of the Act. These were identified in the grounds of opposition as:

	TRADE MARK	NUMBER	CLASS	JOURNAL	PAGE
1.	DOUBLE HEARTS DEVICE	781540	16	4281	1113
2.	PAPER MATE WRITE BROS	1015603	16	5106	1411
3.	HEARTS DEVICE	1226398	16	5668	893
4.	HEARTS DEVICE	1226399	16	5668	893
5.	PAPER MATE PRECISE ROLLER	1220431	16	5647	3026
6.	PAPER MATE	1168091	16	5561	813
7.	PAPER MATE 2000	1243674	16	5779	3324
8.	PAPERMATE RUBBERSTIK	1511065	16	6033	4242
9.	PAPERMATE MULTI MARKER	1552356	16	6062	817

3. On 11th May 1999 Mr. Gracey filed a Form TM8 (form for counterstatement) under Rule 13(2) of the Trade Mark Rules 1994 (as amended). The Form TM8 was accompanied by an “Affidavit” in which he responded to Gillette’s grounds of opposition. Paragraph 2 of the “Affidavit” stated that *“the Applicant [i.e. Gillette] has defined 9 marks in Class 16 and yet excludes details of*

the commercial extent of use in relation to each of the marks listed, so in respect of TM Rules 1994 Section 51 & 52, the Registrar is requested to order discovery in relation to the relative commercial consideration of each of the 9 marks to the Applicant claimed Intellectual Property Rights (IPR)”. The Form TM8 and “Affidavit” were filed under cover of a letter which reiterated the request for disclosure.

4. Mr. Gracey was informed by the Trade Marks Registry in a letter dated 4th August 1999 that the Registrar considered his request for disclosure to be premature. The letter confirmed that the Registry would be willing to reconsider the request *“after the initial rounds of evidence have been filed. At that time, the relevance of the documents will have been ascertained and the substantive issues between the parties clarified.”*

5. Further correspondence ensued. In a letter dated 13th December 1999 (by which time Gillette had filed its evidence in support of the opposition) Mr. Gracey outlined his approach to the proceedings in the following terms:-

“(1) In respect of your TM Registrar (Miss Deborah Rich). 1-page MON.20.SEP.99 letter & 2-enc, received WED.22.SEP.99 ...

(2.1) 21 ‘agreements’ expressed in the Opponent’s Exhibit ‘AJR 5’ still leaves in question the validity of Opponent’s TM 1, 226,399 (single heart), so my ‘Applicant’ desire (re. TM 2,137,569) is to rely upon my TUE.11.MAY 1999 Counter statement/Affidavit and Oral Evidence at the Substantive Hearing, in relation to the issues raised in my TUE.11.MAY.99 Testimony;

(2.2) ...

(2.3) ...

(3) Please reassess my request for discovery ...

STATEMENT OF TRUTH: IT IS MON.3.DEC.99
AND IN RESPECT OF ANSWERING THE
QUESTION: ARE ALL THE FACTS STATED IN
THIS 1-PAGE DOCUMENT SOLEMNLY
BELIEVED IN GOOD CONSCIENCE, TO BE
TRUE - MY ANSWER IS YES ...”

6. The Registry made its position clear to Mr. Gracey in a letter dated 7th March 2000. It expressed the view that his “Counterstatement/Affidavit” had been filed under Rule 13(2) of the Trade Marks Rules 1994 and “*only performs the function of being a Counterstatement.*” It informed him that if he wished to apply under Rule 49(2) of the 1994 Rules for permission to give oral evidence in support of his own case at the substantive hearing of the opposition and if he wished to pursue the request for disclosure made in paragraph 2 of his “Affidavit” dated 11th May 1999 he should write to the Registry explaining the basis upon which he maintained that the Registrar should accede to his requests. It also pointed out that with one exception (expired registration number 1511065) the rebuttable presumption of validity contained in Section 72 of the Trade Marks Act 1994 applied to the earlier trade marks cited in Gillette’s grounds of opposition.

7. Mr. Gracey responded to this letter in a letter of the 26th April 2000 which stated:

“(1) In respect of your TM Registrar (Alistair East)
02-page WED.12.APR 00 letter & 09-enc ...

- (2) My case in this matter is founded on my belief that TM 1,226,399 is an invalid TM suitable for revocation;
- (3) My TUE.11. MAY.99 TM8 testimony is also my counterclaim that TM 1,226,399 is invalid;
- (4) The counterclaim/`CROSS APPEAL` made at TM appeal in REV 9214 for ACADEMY was made without the payment of any fee;
- (5) 21 `agreements` expressed in the Opponent`s Exhibit `AJR 5` still leaves in question the validity of Opponent`s TM 1,226,399 (single heart), so my `Applicant` desire (re TM 2,137,569) is to rely upon my TUE. 11.MAY.99 Counterstatement/Affidavit and Oral Evidence at the Substantive Hearing, in relation to the issues raised in my TUE.11.MAY.99 Testimony.
- (6) The format of my Affidavit had apparently been accepted by the Registrar prior to the Opponent filing its Testimony (*RSC O. 2, r.2*) and furthermore, the Registrar has previously accepted Testimony in my format as early as FRI.10.JAN.97 in respect of my Testimony in REV 9206, in which the first FIVE paragraphs were dedicated to `putting on notice` my beliefs to the Applicant/Registrar as to why the Registrar should exercise DISCRETION in that acceptability of my chosen (in good conscience in accordance with my beliefs) Testimony format for an `Affidavit` – also please see *TM Rule 49(2) & 60* and the *Civil Evidence Act 1968 & Oaths Act 1978* (both in *Section 2* of the White Book – In addition to which, the Registrar (Stephen P. Rowan) WED.17.NOV. 99 Decision (REV 9206) documents the Registrar`s discretion being exercised toward the CPR ie/eg the `Witness Statement` (`Statement of Truth`) format;
- (7) A copy of *Gotha City v. Sotheby`s [1998] 1 WLR 114* is being pursued via the British Library;

- (8) In my opinion, it is in the Opponent's interest to fulfil my request for further and/or better information (TM Rule 51 & CPR) at this stage because the matters are material to my counterclaim;
- (9) Following the Opponent's declaring its position on questions relating to TM 1,226,399 – then an opportunity should be given for my filing of evidence in reply;
- (10) The 'presumption of validity' of TM 1,226,399 is accepted, but my counterstatement/counterclaim is that it is an invalid TM and in those circumstances, which raise ... 'a question' ... as to use and validity, then under the *TM Act 1994* the Proprietor should provide evidence of use within the most recent 5 yr period, under *section 46(5) & section 100*.

STATEMENT OF TRUTH: IT IS WED.26.APR.00 AND IN RESPECT OF ANSWERING THE QUESTION: ARE ALL THE FACTS STATED IN THIS 2-PAGE DOCUMENT SOLEMNLY BELIEVED IN GOOD CONSCIENCE, TO BE TRUE – MY ANSWER IS YES...”

8. Gillette wrote to the Registry on 16th May 2000 confirming that it opposed the making of orders to the effect envisaged in Mr. Gracey's letter of 13th December 1999 and explaining the basis upon which it maintained that the Registry should not accede to his requests.

9. The Registry subsequently wrote to Mr. Gracey on 23rd May 2000 informing him that it was the Registrar's preliminary view that both requests should be refused "*as you have failed to supply sufficient reasons for the Registrar to exercise her discretion in these matters*". The letter went on to say that the Registrar would allow the parties to the proceedings "*to provide full written*

arguments against the decision” and request a hearing within a period of 14 days expiring on 6th June 2000.

10. Mr. Gracey did not provide any written arguments against the preliminary decision recorded in the Registry’s letter of 23rd May 2000. Instead he filed an application for revocation of Gillette’s earlier trade mark number 1,226,399 (see paragraphs 15 et seq below) under cover of a letter which stated:

- “(1) In respect of your TM Registrar (Alistair East) 01-page TUE.23.MAY 00 letter & 00-enc ...
- (2) This communication restates all the points raised in my WED.26.APR.00 letter and should be read alongside that 02-page letter;
- (3) Because all my requests for further information re proper use of TM 1,226,399 has been withheld by paragraph #2 of the Registrar’s TUE.23.MAY.00 letter, a TM26(N) follows on page 2 with a Statement of Case on page 3, and the Registrar is requested to formally stay proceedings on Opp.49,435 pending the outcome of the revocation proceedings and in respect of paragraph #3 of the Registrar’s letter – appoint an interlocutory hearing to agree my utilizing the outcome of the revocation proceedings as oral evidence because in any event (re paragraph #4 of the Registrar’s TUE.23.MAY.00 letter) a main hearing is requested in due course.

11. The Registry then notified the parties in official letters dated 19th June 2000 that *“the Registrar will appoint an Interlocutory Hearing in respect of the refusal to allow ... oral evidence at the Main Hearing and the refusal to order discovery You will be informed of the date [of the Hearing], in a letter from*

our Hearings section.” Gillette was given an opportunity to respond to Mr. Gracey’s request for a stay of the opposition proceedings pending the outcome of his application for revocation of registered trade mark number 1,226,399. In a letter sent to the Registry on 27th June 2000 it opposed the request and explained the basis upon which it maintained that no stay should be granted.

12. On 30th June 2000 the Registry wrote to Mr. Gracey informing him that it was the Registrar’s preliminary opinion that his request for a stay of the opposition proceedings should be refused *“as the revocation of one of the opponent’s prior marks is unlikely to resolve the opposition”*. The letter went on to say that the Registrar would allow the parties *“to provide full written arguments against the decision”* and request a hearing within a period of 14 days expiring on 14th July 2000.

13. Gillette responded to this letter on 5th July 2000 maintaining that a hearing to the question of a stay would be wholly unnecessary. Mr. Gracey faxed a manuscript annotation to the Registry on 14th July 2000 indicating that the points made in Gillette’s letter of the 27th June 2000 were disputed and requesting a hearing to consider whether the opposition proceedings should be stayed. The annotation was endorsed on a copy of the Registry’s letter of 30th June 2000.

14. The Registry then notified Mr. Gracey in an official letter dated 18th July 2000 that:

“The Registrar will now appoint an Interlocutory Hearing to determine the following:-

- (1) your request for discovery – refused in our official letter of 23 May 2000
- (2) your request to provide oral evidence at the Main Hearing – refused in our official letter of 23 May 2000
- (3) your request to stay these proceedings pending the outcome of a co-pending revocation action – refused in our official letter of 30 June 2000.

The case has therefore been passed to our Hearings Section who will inform you of the date of the Interlocutory Hearing in due course.

Revocation Application No. 11654

15. Gillette was registered under number 1,226,399, with effect from 14th September 1984, as the proprietor of the following series of four trade marks:



for use in relation to “paper, cardboard, paper articles, cardboard articles and inks, all included in Class 16; printed matter, books, periodical publications, stationery, writing instruments and drawing instruments, ink refills for pens; instructional and teaching materials (other than apparatus); office requisites (other than furniture)”

16. On 6th June 2000 Mr. Gracey applied for revocation of the registration on the following grounds:

STATEMENT OF CASE

- (1) 21 `agreements' expressed in the Opponent's Exhibit `AJR 5' in Opposition proceedings Opp.49,435 still leaves in question the validity of Opponent's TM 1,226,399 (single heart), so my `Applicant' desire (re TM 2,137,569) is to rely upon my TUE.11.MAY.99 Counterstatement/[^]Affidavit' and Oral Evidence at the Substantive Hearing, in relation to the arguments raised in that TUE.11.MAY.99 Testimony – but to do so it is now been formally alleged by way of the accompanying form TM26(N) that TM 1,226,399 should be revoked for non-use in the period 5 years prior to THU.1.MAY.97 (the date of application for TM 2,137,569);
- (2) In my opinion, it was in the Registered Proprietor's interest to fulfil my requests for further and/or better information (TM Rule 57 and CPR Part 18) following receipt of my TUE.11.MAY.99 Counterstatement in the Opp. 49,435 proceedings (ie over a year ago) because such conduct would have been a reasonable way to reduce costs and time spent on this matter (CPR Part 44);
- (3) Following the Registered Proprietor's declaring the new position on questions relating to TM 1,226,399 revocation – then an opportunity should be given for my filing of evidence in relation to Opp. 49,435.
- (4) The Registrar's previous presumption of validity of TM 1,226,399 is accepted, but my counterstatement/counterclaim to Opp. 49,435 is that TM 1,226,399 is an invalid TM and in those circumstances, which raise ... *`a question'* ... as to use and validity, then under the *TM Act 1994* the Registered Proprietor should attempt to provide evidence of use of TN 1,226,399 within the specified 5 year

period, having particular regard for *section 46(5) & section 100*.

- (5) In relation to the Registered Proprietor's conduct since the offer made via paragraph #3 of my WED.03.FEB.99 letter to the Registrar – an award of costs is requested in my favour in addition to the £200 fee for filing the Form TM26(N).”

17. The Registry notified Mr. Gracey in an official letter dated 8th June 2000 that it considered his statement of grounds to be largely unacceptable for lack of materiality. He was invited to file an appropriately amended statement of grounds by 29th June 2000. On 29th June 2000 Mr. Gracey wrote to the Registry asking for the agenda of the forthcoming interlocutory hearing (in Opposition No. 49435) to be expanded to allow argument in relation to the points raised in the official letter of 8th June 2000.

18. The Registry replied to Mr. Gracey on 20th June 2000 informing him that the Registrar could not simply expand the agenda of the forthcoming hearing in the opposition proceedings. He was asked to submit an amended Statement of Case as required by the official letter of 8th June 2000 or request a hearing to consider whether amendment was properly required, in either case by 14th July 2000. Mr. Gracey responded on 14th July 2000 indicating that he considered the Statement of Case to be sufficient and requesting a hearing to consider the matter.

The Interim Hearings

19. The date appointed for the hearings which Mr. Gracey had requested in connection with Opposition No, 49435 and Revocation Application No. 11654 was 10th August 2000. The hearing in the revocation proceedings was listed to commence at 10.30 am. The hearing in the opposition proceedings was listed to commence at 12 noon. The parties were notified of the appointments in official letters dated 26th July 2000. The letters notifying Gillette were sent via the Post Office's special delivery service which guarantees next day delivery. The letters notifying Mr. Gracey were sent by ordinary first class post. He received them on 28th July 2000. They were sent to him at the address which the Registry understood to be his then current postal address.

20. Ann Corbett, head of the Law Section in the Trade Marks and Designs Directorate of the Patent Office, has explained in a statutory declaration dated 21st February 2001 why the relevant letters were sent to Mr. Gracey by ordinary first class post: he has used a number of different addresses in recent years; the Registry has endeavoured to ensure that correspondence reached him in a timely fashion by sending it to whatever it believed to be his current address irrespective of what appeared on the Register; towards the end of 1999 and through until March 2000 correspondence sent to him by ordinary first class post was returned in some cases whereas correspondence sent via first class recorded mail or special mail was returned in all cases; the Registry adopted the practice during that period of sending correspondence to him by ordinary first class post only (with members of staff also sending copies to him by fax in some cases).

21. Her statutory declaration was filed in response to my request for further information to be provided under Rules 57 and 65(2) of the Trade Mark Rules 2000. Mr. Gracey was given the opportunity to file evidence in answer. In a statement in writing dated 11th April 2001 he referred to Ms. Corbett's statutory declaration without disputing the accuracy of anything contained in it.

22. In the evening on 6th August 2000 (which was a Sunday) Mr. Gracey sent letters to the Registry by fax asking for the hearings that were due to take place on 10th August 2000 to be postponed to a date in September. In each case he stated:

- “(2) My receipt of your communication was on FRI.28.JUL.00 ie less than 14 days notice as per 1994 TM Act section 48(2);
- (3) In respect of my challenges in relation to several legal actions (eg. a High Court hearing on WED.02.AUG.00), please appoint a new hearing date (preferably TUE.12 - THU.14.SEPT.00).”

23. The Registry replied by fax on 8th August 2000 confirming that no postponement of the hearings would be allowed. Later the same day Mr. Gracey faxed a manuscript annotation to the Registry:

- “1. CPR 6.7(1) ... METHOD OF SERVICE
 - FIRST CLASS POST.
 - DEEMED DAY OF SERVICE
 - THE SECOND DAY AFTER IT WAS POSTED' ...
- 2. FURTHER TO MY SUN.06.AUG.00 FAXES ESPECIALLY PARA #2 IE. TM ACT 48(2)

PLEASE ASK MR KNIGHT (THE HEARING OFFICER) TO EXPLAIN YOUR LETTER OF TUE.08.AUG.00;

3. RE. MY TEL TODAY 12:01/12:04 PLEASE REPLY BY FAX.”

The annotation was endorsed on a copy of the Registry's fax letter of the same date.

24. Further communications took place on 9th August 2000, with the Registry maintaining that the hearings should go ahead on the 10th August as previously notified. I understand that Mr. Gracey made three or four telephone calls on the morning of the 10th August and spoke to members of the Registry's staff in Newport and London. He explained at the hearing before me [Transcript pp.26 to 28] that he asked for the opportunity to participate in the scheduled hearings via a telephone link. It is not uncommon for parties to Registry proceedings to participate in hearings via a telephone link. It is the method by which Mr. Gracey usually participates in such hearings. However, his last-minute request was refused on this occasion. I do not know whether there was any technical or logistical reason for the refusal. It is sufficient for present purposes to note that Mr. Gracey did not want the hearings to take place without him being heard on his own behalf.

25. The interim applications had been listed for hearing before Mr. Knight, Principal Hearing Officer, acting on behalf of the Registrar of Trade Marks. The Principal Hearing Officer began by considering whether it would be right and

proper to proceed with the hearings in Mr. Gracey's absence. He determined that preliminary issue adversely to Mr. Gracey for a number of reasons.

26. First, he took the view that Mr. Gracey had by his own actions made it necessary for the Registry to use ordinary first class post for notifications that would otherwise have been sent to him via the Post Office's special delivery service; it followed, in his view, that Mr. Gracey could not complain of the difference between the date upon which he would have received notification of the hearings by Post Office special delivery (27th July 2000) and the date upon which he actually received notification of the hearings by ordinary first class post (28th July 2000).

27. Second, he took the view that the period between 27th July 2000 (when Mr. Gracey would have received notification of the hearings by Post Office special delivery) and 10th August 2000 (the date appointed for the hearings) would have been sufficient to satisfy the requirement for 14 days' notice contained in Rule 54(2) of the Trade Marks Rules 2000 (formerly Rule 48(2) of the Trade Marks Rules 1994), even if (which he did not accept) the period between the date upon which Mr. Gracey received notification of the hearings by ordinary first class post (28th July 2000) and the date appointed for the hearings (10th August 2000) was insufficient to satisfy that requirement.

28. Third, he took the view that Mr. Gracey should have been prepared to present written or oral submissions in support of his interim applications at the hearings which had been appointed at his request and that it would not be

reasonable to accede to his relatively late request (6th August 2000, effectively received on 7th August 2000) for a postponement of the hearings or his last - minute request (10th August 2000) to participate in the hearings via a telephone link.

29. Having decided that the hearings should go ahead in Mr. Gracey's absence, the Principal Hearing Officer turned his attention to the adequacy of the Statement of Case filed in the revocation proceedings and then to the applications in the opposition proceedings for disclosure, permission to adduce oral evidence at the substantive hearing and a stay pending the outcome of the revocation proceedings.

30. For reasons which I need not recount, the Principal Hearing Officer struck out most of the averments made in the Statement of Case in the revocation proceedings and directed that the residue (consisting of the last one and a half lines of paragraph 1 and the application for costs contained in paragraph 5) should stand as the claimed basis for revocation. The Principal Hearing Officer made no order for costs in respect of that aspect of the proceedings before him. Mr. Gracey gave notice of appeal to an Appointed Person under Section 76 of the 1994 Act on 6th November 2000. At the hearing before me he indicated that he was minded to withdraw his appeal in the revocation proceedings. He gave notice of withdrawal in a letter sent to the Treasury Solicitor's department by e-mail later the same day. As I indicated at the hearing [Transcript pp.83, 84] I consider the withdrawal of that appeal to be a matter of no real consequence so far as the costs of the proceedings before me are concerned. I therefore make no order for costs in relation to the withdrawn appeal.

31. The Principal Hearing Officer's conclusions in relation to the interim applications in the opposition proceedings were in each case adverse to Mr. Gracey. Taking account of the observations of Aldous J. in Merrell Dow Pharmaceuticals Inc's (Terfenadine) Patent [1991] RPC 221 at 223 and the observations of Colman J. in O. Co v. M. Co [1996] 2 LL.R 347 at 351 he decided that an order for disclosure of *the width* requested could not be justified and that an order for disclosure of *the kind* requested was not necessary for a just and fair determination of the objections to registration raised in Gillette's grounds of opposition.

32. He rejected Mr. Gracey's application for permission to give oral evidence in support of his own case at the substantive hearing of the opposition. He did so on the basis of the observations of Lord Evershed MR in Kidax Ltd's Applications [1959] RPC 167 at 175 to the effect that evidence in Registry proceedings should normally be given by way of affidavit or statutory declaration and on the basis that no justification of any kind had been suggested for the abnormal procedure that Mr. Gracey wanted the Registrar to adopt in the present case.

33. The application for the opposition proceedings to be stayed pending the outcome of the revocation proceedings was rejected on the basis that the revocation proceedings concerned only one of the earlier trade marks cited by Gillette in the opposition proceedings and on the basis that revocation of that registration would not necessarily establish that Mr. Gracey's application for registration in Class 16 was free of the objections raised against it in the opposition proceedings. The Principal Hearing Officer considered that in those

circumstances it would not be appropriate to stay an opposition which was ready for hearing to await the outcome of a revocation application which had yet to be served on Gillette.

34. The Principal Hearing Officer awarded Gillette £600 as a contribution towards its costs of the work required for the hearing in relation to the opposition. He indicated that if Gillette wished to apply for an award of costs for attendance at the interim hearing relating to the opposition, it could do so at the conclusion of the main proceedings.

The Appeal In The Opposition Proceedings

35. Mr. Gracey gave notice of appeal to an Appointed Person under Section 76 of the 1994 Act against the Principal Hearing Officer's decision to determine the interim applications in the opposition proceedings in his absence and without his consent. The Grounds for Appeal and Statement of Case filed on 7th November 2000 stated as follows:

**“GROUNDS FOR APPEAL THAT THE
THU.10.AUG.00 DECISION BE SET ASIDE**

(1) The hearing authorised by TM Registrar (Mr. Knight) on THU.10.AUG.00 without my consent was a conscious administrative breach of *2000 TM Rule 54(2)* and without regard for the *Principles of Natural Justice*, the *HRA Article 6 & 8* (re. *Section 7(1) & 6(1) 'Administrative Acts'*), the Public Interest or the *CPR Part 6.7(1)*.

(2) Any attendance by Gillette at the hearing should be at Gillette's own risk of costs because of

the conscious participation by Gillette (with the Registrar) in the breach of *2000 TM Rule 54(2)*.

STATEMENT OF CASE

(3) Re. my correspondence with the TM Registrar (Sara Walter) 02-page 11:08am TUE.08.AUG.00 fax, the TM Registrar (Ann Corbett/Graham Attfield) 02-page 10:37hrs WED.09.JUL.00 fax & TM Registrar (Graham Attfield) 01-page 16:13 hrs WED.09.AUG.00 fax.

(4) My receipt of the Registrar's WED.26.JUL.00 communication was on FRI.28.JUL.00 (by post rather than fax - faxes having always previously been accepted) ie. less than 14 days notice as per *1994 TM Rule 48(2)*, now repeated as *2000 TM Rule 54(2)* and since one day's notice is one day before, then ... '*at least fourteen days' notice of the time*' ... means at least 14 days before THU.10.AUG.00 rather than 13 days or 12 clear days before as is the case given my receipt of notice on FRI.28.JUL.00 (notified to all Parties by my SUN.06.AUG.00 fax).

(5) In respect of the *CPR Part 1.1(2)(a)* and my challenges in relation to several legal actions (eg. various High Court hearings), please award that my costs related to making this Appeal be paid by the Registrar & Gillette, and please offer a new hearing date (allowing suitable time for the Parties to agree its suitability), and supply pages 1 & 7 of the 20-page THU.10.AUG.00 Decision which are absent from the copy of the Decision sent to my address.

STATEMENT OF TRUTH: My belief is that the facts stated in this correspondence are true ..."

36. During the pendency of the appeal Gillette sold its stationery products business to Berol Corporation, a subsidiary of Newell Rubbermaid Inc., a corporation based in the United States. The trade marks cited by Gillette in support of its opposition were assigned pursuant to that transaction. All three corporations were represented by Mr. Ayrton at the hearing of the appeal. It is not necessary for

me to distinguish between them. I shall treat them as one for the purposes of this appeal and simply refer to them collectively as “Gillette”.

37. At the hearing before me Mr. Gracey maintained that the Principal Hearing Officer’s preliminary decision to proceed in his absence was wrong and that the rejection of his interim applications in the opposition proceedings should therefore be set aside with directions for a new hearing as requested in paragraph 5 of his Statement of Case in the appeal.

38. Gillette and the Registrar maintained that the preliminary decision was correct and that the rejection of the interim applications should therefore stand.

39. Gillette additionally maintained that it would in any event be disproportionate to set aside the rejections because the interim applications that Mr. Gracey wished to pursue at a fresh hearing were, in substance and reality, hopeless applications.

40. The latter point was discussed at some length [Transcript pp.19 to 24, 41 to 44, 56 to 72, 74 and 75]. Mr. Gracey submitted that his appeal could and should succeed without regard to the question whether he actually had tenable grounds for pursuing the interim applications which the Principal Hearing Officer had rejected in his absence at the hearing on 10th August 2000. Having referred him to the observations of Laws LJ in the case of Lloyds Bank plc v. Dix (below) I gave him the opportunity (to accept or decline as he wished) to outline succinctly in writing within 21 days of the hearing his reasons for saying that his interim applications

were not hopeless applications. I gave Gillette a period of 14 days thereafter within which to respond in writing to any written observations that Mr. Gracey might choose to make in this connection. The parties were provided with copies of the Lloyds Bank case and the transcript of the hearing before me. I understand that they received these materials within a few days after the hearing.

41. Mr. Gracey took the opportunity to submit comments in writing (reproduced as Annex A to this Decision). Gillette maintained that his comments took matters no further forward. It stood by its earlier submissions to the effect that his interim applications were hopeless applications.

Decision

Was due notice given?

42. Rule 54 of the Trade Marks Rules 2000 (formerly Rule 48 of the Trade Marks Rules 1994) provides as follows:

“Decisions of registrar to be taken after hearing

54.(1) Without prejudice to any provisions of the Act or these Rules requiring the registrar to hear any party to proceedings under the Act or these Rules, or to give such party an opportunity to be heard, the registrar shall, before taking any decision on any matter under the Act or these Rules which is or may be adverse to any party to any proceedings before her, give that party an opportunity to be heard.

(2) The registrar shall give that party at least fourteen day’s notice of the time when he may be heard unless that party consents to shorter notice.”

43. In Halsbury's Laws of England 4th Edn Vol.45(2) (1999 re-issue) it is noted (with citations omitted) that:

“When a period is fixed before the expiration of which an act may not be done, the person for whose benefit the delay is prescribed has the benefit of the entire period, and accordingly in computing it the day from which it runs as well as the day on which it expires must be excluded, and the act may not be done before midnight of that day” (paragraph 233)

“In many statutes, statutory rules and byelaws the intention to exclude both days and to give the person affected a clear interval of time between the two is put beyond all doubt by the insertion of words such as ‘clear days’ or so many days ‘at least’” (paragraph 234)

44. In Re Lypne Investments Ltd [1972] 1 WLR 523 at 525 Megarry J. observed that:

“The general rule in the computation of periods of time is that unless there is a sufficient indication to the contrary, fractions of a day should be ignored, at all events where a period is expressed in days or longer units and not in hours or shorter units and that the day on which the initial event occurs is to be excluded: see generally Trow v. Ind. Coope (West Midlands) Ltd [1967] 2 QB 899.”

45. These considerations appear to me to be applicable to the computation of the period prescribed for notification of hearings under Rule 54. In my view the hearing which took place in the opposition proceedings on 10th August 2000 should, in the absence of consent to shorter notice, have been preceded by a period of at least 14 whole days during which the parties were under notice of it.

46. Section 7 of the Interpretation Act 1978 provides that:

“Where an Act authorises or requires any document to be served by post (whether the expression ‘serve’ or the expression ‘give’ or ‘send’ or any other expression 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.”

This Section applies to subordinate legislation in accordance with the provisions of Section 23(1) of the same Act. Rule 10(4) of the Trade Marks Rules 2000 confirms that anything sent to any applicant, opponent, intervener or registered proprietor at his address for service shall be deemed to be properly sent for the purposes of those Rules.

47. The second working day after posting is normally regarded as the day on which first class mail would be delivered in the ordinary course of post: c.f. Practice Direction [1985] 1 WLR 489 and, now, Civil Procedure Rule 6.7. I consider that the letters which the Registry sent to Mr. Gracey on 26th July 2000 were delivered in the ordinary course of post when they were received at his postal address on 28th July 2000. I also consider that the letters which the Registry sent by special delivery to Gillette on 26th July 2000 were delivered in the ordinary course of such post when they were received at its address for service on 27th July 2000. The chosen methods of notification were entirely unobjectionable. However, neither party received due notice of the hearing on 10th August 2000 because the

period during which they were under notice of it was in each case less than the period of 14 whole days required by the Rules.

Was there consent to short notice?

48. Gillette was represented and made submissions at the hearing on 10th August 2000. It can accordingly be taken to have consented to the short notice it had received. Mr. Gracey's consent to short notice could likewise have been inferred if he had participated in the hearing via a telephone link. However, his request to participate via a telephone link was refused and I cannot see anything in his behaviour towards the Registry, in this instance or in general, from which it could be inferred that he authorised, encouraged or condoned the giving of short notice. The fact that he may have made it necessary for the Registry to notify him of hearings by ordinary first class post rather than by Post Office special delivery is not sufficient to support that inference. It simply reinforces the conclusion to be drawn from Section 7 of the Interpretation Act 1978 and Rule 10(4) of the Trade Marks Rules 2000 that the notifications were legitimately sent to him by ordinary first class post. It does not support the further conclusion that he consented to the giving of short notice of the appointed hearing by that or any other method of notification. I cannot accept that the hearing in the opposition proceedings went ahead on the basis of short notice with Mr. Gracey's consent.

Could short notice nevertheless be deemed sufficient?

49. On 10th August 2000 the Principal Hearing Office was faced with a situation in which there had been a failure on the part of the Registrar to comply with the limitation as to time (“*at least 14 days*”) prescribed for the giving of notice of the hearing. He could only have deemed the short notice given to Mr. Gracey to be sufficient within the latitude, if any, allowed to him by the Trade Marks Rules. In assessing whether he had the power to treat the giving of short notice as sufficient to enable the hearing to proceed in Mr. Gracey’s absence and without his consent, the Principal Hearing Officer would have been bound to recognise the importance of the relevant time limit in the context of the Rules as a whole.

50. The importance of the time limit cannot be doubted in the light of the observations of Millett LJ in Petch v. Gurney [1994] 3 All ER 731 at p. 736:

“The question whether strict compliance with a statutory requirement is necessary has arisen again and again in the cases. The question is not whether the requirement should be complied with; of course it should: the question is what consequences should attend a failure to comply. The difficulty arises from the common practice of the legislature of stating that something ‘shall’ be done (which means that it ‘must’ be done) without stating what are to be the consequences if it is not done. The court has dealt with the problem by devising a distinction between those requirements which are said to be ‘mandatory’ (or ‘imperative’ or ‘obligatory’) and those which are said to be merely ‘directory’ (a curious use of the word which in this context is taken as equivalent to ‘permissive’). Where the requirement is mandatory, it must be strictly complied with; failure to comply invalidates everything that follows. Where it is merely directory, it should still be complied with, and there may be sanctions for disobedience; but failure to comply does not invalidate what follows.”

and at p. 738:

“Where statute requires an act to be done in a particular manner, it may be possible to regard the requirement that the act be done as mandatory but the requirement that it be done in a particular manner as merely directory. In such a case the statutory requirement can be treated as substantially complied with if the act is done in a manner which is not less satisfactory having regard to the purpose of the legislature in imposing the requirement. But that is not the case with a stipulation as to time. If the only time limit which is prescribed is not obligatory, there is no time limit at all. Doing an act late is not the equivalent of doing it in time. That is why Grove J. said in *Barker v. Palmer* (1881) 8 QBD 9 at 10 - ‘provisions with respect to time are always obligatory, unless a power of extending the time is given to the court’. This probably cannot be laid down as a universal rule, but in my judgment it must be the normal one. Unless the court is given a power to extend the time, or some other and final mandatory time limit can be spelled out of the statute, a time limit cannot be relaxed without being dispensed with altogether; and it cannot be dispensed with altogether unless the substantive requirement itself can be dispensed with.”

The logic of these observations leads to the conclusion that the Registry’s failure to give “*at least 14 days’ notice*” was fatal to the validity of the 10th August hearing in the opposition proceedings unless the Rules could properly be taken to have given the Principal Hearing Officer a power to legitimise the giving of short notice in the circumstances of that hearing.

51. The power to abridge time limits is conspicuous by its absence from the Trade Marks Rules. Irregularities in procedure can be rectified under Rule 66 of the Trade Marks Rules 2000 (formerly Rule 60 of the Trade Marks Rules 1994) but not so as to deprive other provisions of the Act or Rules of their intended

effect: E's Applications [1983] RPC 231 (HL). The same constraint would appear to apply to the rectification of irregularities under Rule 68(7) of the Trade Marks Rules 2000 (formerly Rule 62(7) of the Trade Marks Rules 1994 as amended in 1998). Moreover I am not persuaded that "*an error, default or omission on the part of the Office or the registrar*" can be regarded as "*attributable*" to itself for the purposes of rectification under the latter provisions. No other provisions of the Rules appear to supply a power to depart from the requirement that the Registrar must give a party "*at least 14 days' notice*" of the time when he may be heard "*before taking any decision*" which is or may be adverse to that party. I can only conclude that the Principal Hearing Officer had no such power and that he was not entitled to treat short notice of the 10th August hearing in the opposition proceedings as sufficient to enable him to determine the interim applications in Mr. Gracey's absence.

Should I consider whether the interim applications were hopeless?

52. I think it is clear: (i) from the written representations recorded in paragraphs 5 and 7 above, that Mr. Gracey was proceeding (wrongly) on the basis that the validity of Gillette's registered trade mark number 2,137,569 was in issue in the opposition proceedings; (ii) from the written representations recorded in paragraph 7 above and in Annex A below, that he regards the existence and availability of the powers he wants the Registrar to exercise as sufficient to justify his request for a hearing at which to argue that those powers should be exercised in the manner he desires: (iii) from what he said at the hearing before me [Transcript pp.16, 17, 19, 20, 22, 25 and 26] and from the written representations

recorded in Annex A below, that he is presently unable or unwilling to be specific about the arguments he proposes to put forward at the new hearing he has requested; and (iv) that there are difficulties in the way of the applications he wishes to pursue. Should I now go on to consider whether, as Gillette maintains, the applications were hopeless?

53. It may be demonstrable that the process by which a decision has been reached was good enough, even if it involved a breach of procedure, to leave no room for any real doubt as to the rectitude of the determination. If so, the breach of procedure may be regarded as immaterial, both in the context of proceedings for judicial review of the determination: Wade & Forsyth Administrative Law 8th Edn (2000) pp.501 to 503; De Smith, Woolf and Jowell's Principles of Judicial Review (1999) paras. 9-030 to 9-035, pp.386 to 391; and in the context of proceedings by way of appeal: Lloyds Bank plc v. Dix (26 October 2000).

54. The Lloyds Bank case exemplifies the immunising effect of this approach to materiality. The question for consideration was whether an application for an adjournment made on the date fixed as the first day of a trial was wrongly refused by the trial judge. The refusal of an adjournment was said to have deprived the defendants of their right to a fair trial under Article 6(1) of the European Convention on Human Rights. Their appeal was rejected by the Court of Appeal. In paragraphs 31 and 32 of his judgment, Laws LJ observed.

“31. If I considered that an adjournment on 1st November 1999 would or reasonably might have made a material difference to the outcome of the

litigation. I should for my part be prepared to order a new trial.

32. However [counsel] was, I think, at first prepared to submit that even if this court were satisfied that on the facts the appellants had no prospect of resisting an order for possession and a money judgment for the value of the equity, still they should obtain relief here - presumably in the form of an order for a new trial - if it were demonstrated that the proceedings below were infected by procedural irregularity or unfairness. He pointed to differences between RSC Order 59 Rule 11 and CPR Part 52.11(3) as tending to show a heightened importance accorded by the new Rules, in the context of appeals to this court, to the requirements of procedural fairness. It is unnecessary to set out these provisions since [counsel] was at length disposed to accept that in a case where no procedural guarantees (or indulgences) could save a party from an inevitable conclusion on the merits that his case was truly hopeless, this court should not somehow allow him to go back into the fray because there had been some failure of fairness along the way. That would be for the court to act in vain, which it does not do. Nor, I should add, does Art. 6 of the European Convention on Human Rights require it to do so; though I would accept that that provision may raise nice questions as to the balance to be struck, case by case, between the force of a procedural defect on the one hand and the force of an apparently secure result, not flowing from any such defect, on the other. Those questions do not arise, however, where the litigation has only one possible result. And as I shall shortly demonstrate that, in my judgment, is the position here.”

Lord Phillips MR and May LJ agreed. The refusal to grant an adjournment was regarded as a matter of no materiality relative to the determination that the court was required to make. For present purposes, I think it is important to note that the decision to refuse an adjournment was taken by the trial judge at a duly appointed

hearing, in the exercise of a discretion he undoubtedly possessed, in the presence of the defendants and after considering representations made on their behalf.

55. It is clear that the denial of a right to be heard will not readily be regarded as an immaterial breach of procedure. In R. v. Broxtowe Borough Council ex parte Bradford [2000] IRLR 329 the Court of Appeal (Lord Woolf MR, Waller and Chadwick L.JJ) adopted and applied the following observations of Bingham LJ in R. v. The Chief Constable of the Thames Valley Police ex parte Cotton [1990] IRLR 344 at 352, paragraph 60:

“While cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all the circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:

1. Unless the subject of the decision has had an opportunity to put his case it may not be easy to know what case he could or would have put if he had had the chance.
2. As memorably pointed by Megarry J in *John v. Rees* [1970] Ch 345 at p.402, experience shows that that which is confidently expected is by no means always that which happens.
3. It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if the complainant’s position became weaker as the decision-maker’s mind became more closed.
4. In considering whether the complainant’s representations would have made any difference to the outcome the court may unconsciously stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of a decision.

5. This is a field in which appearances are generally thought to matter.

6. Where a decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied.”

In the context of a statutory right to be heard it may be necessary to have regard to the further consideration identified by Millett LJ in Petch at p.735 that a court or tribunal cannot assume a jurisdiction to waive or vary a statutory requirement upon which the very exercise of its jurisdiction depends.

56. In the present case I can see no escape from the conclusion that the decision to proceed with the hearing of Mr. Gracey’s interim applications on the basis of short notice, in his absence and without his consent was a material breach of procedure. Rectitude in the determination of those applications required the minimum period of notice specified in Rule 54 to be given to him in advance of the hearing at which he was to have the opportunity to be heard before any decision adverse to him was taken. I think that the imperative terms in which Rule 54 is expressed and the absence of any power in the Registrar to legitimise non-compliance with its provisions leave me with no alternative but to regard the breach of procedure in issue in this appeal as a material breach. It would not be right in those circumstances for me to examine the merits of the interim applications. I would simply be compounding the breach of procedure if I attempted to do so.

Conclusion

57. For the reasons I have given, the appeal in Opposition No. 49435 will be allowed, the Principal Hearing Officer's determinations in relation to Mr. Gracey's interim applications in the opposition proceedings will be set aside (as will the order for costs he made in favour of Gillette in that connection) and the interim applications will be listed for hearing before a different hearing officer at a hearing to be appointed and notified to the parties in due course. The parties should be notified of the date appointed for the hearing by means of notifications sent to addresses which can be regarded as their addresses for service in accordance with the provisions of Rule 10 of the Trade Marks Rules 2000, whether or not copies of any such notifications are sent to any other addresses by way of confirmation or as a precautionary measure. Any request for the opportunity to participate in the appointed hearing via a telephone link should be made in writing and communicated to the Registry no later than 10 days prior to the appointed date so that the necessary arrangements can (if reasonably practicable) be put in place within the time available between receipt of the request and the due date of the hearing.

58. It appears to me that the outcome of Mr. Gracey's interim applications will shed light backwards on the extent to which the parties' costs of this appeal and their costs of the abortive hearing in the opposition proceedings on 10th August 2000 were reasonably and properly inflicted and incurred, in pursuit and defence of those applications. Those costs will therefore be treated as costs in the opposition. The question of how and by whom they are to be borne and paid will

be reserved for determination by the Registrar as and when she comes to consider an award in respect of the costs of the interim applications.

59. I decline to make an order for costs against the Registrar. Mr. Gracey could reasonably have been expected to do more than he did to facilitate the determination of his interim applications. He appears to me to have been demanding of others and generally undemanding of himself in the application of the Trade Marks Rules to these proceedings. The grounds upon which he maintains that the Registrar should accede to his applications remain obscure to this day. He knew in advance of the notification he received on 28th July 2000 that the Registry was taking steps, at his request, to appoint a hearing to consider his applications. He did not object to receiving short notice of the hearing until Sunday 6th August 2000 when he sat down to prepare, thought to himself “Well there is a lot of work to do here” and sent a letter to the Registry by fax asking for the hearing to be postponed [Transcript p.25 lines 12 to 17]. So far as I can tell, there was nothing to prevent him from travelling to London and attending the hearing in person on 10th August 2000 if he had been minded to do so [Transcript p.24 lines 9 to 21 and p.26 lines 9 to 13]. In support of his request for delay he relied purely on the fact that there had been a breach of the rules [Transcript p.17]. The Principal Hearing Officer concluded that Mr. Gracey’s reliance upon the rules was misplaced. He did so in good faith and went ahead with a view to advancing matters so that the opposition could thereafter proceed to a substantive hearing. Being wrong in that conclusion and endeavour is not sufficient, in my view, to make the denial of Mr. Gracey’s request for delay, in the circumstances I have

described, a matter in respect of which the Registrar should be ordered to pay costs.

60. The appeal in the revocation proceedings stands withdrawn with no order for costs as noted in paragraph 30 above.

Geoffrey Hobbs Q.C.

23 May 2001

Nicholas Dynes Gracey, the appellant, appeared and participated via a telephone link.

Simon Ayrton of Messrs Bristows, Solicitors, appeared on behalf of Gillette.

Mike Knight, Principal Hearing Officer, appeared on behalf of the Registrar.

ANNEX A

REASONS WHY THE REGISTRAR SHOULD RESPECT:-

RULE 54 OF THE TRADE MARKS RULES 2000,

IN RELATION TO HER THU.10.AUG.00 DECISION

AND WHY THAT DECISION SHOULD BE SET ASIDE ...

1. All the reasoning documented in my Grounds of Appeal & Statement of Case.

2. All the reasoning documented in the transcript of the WED.31.JAN.01 hearing.
3. All my applications are capable of refinement & clarification before or during my requested hearing.
4. Rolf Gustafson v. Sweden, 25 E.H.R.R. page 623, 1997, '*... Access to Court for criminal compensation ...*'.
5. In re. Medicaments and Related Classes of Goods (No 2), The Times Law Report, page 29, FRI.02.FEB.01, '*... Objective test of perceived bias in tribunal ...*'.
6. My MON.29.JAN.01 email to the Appointed Person c/o the Treasury Solicitor.
7. The Registrar refused my telephone attendance.
8. Berol & Registrar count 12 days as 14.
9. Proper notice could only have been made by fax.
10. The Registrar alleged '*... You may think Mr. Nicholas Dynes Gracey is a cross that you have to bear ...*'.

11. Lambeth London Borough Council v. Hughes, May 2000, CA, unrep (Civil Procedure News, Issue 9/2000, November 24, 2000) Summary - '*... held, allowing D's appeal, (1) oppression includes conduct which effectively deprives a tenant of his opportunity to apply for a stay, (2) where oppression is in issue, the conduct of the court staff as well as that of the judgment creditor may be taken into account (Civil Procedure 2000, Vol.1, para. cc27.17.1, and Vol.2 para. 3A-348) ...*'.

12. Southwark LBC v. Sarfo (2000) 32 HLR 602, CA (Gazette, 94/47, 7 December 2000, p.42) Summary - '*... the Cour of Appeal confirmed that an executed warrant can be set aside if there has been oppression in the execution. Roch LJ said: "Oppression ... is the insistence by a public authority on its strict rights in circumstances which make that insistence manifestly unfair. The categories of oppression are not closed because no-one can envisage all the sets of circumstances which could make the execution of a warrant oppressive." ...*'.

13. Saint v. Barking and Dagenham LBC (1999) 31 HLR 620, CA (Gazette, 94/47, 7 December 2000, p.42) Summary - '*... A warrant was set aside after eviction because the conduct of the council in obtaining and executing the warrant had been 'oppressive'. It had been under a duty 'promptly' to invite the applicant to renew his housing benefit under the Housing Benefit (General) Regulations 1987 reg 72(14). This obligation required the council to send the renewal form to an address where it was likely to come to the applicant's attention. The council was relying on its own wrongdoing*

in obtaining the warrant to the extent that non-payment of housing benefit had caused the suspended order to be breached. Second, before the applicant's arrest his level of arrears had fallen below the level required to comply with the suspended order and when the warrant was applied for his outstanding debt was small. If he had been given an opportunity to apply to suspend the warrant of possession he should have succeeded ...'.

14. *Hammersmith and Fulham LBC v. Lemeh July 2000 Legal Action 28, CA (Gazette, 97/47, 7 December 2000, p.42) Summary - '... the defendant went to court to apply to suspend a warrant the day before it was due to be executed. A member of the court staff, wrongly, told him that there was no warrant. As a result he left the court and the warrant for possession was executed the following morning. The defendant applied to set aside execution of the warrant on the ground of oppression. The application was granted and the council appealed contending that oppression had to be caused by the landlord and not by the court. The Court of Appeal dismissed the council's appeal. Once a warrant for possession has been obtained its execution is a matter between the tenant and the court. There is no reason why misleading information from a court officer, preventing a tenant from taking steps to have execution of a warrant stayed prior to execution, cannot amount to oppression. In the present case, that was a question of fact. It was clear that if the member of court staff had not given the wrong information, the defendant would have been able to make his application, and undoubtedly had the application heard before the execution ...'.*

15. Lambeth London Borough Council v. Hughes July 2000 Legal Action 29, CA (Gazette, 94/47, 7 December 2000, p.42) Summary - *'... the Court of Appeal held that: (1) the council's statement that only payment in full could prevent eviction was misleading and 'oppressive' in the absence of any reference to the possibility of an application to the court; and (2) the posting by the court of a bailiff's letter advising the occupant of the date for eviction in such a way that it was only received as the eviction was taking place again made the execution oppressive ...'*

16. Lloyds Bank v. Dix, CA, THU.26.OCT.00.
 - (a) Dix had had a hearing ...

 - (b) Legal Aid was withdrawn.

 - (c) Dix sought adjournment.

 - (d) Dix had hearing at which Dix arguments were made.

 - (e) At that same hearing Dix written evidence was considered.

17. My arguments in support of any of my applications have yet to be heard.

18. My legal authorities in support of any of my applications have yet to be heard.

19. My submissions at the hearing may persuade the Registrar or on appeal to the Court or higher Authority.
20. CPR volume 1, Autumn 2000 edition, page 11, paragraph 1.3.10, ‘... *Human Rights Act 1988 (HRA) and the CPR ...*’.
21. CPR volume 1, Autumn 2000 edition, page 8, paragraph 1.3.6, ‘... *Ensuring parties on equal footing ...*’.
22. CPR volume 1, Autumn 2000 edition, page 4, paragraph 1.3.1, ‘... *Section 6 HRA ...*’.
23. The Opponent appears happy with the Registrar’s Decision so should be willing to avoid attendance & costs at my first hearing of my applications, given the Opponent’s alleged belief that my new evidence and arguments will be ‘hopeless’, one test therefore is the Opponent’s willingness to stay away from my hearing, a hearing which is to assist in the protection of my IPR ‘property’ (HRA Protocol 1, Article 1 ‘... *Right to Property ...*’).

STATEMENT OF TRUTH: MY BELIEF IS THAT ALL THE FACTS STATED
IN THIS CORRESPONDENCE ARE TRUE.