

**IN THE MATTER of Trade Mark Registration No 2222113  
in the name of Shafeeq Akram**

**and**

**IN THE MATTER of an application for invalidity No 80710  
by Vehicle Options Limited**

### **Background**

1. On 11 February 2000, Mr Shafeeq Akram applied under the Trade Marks Act 1994 to register the trade mark shown below:



2. Following amendment of the specification during the examination process, the mark was advertised for opposition and subsequently proceeded to registration for a specification of goods and services which reads:

**Class 12**

Motor land vehicles; anti-theft devices for vehicles.

**Class 36**

Financial brokerage services for motor land vehicles.

3. On 18 January 2002, Vehicle Options Ltd filed an application for a declaration that the registration be declared invalid. The application was made on Form TM26(I) together with the appropriate fee. The application was accompanied by a statement of case, setting out the two grounds for invalidity. They are:

- (1) under section 3(6) in that the applicants have made substantial use of the mark VEHICLEOPTIONS in the United Kingdom since December 1998 and that they operate in the sector of vehicle finance brokerage and have built up a

network of approximately 30 franchisees in the United Kingdom. They claim that the registered proprietor became a Vehicle Options' franchisee on 28 July 1999 after signing an agreement with the applicants. It is stated that on 2 November 2000, the applicants notified Mr Akram of their intention to terminate the contract. At the beginning of the same year, 2 February 2000, Mr Akram had filed the trade mark application for the trade mark in suit VEHICLEOPTIONS.CO.UK & device. They claim that Mr Akram is also the owner of the domain name vehicleoptions.co.uk and that when filing both the trade mark and domain name applications, Mr Akram was under the obligations of the franchise agreement signed on 28 July 1999. As such, they claim that Mr Akram's dealings fell short of the acceptable standards of commercial behaviour and that as such, the application was made in bad faith.

- (2) under section 5(4)(a) in that the applicant has made substantial use of the mark VEHICLEOPTIONS since 31 December 1998, it has built up a substantial goodwill and reputation in the mark in the area of vehicle financial brokerage. As such, the applicant believes that use of the mark VEHICLEOPTIONS.CO.UK by Mr Akram has induced other finance broker [sic] to mistakenly infer that Mr Akram [sic] services and those provided by the applicant are from the same source. Consequently the applicant has suffered damage and is still suffering damage. They claim the application should not have been registered because its use was liable to be prevented by virtue of passing off.

4. The registered proprietor filed a counterstatement denying the grounds of invalidity.

5. Both sides filed evidence in the proceedings and the matter came to be heard before me on 2 April 2003. At the hearing, Mr Visintini from Field Fisher Waterhouse represented the applicants for invalidity. Mr Akram represented himself and appeared via a video link.

## **Evidence**

### Applicant's Evidence

6. This consists of:

- a witness statement dated 20 June 2002 by Mr Gary Stephen Franklin, Company Director and one of the founders of Vehicle Options Ltd. The witness statement includes some sixteen exhibits. He gives evidence as to incorporation of his company and the subsequent activity of that company. His evidence explains how a franchise network was set up. Mr Franklin also gives evidence concerning the relationship between his company and the registered proprietor, Mr Akram.

### The Registered Proprietor's Evidence

7. This consists of:

- a witness statement dated 13 September 2002 by the registered proprietor, Mr Shafeeq Akram. The witness statement includes thirty-one exhibits. He gives evidence about his business and how he came into contact with the applicant for invalidity and entered into an agreement with them. His evidence explains the dealings with the applicant and how he became dissatisfied with the arrangement. Mr Akram analyses the applicant's evidence and makes various comments about it. He also gives evidence concerning his own use of the trade mark.

### The Applicant's Evidence in Reply

8. This consists of :

- a further witness statement 25 November 2002 by Mr Franklin. He makes various comments concerning Mr Akram's evidence.

9. Some of the basic facts in this case are not in dispute, the applicant and registered proprietor were in a commercial relationship. However, both parties dispute the interpretation to be put on that relationship and the obligations that this did or did not place upon them. Equally, the registered proprietor disputes the applicant's claim to a goodwill and reputation in the trade mark. In so far as it is necessary to discuss the evidence filed by both parties, I will do so as part of my decision.

### **Decision**

#### Grounds

10. The provisions relating to invalidity can be found in section 47 of the Trade Marks Act 1994, it reads:

“47.-(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trade mark may be declared invalid on the ground -

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

- (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(3) An application for a declaration of invalidity may be made by any person, and may be made either to the registrar or to the court, except that -

- (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
- (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(4) In the case of bad faith in the registration of a trade mark, the registrar himself may apply to the court for a declaration of the invalidity of the registration.

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed.”

11. The applicant’s grounds go to sections 3(6) and 5(4)(a) which read:

“3(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

“5.- (4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or
- (b) .....

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

## Section 5(4)(a)

12. I will deal first with the applicant's ground under section 5(4)(a). The requirements for this ground of invalidity have been restated many times and can be found in the decision of Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *WILD CHILD Trade Mark* [1998] RPC 455. The three elements that must be present can be summarised as follows:

- (1) that the goods or services of the applicant have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the registered proprietor (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the registered proprietor are goods or services of the applicant; and
- (3) that the applicant has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the registered proprietor's misrepresentation.

13. Thus, assuming notional and fair use, I must determine whether, as at the date of application for the trade mark, the applicant could have prevented the registered proprietor from using the trade mark in suit under the law of passing off. As in both grounds of invalidity, the onus is on the applicant to show that their ground of invalidity is made out.

### Goodwill and Reputation

14. Mr Visintini took me to the evidence filed by Mr Franklin which in his view supported the applicant's claim to a goodwill and reputation in the trade mark VEHICLE OPTIONS. He took me through the history of the company known as Vehicle Options Limited from its incorporation in late December 1998 through to the date when Mr Akram filed the application for the trade mark, 11 February 2000. In order to prove the ground of invalidity, the applicant must show that in that thirteen month period they established the necessary goodwill and reputation in their trade mark. Does their evidence support this claim?

15. Mr Visintini took me to the evidence showing the number of leasing companies, franchisees and dealerships with which Vehicle Options had established relationships. In addition, he suggested that the Director's Reports and Financial Statements for the years 1999, 2000 and 2001 were testimony of the success of Vehicle Options. Most of the year 2000 and the year 2001 are outside the relevant period and so are of no value to me in deciding this point.

16. Unfortunately, in my view, the evidence is not very helpful. In his evidence, Mr Franklin refers to the leasing companies with which his company had established relationships. At GSF1 he provides a lists of leasing companies with which his company has established relationships "since December 1998". This evidence does not tell me the number of such arrangements in place at the relevant date, February 2000. As an example, at GSF2 he provides two such contracts and correspondence with leasing companies. There is a software

licence with All Vehicle Contracts Limited, dated 11 December 1998 (before the date of the applicant's incorporation – but I do not think that particularly relevant), and an agreement between British Car Contracts Limited and the applicant dated 13 August 1999. There is also correspondence from a company EVR (Eden Vehicle Rentals Ltd) dated December 1998 and January 1999.

17. Mr Franklin states that they have thirty one franchisees and provides a list at GSF3 and a list of car dealerships with which he states his company has established a relationship since December 1998. Again, both these exhibits give me no indication as to the number of franchisees or dealerships which the applicant had established contact at February 2000. The list of dealerships is impressive but I have no idea of the extent of the relationship with each, nor the date on which any relationship was formed. Mr Franklin states in his evidence that “the majority of franchisees trade as My Company and all franchisees have the consent to use My Company trade marks and logo”. How many were trading at February 2000 and how many of those under the applicant's trade mark? In my view, I cannot answer either question on the basis of the evidence before me.

18. I am told in the evidence that in excess of £15000 was spent on advertising and marketing in 1999, figures for 2000 and 2001 are provided but are not relevant. An example of their promotional literature is exhibited at GSF6, it has a copyright date of February 2002 and so is not relevant

19. The Directors' Report and Financial Statements for the year 1999 (GSF5) show a gross profit of £224,736 that is before administrative expenses, tax and other deductions, the retained profit is shown as £6,871. I have no way of knowing whether this represents a significant turnover in this field.

20. Thus, whilst it is clear that the company was trading at the relevant date, on the basis of the evidence before me, I have no way of establishing the nature and extent of that use and so of assessing whether the applicant had the necessary goodwill and reputation. The onus in these proceeding is on the applicant, it is for them to bring forward evidence of goodwill and reputation. **They have not done so here. As such, I find that the applicant has failed to show the necessary goodwill and reputation in the trade mark VEHICLE OPTIONS as at the relevant date.**

Conclusion under section 5(4)(a)

**21. As the applicant has failed to show the necessary goodwill and reputation, the ground of invalidity under section 5(4)(a) of the Act is not made out and falls to be dismissed.**

### Section 3(6)

22. As with the objection under section 5(4)(a), the onus is on the applicant. It is for them to show that the registered proprietor, Mr Akram, made the application for the trade mark in bad faith. A number of cases from the High Court and Appointed Person have commented on the application of this section. In particular, there is the often quoted statement of Mr Justice

Lindsey in *Gromax Plasiculture Ltd v. Don & Low Nonwovens Ltd* [1999] R.P.C. 367 at page 379. The relevant passage is cited in a decision of Mr Geoffrey Hobbs Q.C., *Demon Ale Trade Mark* [2000] RPC 345, where he stated:

“I do not think that section 3(6) requires applicants to submit to an open-ended assessment of their commercial morality. However, the observations of Lord Nicholls on the subject of dishonesty in *Royal Brunei Airlines Sdn Bhd v. Philip Tan* [1995] 2 A.C. 378 (PC) at page 389 do seem to me to provide strong support for the view that a finding of bad faith may be fully justified even in a case where the applicant sees nothing wrong in his own behaviour.

In *Gromax Plasticulture Ltd v. Don & Low Nonwovens Ltd* [1999] R.P.C. 367 Lindsay J. said (page 379):

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

These observations recognise that the expression "bad faith" has moral overtones which appear to make it possible for an application for registration to be rendered invalid under section 3(6) by behaviour which otherwise involves no breach of any duty, obligation, prohibition or requirement that is legally binding upon the applicant. Quite how far the concept of "bad faith" can or should be taken consistently with its Community origins in Article 3(2)(d) of the Directive is a matter upon which the guidance of the European Court of Justice seems likely to be required: *Road Tech Computer Systems Ltd v. Unison Software (U.K.) Ltd* [1996] F.S.R. 805 at pages 817, 818 *per* Robert Walker J.

In the present case the objection under section 3(6) related to the applicant's breach of a statutory requirement. Section 32(3) of the Act required him to be a person who could truthfully claim to have a bona fide intention that DEMON ALE should be used (by him or with his consent) as a trade mark for beer. His application for registration included a claim to that effect. However he had no such intention and could not truthfully claim that he did. That was enough, in my view, to justify rejection of his application under section 3(6).”

23. More recently, Mr Simon Thorley, Q.C., sitting as the Appointed Person in *Eicher Limited Royal Enfield Motor Units v. David Matthew Scott Holder T/A Velocette Motorcycle Co* [2002] RPC 24 stated:

“31. An allegation that a trade mark has been applied for in bad faith is a serious allegation. It is an allegation of a form of commercial fraud. A plea of fraud should not lightly be made (see Lord Denning M.R. in *Associated Leisure v. Associated Newspapers*

(1970) 2 QB 450 at 456) and if made should be distinctly alleged and distinctly proved. It is not permissible to leave fraud to be inferred from the facts (see *Davy v. Garrett* (1878) 7 Ch. D. 473 at 489). In my judgment precisely the same considerations apply to an allegation of lack of bad faith made under section 3(6). It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference. Further I do not believe that it is right that an attack based upon section 3(6) should be relied on as an adjunct to a case raised under another section of the Act. If bad faith is being alleged, it should be alleged up front as a primary argument or not at all.”

24. That being the case, what does the evidence tell me? Firstly I should point out that some of the evidence concerns ownership of domain names including or based on the words VEHICLE OPTIONS. Mr Akram owns at least one, indeed during the course of the hearing he stated that he had recently purchased another. Ownership and any disputes between the parties as to ownership of these domain names is not directly relevant to the dispute before me. I will make some reference to the domain names but not perhaps as much as the evidence would suggest. Equally, some of the evidence goes to the bona fides of the applicant company. Mr Akram makes various statements about their mode of operating and also about investigations into the way the company is run. An example is the claim that Vehicle Options broke their agreement in appointing another franchisee near to Mr Akram. In my view, these allegations, although clearly important to Mr Akram, are not relevant to the issue before me. I must assess whether, on the basis of the evidence before me, Mr Akram acted in bad faith in filing the application for the trade mark on 11 February 2000. The way in which the applicant for invalidity conducts its business is not in my view relevant.

25. So what of the relevant facts? Many of the basic facts are not in dispute. It is not disputed that Mr Akram joined Vehicle Options as a agent/franchisee on 28 July 1999. The agreement is exhibited at GSF7. He was given notification of termination of the agreement on 2 November 2000, nearly nine months after the application was filed for the trade mark in suit. Thus, at the date when the application was filed Mr Akram was subject to the terms of the agreement between the two parties.

26. Where the two sides differ is in their interpretation of this agreement. What does the agreement say? It is dated 28 July 1999, between Vehicle Options Limited (Vehicle Options) and Mr Shafeeq Akram and acknowledges him as an agent and that they will provide him with the facilities to act as a vehicle finance broker. It consists of a letter and Appendix. There are various provisions about the use of software provided by Vehicle Options as part of the deal. For example, Paragraph 3 of the letter states, “...software is exclusively for [the agents] use and for persons directly in his employ and that under no circumstances, other than with Vehicle Option’s consent in writing, will [the agent] permit any other party to access or gain possession of any copy or any part or component thereof”.

27. There are provisions relating to subscriptions and monthly management fees and it is stated that the agreement will continue in force for a term of five years subject to the right of Vehicle Options to terminate. There are various clauses to limit the liability of Vehicle Options who give no guarantee in connection with the sales volume profitability. There is the usual catch all clause,



“This Agreement constitutes the entire agreement between the two parties and the Agent acknowledges that he had not relied on any oral or written representations not contained in this Agreement.”

28. The letter appears to be signed by Mr Akram. Appendix A and B set out obligations of the Agent and Vehicle Options. The Agreement makes no mention of the ownership use or otherwise of the trade mark VEHICLE OPTIONS.

29. Mr Akram submits that this is the end of the matter. The Agreement is silent on the ownership and use of the trade mark VEHICLE OPTIONS, therefore there was nothing to stop his applying for the trade mark the subject of this dispute. In making the application he was not in breach of the terms of the agreement and so cannot be said to have acted in bad faith. Further he argues that the relationship between them was one of broker/agent not franchisor/franchisee.

30. The applicant submits that Mr Akram, along with its other franchisees had an implied licence to use the mark of the applicant but that ownership of that mark did not pass to the franchisee. They submit that Mr Akram, or indeed any other franchisee, could not claim to be the owner of the trade mark the subject of the registration. The applicant states that there is an implied licence in the agreement between the parties concerning use of the VEHICLE OPTIONS trade mark and so the trade mark the subject of the registration. It is a great pity that companies such as the applicant do not take better care of their intellectual property rights. The agreement is full of reference to software, presumably because the third party who owned the software made it a requirement in their agreement with Vehicle Options Ltd that they should ensure proper use of the copyright in their software. Such a clause in the agreement with Mr Akram concerning the use of the trade mark VEHICLE OPTIONS would have greatly simplified proceedings. As it is, it does not affect the eventual outcome.

31. Mr Akram’s evidence refers to other franchisees using domain names including the words VEHICLE and OPTIONS. The applicant in the evidence accepts this but states that on the termination of contractual relations, such franchisees are requested to stop using the trade mark and logo VEHICLE OPTIONS and any associated domain names. Their evidence states that the domain names referred to in Mr Akram’s evidence are inactive with the exception of those owned by Mr Akram and that to the best of their knowledge all former franchisees have stopped using the VEHICLE OPTIONS trade mark and logo on termination of the contractual relations. They submit that this is normal and acceptable commercial behaviour observed by reasonable and experienced men in the area of expertise of the applicant.

32. Further, the applicant asserts that Mr Akram recognized this arrangement by requesting “permission” from the applicant for his filing of the domain name “vehicleoptions.co.uk”. Mr Franklin states:

“Mr Akram registered the domain name [www.vehicleoptions.co.uk](http://www.vehicleoptions.co.uk) on 25 September 1999. As admitted by Mr Akram in his counter-statement and in his letter of 16 April 2001 (Exhibit GSF10). Mr Akram before registering this domain name, informed me of his intention and obtained my consent to the registration of the domain name [www.vehicleoptions.co.uk](http://www.vehicleoptions.co.uk). I took no objection to Mr Akram registering the domain name because he was, at the time, a franchisee and my understanding was that registration of

the domain name was in trust for the benefit of My Company. I intended to support Mr Akram [sic] initiative to promote and advertise My Company's services via the Internet. Given the relationship of trust created by the franchise agreement, it was not unreasonable to expect Mr Akram to relinquish or transfer the domain name to My Company upon termination of the contractual relationship with My Company."

33. Mr Akram's version of this event is as follows, he states:

"In paragraph 17 of the applicant's witness statement he admits that I notified him of my intention to register the domain name [www.vehicleoptions.co.uk](http://www.vehicleoptions.co.uk). He was aware that I was establishing my own online business selling a multitude of automotive services via the domain. He knew that this was my own independent operation independent of his company. At no time did I create the impression that the domain was in trust for his Company. I think, knowing the applicant quite well and reading this witness statement and by examining the exhibits that the applicant would have wanted this in writing. I did not even mention the applicant on the web site at all, not even a single line because it was my own independent work devoid of any relationship with the applicant. His claim that he supported my domain name registration is false. In Exhibit SA18 are copies of two invoices. These are my first marketing invoice and my invoice for the purchase of the domain. Shortly after I purchased the domain I took both these invoices to the applicant personally for a meeting. In the meeting I presented him with both these invoices. The second invoice is of most relevant because I had to revise it before re-submitting. As I was going to advertise leasing services as well as other things on the website I wanted to include this expense in my marketing invoice. It was rejected because the internet had nothing to do with marketing....."

34. In his second witness statement, Mr Franklin refers to Exhibit 2GSF3 which he states is the original invoice submitted by Mr Akram for the domain name. It is dated 1 October 1999 and includes a reference to "Net Address Ltd" for £57.58. At 2GSF4 there is an e-mail from Heather Franklin (Account Manager) concerning, Net Address Ltd it states: "Costs associated with the Internet eg domain name registration, site design etc are not reimbursable. However, I understand that Jim has spoken to you and we may reimburse the full amount paid (provided you can supply a receipt) and adopt the domain name."

35. This evidence goes to the ownership of the domain name. Again, ownership of that name is not directly relevant to the dispute here. However, I think that it does to some extent show the relationship between the parties. I find it strange that Mr Akram should seek payment from the applicant for registering the domain name, if he did not believe that the applicant had some connection with the name VEHICLE OPTIONS.

36. Mr Akram also notes that his trade mark is not VEHICLEOPTIONS.CO.UK but includes a logo and colour. He makes allegations concerning infringement of copyright in his logo by the applicant, again that is not relevant to these proceedings. Although Mr Akram's trade mark contains other elements in addition to VEHICLE OPTIONS it seems to me that to the eye and the ear it is a VEHICLE OPTIONS trade mark. If I would find on the evidence that an application by Mr Akram for the trade mark VEHICLE OPTIONS was an act of bad faith, then the additional matter in the trade mark as registered, would not, in my view, affect my decision.

37. Mr Akram asserts that he was not acting in bad faith when he made his application. There was no request for cross-examination by either party in these proceedings. Absent such cross-examination, I must accept the statements made by Mr Akram unless there is evidence from the other party which calls those statements into question.

38. The provisions of section 3(6) state that a trade mark shall not be registered **if or to the extent that** the application is made in bad faith (my emphasis). Thus it could be possible to find that an applicant may have filed a trade mark for a range of goods and services and the extent to which that application was made in bad faith might vary dependent upon the different goods and services. Here Mr Akram has a registration for:

**Class 12**

Motor land vehicles; anti-theft devices for vehicles.

**Class 36**

Financial brokerage services for motor land vehicles.

39. The applicant's core business is in financial brokerage services for motor land vehicles. However, there is in my view a clear link between the provision of finance for the purchase of a vehicle and the vehicle itself. There is a more tenuous link to anti-theft devices but if I found that Mr Akram had acted in bad faith in filing the trade mark for Class 36 and for Motor land vehicles in Class 12, I would be reluctant to leave his registration for "anti-theft" devices intact. This could well block an application by the applicant for their trade mark in their legitimate area of trade. To allow an application to remain on the register in such circumstances when it has been found that the applicant acted in bad faith in filing the application would in my view be perverse. Thus, if I find that Mr Akram acted in bad faith in filing the application in Class 36, it seems to me that the finding will apply to all the goods and services of his registration.

Conclusions under section 3(6)

40. In so far as Mr Akram might have seen nothing wrong in his own behaviour, his statement that he did not believe that he was acting in bad faith in making the application, may be true. But that is not an end of the matter. The question of bad faith cannot be determined as against each individual applicant's own state of mind. Such an interpretation of bad faith would lead to variable applications of the principle based on the moral makeup of each applicant. What one applicant may consider to be perfectly reasonable, another may consider to be an act of bad faith. As noted above, it includes behaviour which otherwise involves no breach of any duty, obligation, prohibition or requirement that is legally binding upon the applicant. Do the actions of Mr Akram, fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined?

41. Having regard to all the evidence I think the answer to this question must be yes. I do not reach that view lightly. However, it seems to me that Mr Akram was aware that the applicant conducted a business under the trade mark VEHICLE OPTIONS, holding themselves out as a

franchisor or broker for other businesses, and stating that they would provide those businesses with the wherewithal to conduct business. I say “holding themselves out” as much of Mr Akram’s evidence goes to the conduct of the applicant and his view that they did not provide all the help they said they would supply. The allegations of Mr Akram may or may not be true. That is not relevant to the question here. Mr Akram may not have seen anything wrong in his own behaviour, but it seems to me, from the stand point of a reasonable and experienced man in the particular area being examined, the action of Mr Akram in applying for the trade mark the subject of the registration in suit, was an act of bad faith. In my view, such a reasonable and experienced man, aware of all the circumstances in this case, would have reached the view that the trade mark VEHICLE OPTIONS was the property of Vehicle Options Ltd and that to file an application for that trade mark would fall short of the acceptable commercial standards in the field and amount to an act of bad faith.

**42. Taking all these factors together, I find that the application was filed in bad faith and the applicant’s ground of invalidity under section 3(6) is made out.**

#### **Consequences of Decision**

**43. The applicant’s ground under section 5(4)(a) is dismissed, but they have succeeded in their objection under section 3(6) of the Act and the trade mark is declared invalid.**

**44. Under section 47(2)(b) I declare trade mark number 2222113 invalid and in accordance with section 47(6) I declare that the registration be deemed never to have been made.**

#### **Costs**

**45. The applicant has been successful and is entitled to a contribution towards their costs. I order that the registered proprietor pay the applicant the sum of £2000 as a contribution towards their costs.** This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 21<sup>st</sup> day of November 2003**

**S P Rowan  
For the Registrar  
the Comptroller-General**