

O-197-09

TRADE MARKS ACT 1994

**IN THE MATTER OF CONSOLIDATED PROCEEDINGS BETWEEN
JUST JUNK LTD (JJL) AND JUST JUNK FRANCHISING CORPORATION (JJFC)
UNDER NOS. 83210 & 96379
CONSISTING OF JJFC'S OPPOSITION TO JJL'S APPLICATION NO. 2467426
AND JJL'S APPLICATION TO HAVE JJFC'S REGISTRATION NO. 2450401
DECLARED INVALID**

BACKGROUND

1) On 20 September 2007 JJJL filed an application to register the following trade mark:



2) Following examination, the trade mark was accepted and published for opposition purposes on 4 January 2008, for “Refuse collection services” in class 39.

3) On February 2008 JJFC filed a notice of opposition. This consists of a single ground based upon section 5(2)(b) of the Trade Marks Act 1994. JJFC rely on the following trade mark:

Trade Mark	No.	Application Date	Registration Date	Services
JUST JUNK	2450401	22.03.2007 - IC Priority claimed from 3.11.2006 (Canada)	26.10.2007	39 - Rubbish cartage and collection services.

4) On 11 June 2008 JJJL filed a counterstatement which consists, in essence, of a denial of the ground on which the opposition is based. I note that in their counterstatement JJJL say inter alia:

“I have traded with this name for 3 years....”

And:

“Other party have rejected talks to settle matter.”

5) On 14 April 2008 JJJL applied to have the registration mentioned in paragraph three above declared invalid on the basis that it contravenes section 5(4)(a) of the Act because JJJL have:

“.. unregistered rights in the trade mark “Just Junk””.

6) The application contains, inter alia, the following comments:

“4. [JJL] sent a Cease and Desist Notice to [JJFC’s] agents in August 2007.

5. [JL] stated that [they] had unregistered rights in the said trade mark, had been using the trade mark since 2003 having built substantial goodwill and reputation.

6. [JL] requested [JFC] to withdraw the application by 14th September 2007.

7. [JFC] did not respond.....

8. [JFC] has not commenced or undertaken any trading activity in the UK to date using the trade mark.

9. [JL] undertook market research activities into the waste management and recycling industries in 2003.

[JL] developed a business plan in 2004 and commenced trading in 2005.

On the 5th October 2005 [JL] registered a limited liability company in the name of Just Junk Ltd...

[JL's] activities have and do comprise identifying customers (commercial and domestic) with excess waste/rubbish/junk, arranging collection, recycling and disposal thereof.....

[JL] established a website presence in 2006 and through extensive investment in website advertising and marketing with Google, Yell.com, Thomson and others developed online goodwill and reputation in the UK for the brand Just Junk...

[JL] has since developed a growing reputation amongst business and domestic consumers, resulting in substantial goodwill and reputation for both the business and trading name, Just Junk.”

7) On 29 May 2008 JFC filed a counterstatement which, broadly, requires JL to prove their various assertions mentioned above.

8) While only JL filed evidence in these consolidated proceedings, I note that Urquhart-Dykes & Lord LLP (JFC's professional representatives in this matter), filed written submissions (in lieu of filing evidence) under cover of a letter dated 16 February 2009, and additional written submissions on 14 May 2009. I shall refer to these as and when necessary in my decision. Both parties seek an award of costs in their favour. Neither party requested to be heard. JL did not file any written submissions.

JL'S EVIDENCE

9) This consists of a witness statement, dated 12 November 2008, from Naseem Iqbal, JL's Managing Director, a position he has held since October 2005. Mr Iqbal confirms that the information in his statement comes from his own knowledge or from the records of his company. Mr Iqbal explains that JL was incorporated on 5 October 2005. Exhibit NI1 consists of a copy

of a Certificate of Incorporation from Companies House confirming this to be the case; he states that he was using the Just Junk trade mark at this time. Exhibit NI2 consists of a letter dated 27 October 2005 from the Environment Agency to “Just Junk” confirming that their application to be authorised for the transportation of controlled waste had been approved and enclosing the appropriate registration certificate. Two certificates are provided both of which were issued under The Control of Pollution (Amendment) Act 1989 and The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991. The first identifies the Regulation Authority as “Midlands Region – Lower Trent” and bears the following date of registration and expiry of registration dates: 6 October 2005 and 5 October 2008 respectively; the business name is identified as “Just Junk” and the certificate appears to be dated 24 October 2005. The second certificate appears to be an update (to reflect a change of address) issued by the E A National Customer Contact Centre on 23 April 2008.

10) Exhibit NI3 consists of an undated letter on Environment Agency letter headed paper addressed to “Dear Sir or Madam” from Timothy Ross who is described as the: “Project Officer, Derbyshire Fly-tipping Project.” In the first paragraph Mr Ross says:

“I confirm that I have known Naseem Iqbal the operator of Just Junk for three years through my role as an Environment Officer and Project Officer regulating the waste industry.”

11) It is unclear if this letter was solicited for the purposes of these proceedings. If it was, then the comments in Tribunal Practice Notice (TPN) 1 of 2008 (which is reproduced at Annex 1 in this decision) would be relevant. However, as it is undated it has little evidential value. Mr Iqbal adds that the domain names Just-Junk.com and Just-Junk.co.uk were registered on 12 December 2005 and 9 September 2006 respectively. Exhibit NI4 consists of, inter alia, a “Whois” record confirming the details for the Just-junk.co.uk domain name. The exhibit also includes screen-shots from JJJL’s website said to date from 2006 (in which I note that, inter alia, the trade mark the subject of application No. 2467426 appears), together with screen-shots of JJFC’s website which, Mr Iqbal points out, do not show any use in the UK. He claims that a search of the term “Just Junk Nottingham” does not show JJFC but does show his company. I note that JJJL are based in Derby.

12) Exhibits NI5 and NI6 consists of a range of invoices the majority of which are to JJJL or JUST JUNK and which have dates ranging from 19 October 2006 to 9 October 2007. I do not intend to summarise these invoices here but will comment on them later in this decision.

13) Exhibit NI7 consists of copies of letter-headed paper, business cards and advertising literature. While I note that three of the four pages provided bear the trade mark the subject of application No. 2467426, none of the pages appear to be dated.

14) Exhibit NI8 consists of seven letters whose dates range from 27 November 2006 to 15 October 2008 and which I note Mr Iqbal describes as “testimonials from its clients”. The writers of the letters are, I note, based in Derby, Nottingham and Burton-on- Trent. Four of these are “To whom it may concern” letters which I intend to approach on the basis of the guidance provided in the TPN mentioned above. Of the three that remain I note that the letters from Anpa Interiors

(19 September 2007), Adams Florist (also 19 September 2007) and DC Robinson (15 October 2008) were addressed to “Just Junk” or “Just Junk Ltd” and two of the letters named Mr Iqbal personally. The letter from D C Robinson (Motor Engineers), while after the relevant date in these proceedings, is indicative of the contents of all of the other letters (with the exception of that from Katerpak Food Service dated 27 November 2006 which given its contents is of no evidential value). D C Robinson’s letter is from their Office Manager Kevin Lockie who writes:

“Dear Sir,

I am writing to (sic) this testimonial for you to use at your discretion:

D C Robinson’s have been using the services of Just Junk Ltd since the last quarter of 2006.

Just Junk call regularly and remove all the scrap/waste metal that we accumulate in the operation of our business. We have always had good service from Just Junk and their operatives who are efficient and helpful.

We would recommend Just Junk to anyone in need of a reliable and effective service to remove and dispose of waste materials in a safe and legal manner.”

15) Exhibit NI9 consists of eighteen invoices from JJL all of which bear the trade mark the subject of application No. 246746 together with either Just Junk Ltd or Just Junk and whose dates range from 17 April 2007 to 20 November 2007. The “Job” details on them are described as: “Waste”, “Waste Transfer”, “Household Waste”, “Garage Waste”, “Litter Picking” or “Business Waste”; only two of the invoices are to the same customer (Mr Wedgewood). The value of the invoices amounts to some £4800 and relate to a range of addresses in Derby, Nottingham and Burton-on-Trent.

16) Finally, I note the following comments appearing in Mr Iqbal’s statement:

“In the past 3 years my company has grown from strength to strength and has become a leading player in the industry. It is well known as Just Junk...”

And:

“...in that the use of ...the mark was liable to be prevented at 22 March 2007 and or 3 November 2006.....”

DECISION

17) Given that JJFC’s success in the opposition proceedings is entirely dependent on the fate of its trade mark registration No. 2450401, I shall begin by dealing with JJL’s request to have this registration invalidated. If JJL’s invalidation application is successful, JJFC’s opposition to application No. 2467426 will fall away and the application may proceed to registration.

18) JJJ's application for invalidation is based solely upon section 5(4)(a) of the Act which reads as follows:

"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."

19) I must first determine the material date in relation to the claim of passing off. It is well established that this date is the date of the behaviour complained of. Section 5(4)(a) is derived from article 4(4)(b) of First Council Directive 89/104 of December 21, 1998 which states:

"4. Any Member State may furthermore provide that a trade mark shall not be registered or, if registered, shall be liable to be declared invalid where, and to the extent that:

a.

b. rights to a non-registered trade mark or to another sign used in the course of trade were acquired prior to the date of application for registration of the subsequent trade mark, or the date of the priority claimed for the application for registration of the subsequent trade mark and that non-registered trade mark or other sign confers on its proprietor the right to prohibit the use of a subsequent trade mark,"

20) The relevant date for determining JJJ's claim is, in the absence of any competing earlier claim on JJFC's part, the filing date of the registration in suit. As JJFC have not filed any evidence in these proceedings, ordinarily it would be the date of the filing of its application i.e. 22 March 2007 that would become the material date for the purposes of assessing JJJ's allegation of passing off. However, when what became registration No. 2450401 was filed, I note that it claimed an International Priority date of 3 November 2006 from an earlier filing in Canada. That being the case, and given the provisions of Article 4(4)(b) mentioned above, it is at the earlier date of 3 November 2006 that I must assess the position.

21) The requirements for this ground of opposition 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] R.P.C. 455. Adapted to the proceedings at hand, the three elements that must be present can be summarised as follows:

(1) that JJJ's services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by JJFC (whether or not intentional) leading or likely to lead the public to believe that the services offered by them are the services of JJLC; and

(3) that JJL have suffered or are likely to suffer damage as a result of the erroneous belief engendered by JJFC's misrepresentation.

22) To the above I add the comments of Pumfrey J in *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* case, in which he said:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the Registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under Section 11 of the 1938 Act (See *Smith Hayden (OVAX)* (1946) 63 RPC 97 as qualified by *BALI* [1969] RPC 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed at the relevant date. Once raised the applicant must rebut the prima facie case. Obviously he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of possibilities that passing off will occur.”

23) I must also keep in mind the comments of Mr Justice Floyd in *Minimax GMBH & Co KG and Chubb Fire Limited* [2008] EWHC 1960 (Pat) in which he says of the above:

“Those observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

24) It is clear that JJL was incorporated in October 2005, and that in the same month it was registered to carry waste products. It is stated that a website was registered in December 2005. Neither of these are evidence of actual trading. Of the invoices provided, those prior to the relevant date are addressed to JJL or Just Junk for goods and services provided to them. All of the invoices issued by JJL are after the relevant date. The testimonials do not give specific dates as to when JJL began providing services to them, simply referring to time spans which overlap the relevant date, such as “the last quarter of 2006”.

25) There is no evidence of actual trading or goodwill prior to the relevant date. The invalidity action under Section 5(4)(a) therefore fails at the first hurdle.

26) As such, trade mark 2450401 remains on the register and JJFC is able to rely upon it for its opposition based upon section 5(2)(b) of the Act which reads as follows:

“5. - (2) A trade mark shall not be registered if because -

(a)....

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, or

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

27) An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6.-(1) In this Act an “earlier trade mark” means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

28) In these proceedings JJFC is relying on the registered trade mark shown in paragraph 3 above. By virtue of its claim to International Priority, this has an effective application date of 3 November 2006 and as such it clearly qualifies as an earlier trade mark under the above provisions. The application for registration was published for opposition purposes on 4 January 2008 and the registration procedure for JJFC’s earlier trade mark was completed on 26 October 2007. Consequently, the registration is not subject to The Trade Marks (Proof of Use, etc) Regulations 2004.

29) In my consideration of a likelihood of confusion, I take into account the guidance from the settled case law provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) C-334/05 P (LIMONCELLO)*. It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*,

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v Puma AG*,

(g) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,

(h) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*,

(i) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v Adidas AG and Adidas Benelux BV*,

(j) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,

(k) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not

mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

(l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM*

30) In essence the test under Section 5(2) is whether there are similarities in marks and services which would combine to create a likelihood of confusion. In my consideration of whether there are similarities sufficient to show a likelihood of confusion I am guided by the judgments of the ECJ mentioned above. The likelihood of confusion must be appreciated globally and I need to address the degree of visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements taking into account the degree of similarity in the services, the category of services in question and how they are marketed. Furthermore, I must compare the mark applied for and the opponent's marks on the basis of their inherent characteristics assuming normal and fair use of the marks on a full range of the services covered within the respective specifications.

31) I must consider the effect of reputation on the global consideration of a likelihood of confusion under Section 5(2)(b) of the Act. This was considered by David Kitchen Q.C. sitting as the Appointed Person in *Steelco Trade Mark* (BL O/268/04). Mr Kitchen concluded at paragraph 17 of his decision:

“The global assessment of the likelihood of confusion must therefore be based on all the circumstances. These include an assessment of the distinctive character of the earlier mark. When the mark has been used on a significant scale that distinctiveness will depend upon a combination of its inherent nature and its factual distinctiveness. I do not detect in the principles established by the European Court of Justice any intention to limit the assessment of distinctiveness acquired through use to those marks which have become household names. Accordingly, I believe the observations of Mr. Thorley Q.C in *DUONEBS* should not be seen as of general application irrespective of the circumstances of the case. The recognition of the earlier trade mark in the market is one of the factors which must be taken into account in making the overall global assessment of the likelihood of confusion. As observed recently by Jacob L.J. in *Reed Executive & Ors v Reed Business Information Ltd & Ors*, EWCA Civ 159, this may be particularly important in the case of marks which contain an element descriptive of the goods or services for which they have been registered. In the case of marks which are descriptive, the average consumer will expect others to use similar descriptive marks and thus be alert for details which would differentiate one mark from another. Where a mark has become distinctive through use then this may cease to be such an important consideration. But all must depend upon the circumstances of each individual case.”

32) In this case JJFC has not shown any use of its mark and so it cannot rely upon any reputation. However, the mark “JUST JUNK” whilst alluding to the services provided must be considered to be inherently distinctive for the services in Class 39.


33) I shall first compare the services of the two parties:

JJL's specification	JJFC's specification
Class 39: "Refuse Collection services".	Class 39 "Rubbish cartage and collection services".

34) There can be no doubt that the services are identical.

3) Neither side commented upon the average consumer but it would seem clear that, given that the services are identical, that the average consumer will be the same for both parties. To my mind the purchasing of such services will be undertaken by both individuals and companies, and the average consumer must be taken to be the average citizen of the UK. When purchasing such services the average consumer is likely to be circumspect as fly-tipping is an issue when using such service providers, and the purchaser is liable to be fined if they contract with an unethical company, who indulges in such practices. From my own knowledge I believe that most consumers will find such companies in the phone book or from advertisements in local papers and will agree a contract over the phone.

36) I now move onto consider the marks of the two parties, which are reproduced below for ease of reference:

JJL's mark 2467426	JJFC's mark 2450401
	JUST JUNK

37) Clearly, the marks are not identical. Visually, they share the same words "JUST JUNK" which in JJL's mark is emphasised by its repetition in the website address. There are differences as JJL's mark has a kangaroo device and has the words encapsulated in an ellipse with two arrows on the edge. The visual similarities outweigh the differences. Aurally the marks are very similar. JJL's mark would be referred to as JUST JUNK, no consumer given such a clear name would verbalise the device elements, whilst the website address simply emphasises the name of the company as JUST JUNK. Conceptually both conjure up an image of a pile of rubbish or junk, I do not believe that the kangaroo or ellipse device take away from this image.

38) I now consider the issue of "Likelihood of confusion". It is clear from the case law that there is interdependency between the various factors that need to be taken into account when deciding whether there exists a likelihood of confusion. I must also take into account that marks are rarely recalled perfectly with the consumer relying, instead, on the imperfect picture of them he has in kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). Both parties' services in Class 39 are identical, as are the consumers. Such services are usually purchased by telephone, albeit from seeing advertisements in newspapers or telephone directories. There are visual, aural and conceptual similarities between the marks and also some slight differences. Taking account of all of the above I believe that there is a likelihood of

consumers being confused into believing that the services provided by JJJ are those of JJFC or provided by some undertaking linked to them. The opposition under Section 5(2)(b) therefore succeeds.

COSTS

39) As the request for invalidity failed and the opposition case succeeded Just Junk Franchising Corporation has been successful in both actions and is entitled to a contribution towards its costs. I order the Just Junk Limited to pay Just Junk Franchising Corporation the sum of £1200. This sum 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 10th day of July 2009

**G W SALTHOUSE
For the Registrar
The Comptroller-General**

ANNEX 1

Tribunal Practice Notice (1/2008)

Correspondence solicited for proceedings

1. The Registrar has noted an increasing trend for evidence to be filed in the form of letters from third parties solicited by the parties to the proceedings. Typically, it is the Registrar's experience that such letters are headed "To whom it may concern", or even addressed to the Registrar, whilst others are less obvious in format. The procedures for filing evidence in trade mark proceedings before the registrar is governed by rule 55 of the [Trade Marks Rules \(2000\) as amended](#)  (365Kb). The rule states:

"(1) Where under these Rules evidence may be admitted by the registrar in any proceedings before her, it shall be by the filing of a statutory declaration or affidavit.

(2) The registrar may in any particular case take oral evidence in lieu of or in addition to such evidence and shall, unless she otherwise directs, allow any witness to be cross-examined on his statutory declaration, affidavit or oral evidence.

(3) Where these Rules provide for the use of an affidavit or statutory declaration, a witness statement verified by a statement of truth may be used as an alternative; the Registrar may give a direction as she thinks fit in any particular case that evidence must be given by affidavit or statutory declaration instead of or in addition to a witness statement verified by a statement of truth.

(4) The practice and procedure of the High Court with regard to witness statements and statements of truth, their form and contents and the procedure governing their use are to apply as appropriate to all proceedings under these Rules.

(5) Where in proceedings before the registrar, a party adduces evidence of a statement made by a person otherwise than while giving oral evidence in the proceedings and does not call that person as a witness, the registrar may, if she thinks fit, permit any other party to the proceedings to call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the statement were his evidence in chief.”

2. Letters of the kind described above are not therefore a suitable means of introducing statements made by the person signing such a letter as his or her evidence in the proceedings. This is because such letters do not comply with the requirements of Rule 55(1) or (3).

3. Where such a letter is relied upon by a witness and attached as an exhibit to his or her affidavit, statutory declaration or witness statement, the statements of the person signing the letter are normally admissible as part of the evidence of the person making the affidavit, statutory declaration or witness statement. However, in these circumstances statements made by the person signing the letter are hearsay evidence.

4. Hearing Officers will give hearsay evidence of this kind such weight as it deserves. Statements made in letters which have been sent to a party for a purpose unconnected with the proceedings are, in general, likely to be given more weight than statements made in letters solicited for the purpose of the proceedings. However, each case will be assessed on its own merits.