

O-428-10

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION 2189486

IN THE NAME OF ADAM ELLIS

IN RESPECT OF THE TRADE MARK:

ReactorPanel

IN CLASS 18

AND

AN APPLICATION TO RECTIFY THE REGISTER (UNDER NO. 83555) BY:

THE REACTORPANEL SADDLE COMPANY LLC

TRADE MARKS ACT 1994

In the matter of trade mark registration 2189486 in the name of Adam Ellis in respect of the trade mark ReactorPanel in class 18

and

An application to rectify the register (under no. 83555) by The ReactorPanel Saddle Company LLC

Background

1) On 29 July 2009 The ReactorPanel Company LLC¹ ("RPC") made an application under the Trade Marks Act 1994 ("the Act") for the rectification of registration no. 2189486. The application for rectification relates to the ownership of the registered trade mark in question. Rectification is dealt with under section 64(1) of the Act which reads:

"64. - (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.

(2) An application for rectification 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.

(3) Except where the registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

(4) The registrar may, on request made in the prescribed manner by the proprietor of a registered trade mark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The registrar may remove from the register matter appearing to him to have ceased to have effect."

¹ It was previously called Reactor Panel USA, LLC.

2) Given that the rectification relates to ownership, it is useful to begin by recording some of the relevant facts from the official records held by the Intellectual Property Office:

- i) Trade mark 2189486 was filed on 19 February 1999 by Roe Richardson Limited.
- ii) The trade mark was published in the Trade Marks Journal on 14 April 1999 and it completed its registration procedure on 1 September that year.
- iii) On 22 February 2007 RPC made an application (on Form TM16) to record a change of ownership (from Roe Richardson Limited to RPC). The request was made on the basis of an asset purchase agreement. The request was refused due to the lack of a written deed of assignment between Roe Richardson Limited and RPC (the asset purchase agreement was between RPC and a company called Reactor Panel Limited). A letter was sent to RPC suggesting that if it provided a witness statement explaining the circumstances of the assignment then it may be recorded on the register. No reply to this letter was received so no change of ownership was recorded.
- iv) The trade mark was renewed (albeit late) on 2 March 2009. It appears from the evidence that Mr Ellis paid the renewal fee.
- v) On 12 March 2009 Mr Ellis made an application (on Form TM16) to record a change of ownership (from Roe Richardson Limited to himself). The Form TM16 was accompanied by a deed of assignment between those two parties. The deed of assignment was signed by C. P. Richardson on behalf of Roe Richardson Limited. The deed of assignment is dated 26 February 2009. The Intellectual Property Office recorded the requested change of ownership.

3) RPC says that it purchased the assets of the Roe Richardson Company Ltd² in April 2000 including the trade mark ReactorPanel and that it has been undertaking business activities in the US and the UK since then with reference to the ReactorPanel name. It is claimed that Mr Ellis previously worked for the Roe Richardson Company making ReactorPanel saddles and that he was hired to do the same by RPC, which he did from the summer of 2000 until October 2006 (when he “essentially disappeared”). It is claimed that when he reappeared (on 13 February 2007) he made demands for money which led to an on-going dispute between RPC and Mr Ellis. RPC believes that Mr Ellis assigned the mark to himself in order to do harm to RPC. It is requested that the registration be returned to the Roe Richardson Company Ltd and then “assistance” provided to

² I note that the registration was filed and initially owned by Roe Richardson Limited not Roe Richardson Company Ltd – I will return to this point later.

transfer the registration to RPC. Assistance relating to the renewal of the registration, once the rectification is complete, is also sought.

4) Mr Ellis denies that the registration should be rectified. In a statutory declaration he filed in response to the rectification, he admits to working for the Roe Richardson Company (between 1998 and 2000) specifically to manufacture ReactorPanel saddles. He says that Carmi Weininger (the president of RPC) became involved in the business in 2000 but as he was the only saddler qualified to manufacture the saddle he set up his own business (UK Saddles Ltd) to "continue to manufacture saddles including the "Reactorpanel" saddle name and mark)". He says that he worked with Ms Weininger until 2007 when their relationship ceased due to an unpaid debt from RPC and one of its agents. He says that the registration was properly assigned to him and was done so out of a desire to continue to manufacture the ReactorPanel saddle for which he was the driving force.

5) Both sides filed evidence. Neither side requested a hearing. Only RPC filed written submissions in lieu of attending a hearing.

The evidence

Mr Ellis' evidence

Statutory Declaration of Mr Adam Ellis dated 7 November 2009

6) I have summarised some of Mr Ellis' evidence in paragraph 4 above. In order to demonstrate the availability of the ReactorPanel saddle from Roe Richardson Ltd (who he calls "predecessors in title") and from himself, Mr Ellis provides Exhibit AE1 which contains:

- a) A price list from Roe Richardson Ltd as of April 1999 headed "Roe Richardson Reactorpanel™ Saddles". The list includes various saddle names, descriptions and prices.
- b) A sheet headed "UK SADDLES LTD" who are "Saddlery Manufacturers For All Equestrian Sports". After contact details for this company, the next line reads "Reactorpanel saddle models new designs from 2000". After describing some saddles, I note at the bottom of the page the text "These can all be viewed www.reactorpanel.com or www.saddleexchange.com".

7) At Exhibit AE2 further material is provided that Mr Ellis believes to support his case. This consists of:

- i) An invoice from UK SADDLES UK to Saddle Exchange Ltd in respect of various "Reactor panel" saddles. The invoice is dated 16 July 2004.

- ii) An email from Mr Ellis to Carmi Weininger of RPC relating to outstanding invoices. There is also a reference to RPC's UK representative also having an unpaid account. A list of "stock items for sale Price unnegociabe [sic]" are listed including "R/P saddles Knives designed and purchased by UK saddles Valued today by our tool makers". At the end of the email is the text "My total = 23,298.00 for all the parts/knives and every item connected to Reactor panel saddles, These if not purchased off UK Saddles would have to be purchased to continue to supply current saddles you have to offer. Regard Adam".
- iii) A statement relating to the account of RPC with UK Saddles Ltd showing a total amount outstanding of £25,883. The transactions relevant to this amount took place between September 2006 and February 2007.
- iv) A letter dated 29 March 2007 from the Credit Protection Association headed "NOTIFICATION OF UNPAID DEBT". The letter is addressed to RPC and is sent on behalf of UK Saddles Ltd.
- v) A letter to Mr Ellis dated 27 October 2009 from Mr Phillip Richardson. The content reads:

"I am writing to you in regard to our telephone conversation concerning the Reactor Panel trade mark. As you recall I resigned as director of Roe Richardson in October 1999. The company and its assets were sold to Miss Carmi Weininger by Charles Steadman at the end of 1999 in an underhand deal (which was the reason for my resignation). I was obviously not party to the specifics of the deal done but as far as I am aware the trade mark Reactor Panel is owned by Roe Richardson. To the best of my knowledge Roe Richardson has not traded in the last ten years, Companies House web site shows the last accounts were filed in 2000 so there is obviously no use of the Reactor Panel trade mark in the UK or abroad by Roe Richardson.

I hope this sheds a little light on the queries you raised with me in our telephone conversation."
- vi) An invoice dated 12 December 2002 from UK Saddles to Mark Savage relating to a "Reactor panel saddle, custom made with extended bars".
- vii) A ReactorPanel Saddle Order Form dated 7 January 2007. It appears to be a joint form with certain parts to be completed by RPC and others by UK Saddles. Text at the bottom indicates "All saddles will be ordered through ReactorPanel Saddle Company Headquarters. Highlighted text includes the words "Ordered by Saddle Exchange".

viii) An invoice from UK Saddles dated 12 July 2001 to Dean Woodward concerning a particular ReactorPanel saddle “made to measure with Endurance kit”.

8) Mr Ellis states in his evidence that he has a court ruling against RPC and that he is proceeding with a further case in the US. In relation to the assignment of the registration to him, he states that this was properly conducted. The deed is exhibited at AE3 and, for sake of clarity, it is shown in Annex 1 to this decision. He completes his evidence by stating that there is no substance to the objection made by RPC and that there is no documentary evidence to prove a prior right to the mark in the UK.

RPC's evidence

Witness statement of Carmi Weininger dated 25 June 2010.

9) Ms Weininger is the “owner and proprietor” of RPC. She states that the mark ReactorPanel is integral to her businesses identity. She says that her company was named in a way so as to mirror the trade mark. She states that it is featured in documentation, literature and in website names etc. both in the US and in the UK. She states that she has spent more than 10 years developing its reputation which, she contrasts to Mr Ellis, whom she says has neither product nor service to protect. In terms of UK use she says that the trade marks has been used since it was acquired in 2000. It has also been used by RPC's authorised distributor in the UK, Saddle Exchange Ltd. Exhibit CW1 is said to show use in the UK. It consists of:

Photographs of two vans with the words www.saddleexchange.com printed on the side. Also printed on the vehicle is a logo which reads THE REACTORPANEL SADDLE COMPANY as part of a circular logo together with the letters RP.

An advertisement in ABSOLUTE HORSE dated March 2008. It is placed by www.saddleexchange.com and is in respect of ReactorPanel Saddles.

A similar advertisement to the above said to date from February 2008 – it is not clear what publication the advertisement was placed in.

10) The mark is also said to be in widespread use in the US by RPC. Various materials in Exhibit CW2-6 show it being used.

11) Ms Weininger states that in April 2000 RPC purchased the assets of Roe Richardson Co Ltd for £32,000. It is explained that Roe Richardson ceased trading four months earlier so the primary assets it purchased were the rights to designs and trade marks. The “asset purchase agreement” is shown in Exhibit CW7. It is between RPC (albeit its previous name as per footnote 1) and a

company called Reactor Panel Limited. Various parts of the agreement are shown in Annex 2 of this decision. I note in particular that the sale included intangible personal property as follows:

- a) All rights to the name "ReactorPanel" wherein Seller shall release and waive any and all rights thereto and will not make use thereof after closing.
- b) All rights to manufacturing techniques; and
- c) All designs, patents, copyrights, and any other intellectual property rights relating to the design and manufacture of the Reactor Panel Saddles.

12) It is explained that immediately prior to the asset purchase agreement the assets were transferred to Reactor Panel Limited for the purposes of the sale in order to shield RPC from any potential liabilities of Roe Richardson. She states that she is the beneficial owner of it having purchased it and that Mr Ellis and Mr Richardson are aware of this. It is stated that a US lawyer approved the asset transfer agreement but she was unaware of the need to re-register the trade mark into her businesses name and that it was not until 2007 that she realized that it was still in the name of the Roe Richardson Company. She attempted to record the change of ownership as highlighted in paragraph 2 above. From the copy documents provided in Exhibit CW8, the letter from the Intellectual Property Office suggesting the filing of a witness statement was not received by RPC, thus, it was not responded to. Ms Weininger had assumed that nothing further was required on her part and that the change of ownership had been recorded.

13) In response to Mr Ellis' evidence, Ms Weininger states that his employment with the Roe Richardson Company ceased in 1999 (when it ceased trading) not in 2000 as claimed. It is also stated that Mr Ellis was not the only saddler qualified to manufacture the saddle. She says that others were considered but Mr Ellis was chosen due to his partner, Steve McCaige, having workshop premises etc. She says that Mr Ellis was simply a tradesperson employed to produce a product and paid by the piece. She says that the relationship with Mr Ellis broke down due to his actions, including the abandoning of his business so as to buy Mr McCaige out in what she says was an unethical way. Various emails are provided relating to this, but I do not intend to summarise them as I do not find them particularly significant in the decisions required of me. Ms Weininger says that as a result of all this UK Saddles Ltd (Mr Ellis' company) was removed from RPC's custom. She does not deny an owed debt, but does not consider this to be relevant.

14) In relation to the sales made by UK Saddles Ltd, she says that they were made under the authority of her business. The invoices were raised to RPC's UK distributor Saddle Exchange Ltd or to a former Roe Richardson agent Mark

Savage. She says that all of the transactions were with her knowledge and consent. She says that Mr Ellis has never used ReactorPanel independently except when he advertised what she calls "counterfeit saddles" in February 2008. (Exhibit CW12 contains an advertisement for "REACTOR PANEL SADDLES by the original manufacturer" an address of www.uksaddlesltd.com is provided. Also, in CW13, there is a letter from RPC to the British Trading Standards Central body about this.)

15) In relation to the assignment to Mr Ellis she states that as Mr Richardson, by his own acknowledgement (see Exhibit AE2 of Mr Ellis' evidence), had resigned as a director of Roe Richardson, and that it had not traded for 10 years, Mr Richardson neither had ownership nor the ability to sell it and, furthermore, Mr Ellis and Mr Richardson were well aware of the asset sale to RPC. She states that Mr Ellis was not the driving force behind the business as he was merely a skilled workman engaged to produce the saddles.

Sufficient interest

16) The applicant, RPC, must have a sufficient interest to apply for rectification. A claim to being the owner of the registration by way of an earlier assignment is one of the clearest forms of interest possible. RPC clearly has an interest in this matter sufficient for the purposes of section 64(1) of the Act.

Is there an error?

17) Section 64(1) relates to errors or omissions in the register. The claim is that Mr Ellis should not be recorded as the proprietor and that the assignment to him and its recordal on the register constitutes an error. In RPC's written submissions there are two central planks to the argument: i) that RPC is the true proprietor so the registration was not capable of assignment to Mr Ellis, and ii) that the assignment to Mr Ellis was signed by Mr Richardson who had resigned from Roe Richardson and, in any event, Roe Richardson have long since ceased trading and may not even exist which means that any assignment is invalid.

18) I have no doubt that the provisions of section 64(1) cover more than the correction of simple clerical errors and can cover, for example, issues of disputed ownership including rescinding erroneous assignments. The registrar has issued a number of decisions to this effect³. Each case must, though, be decided on the merits of its particular facts and circumstances.

19) In its submissions RPC highlights the inconsistent naming of Roe Richardson. The registration was filed by Roe Richardson Ltd but the parties refer, in the main, to the Roe Richardson Company Ltd. Mr Ellis' purported assignment is between himself and Roe Richardson Ltd. Companies House records show a Roe Richardson Company Limited (but not a Roe Richardson

³ See the cases under the references: BL O/283/02, BL O/284/02, BL O/040/05 and BL O/336/01

Ltd) which was dissolved in 2001. With this in mind, it seems to me that the two companies are really one and the same. There is clear evidence of this in Mr Ellis' evidence. In his Exhibit AE1 there is a price list for Roe Richardson Ltd which includes its company registration number (no. 3123022). This is the same company registration number of Roe Richardson Company Limited. It appears that an error of a clerical nature may have been made in some documents including the initial trade mark application. I will treat the two companies as one and the same and will refer to the legal entity as RR from this point on.

20) Considering firstly the position relating to RPC's asset purchase agreement, the most notable point is that the agreement is with Reactor Panel Ltd and not RR. Whilst Ms Weininger explains that the assets of RR were to be transferred to Reactor Panel Ltd, I note from Ms Weininger's evidence that:

"Immediately prior to my purchase of the assets of Roe Richardson Ltd., those assets were transferred to Reactor Panel Ltd – a new company – for the purposes of this sale. I was told by Roe Richardson's majority partner Charles Steadman that this was necessary to shield me from Roe Richardson's prior and potential liabilities, and I had no reason to disbelieve him. The UK attorney whom I engaged in April 2010 to advise me in this matter puts forth that it now appears that the trade mark which I bought had not been transferred into the limited company. However I remain beneficially entitled to the name and I did purchase it, and both Mr Phillip Richardson, who nine years later purported to assign it to Mr Ellis, and Mr Ellis himself are both aware of this." (my emphasis added)

21) There is no explanation of the nature of the type of ownership transmission intended to take place between RR and Reactor Panel Ltd in respect of the trade mark. Most transmissions would be by way of assignment. An assignment of a registered trade mark is only effective if it is in writing signed by, or on behalf of, the assignor (or a personal representative of the assignor)⁴. Whilst I would have been prepared to accept that the asset purchase agreement was sufficient to constitute an effective written assignment between Reactor Panel Ltd and RPC, it would only be effective in so far as any trade marks (and other assets) that stood in the ownership of Reactor Panel Ltd at the relevant time. Evidence demonstrating that the trade mark registration in question was assigned from RR to Reactor Panel Ltd is therefore required, evidence demonstrating an effective assignment as stipulated in section 24(3) of the Act. If the mark was transmitted in some other way other than by way of assignment the, again, evidence would have been required. There is no such evidence for any of this. Indeed, when Ms Weininger is referring to the "limited company" she seems to be referring to the limited company set up as the company to sit between RR and RPC. She concedes that the assets may not have been transferred from RR to Reactor Panel Ltd. Irrespective of what Ms Weininger says, there is no evidence that the assets were transferred to Reactor Panel Ltd. Ms Weininger would not, in any

⁴ See section 24(3) of the Act.

event, have been in a position to know the detail because she had no role with RR or Reactor Panel Ltd. Taking this into account, there is no clear evidence that RPC own the asset constituting the trade mark registration and, as such, these circumstances alone do not mean that the rectification should succeed.

22) Irrespective of the above, I must still consider whether the assignment to Mr Ellis could legitimately have taken place in 2009. It is in Mr Ellis' own evidence that Mr Richardson explains that he resigned from RR in October 1999. If that it so, I struggle to see how he would have had the legal capacity to effect an assignment from RR to Mr Ellis. A legal entity such as RR is a distinct legal person separate from its officers and employees. All Mr Richardson is doing in the deed of assignment is acting on behalf of RR. Given the circumstances he himself describes then he was clearly unable to do so regardless of the reasons for his resignation. I note that the letter to Mr Ellis is from Phillip Richardson and the deed signed by CP Richardson, however, the signatures appear the same, RPC's evidence is that they are the same person, evidence which Mr Ellis has not disputed.

23) The situation is starker still given that RR has long since been dissolved. In such a situation no-one, be it Mr Richardson or Mr Steadman (who signed the asset purchase agreement) would be in a position to assign the mark to anyone because the legal entity that was RR no longer exists. Furthermore, despite Mr Richardson's explanation that RR still owned the mark as far as he was aware, this is wholly inconsistent with his understanding that RPC purchased RR's business. My finding is that the assignment from RR to Mr Ellis was invalid and could not have taken place. This means that the rectification is successful as the relief sought by RPC is the return of the registration into the name of RR.

24) In terms of the relief sought, my decision is to rectify the register by deeming the assignment to Mr Ellis to have never been made. The registration will be returned to Roe Richardson Company Limited rather than Roe Richardson Ltd as it is clear that this is the correct legal name of RR.

25) I note RPC's request for assistance in completing the assignment to it and also in renewing the registration. These are not matters for me, but the concerns I have expressed in paragraph 21 should be borne in mind. RPC should also consider the impact of RR's dissolution and that if RR's assets were not assigned elsewhere prior to its dissolution then they may now instead be *bona vacantia*. In terms of renewal, the trade mark has been renewed even if the fee was paid by Mr Ellis.

Costs

26) RPC has been successful and is entitled to a contribution towards its costs. I hereby order Mr Adam Ellis to pay The ReactorPanel Company LLC the sum of £750. In calculating this amount, I have taken into account that RPC was not professionally represented save for the filing of its written submissions. For activities undertaken without legal representation I have reduced the amount of fees that would have otherwise been awarded by 50% - this in line with the registrar's practice. The sum awarded is broken down as follows:

Preparing a statement and considering the other side's statement:
£250

Filing evidence and considering the other side's evidence:
£300

Filing written submissions:
£300

Dated this 14 day of December 2010

**Oliver Morris
For the Registrar
The Comptroller-General**

Annex 1 – Deed of assignment between RR and Mr Ellis

THIS ASSIGNMENT is made the 26 day of FEBRUARY
Two thousand and nine

BETWEEN Roe Richardson Limited whose registered office
is

Heritage House, 34 North Cray Road, Bexley, Kent

(hereinafter called "The Assignor") of the first

part and

ADAM ELLIS

of THE BARO, WITHINGTON, LEIGH, STONE-ON-TRENT
ST10 4PU.

(hereinafter called "The Assignee")

of the other part.

WHEREAS the Assignor is the Proprietor of the UK Trade

Mark Registration No. 2189486 Reactor Panel

(hereinafter called "The said Mark").

AND WHEREAS the parties hereto have agreed on the sale
and

purchase of the said Mark by the Assignor to the Assignee.

NOW THIS ASSIGNMENT WITNESSETH as follows:

In consideration of the sum of £1 (one pound) now

paid to the Assignor by the Assignee, the receipt whereof
the

Assignor hereby acknowledges, the Assignor as
BENEFICIAL

OWNER hereby assigns unto the Assignee all the Property

right and title in the said Mark with the goodwill in the

business in the goods in respect of which the said Trade Mark

has been used TO HOLD unto the Assignee absolutely.

It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value of the consideration exceeds sixty thousand pounds.

IN WITNESS WHEREOF the parties have executed these presents the day and year first above written.

Signed in the presence of


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JOHN MORPHY

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C.P. Richardson

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Signed in the presence of

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) Dahn

DAVID TOMMSON

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) A. Ellis

ADAM ELLIS.

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Annex 2 – Asset Purchase Agreement between Reactor Panel Ltd and RPC

ASSET PURCHASE AGREEMENT

THIS AGREEMENT dated this 29th day of April, 2000, is by and between THE REACTOR PANEL USA, LLC (hereinafter "Purchaser"), and REACTOR PANEL LIMITED (hereinafter "Seller").

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller substantially all of Seller's assets owned by Seller and properties of Seller's business known as Reactor Panel Limited, presently located at See 12.3 (the "Company").

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

I. SALE OF ASSETS

1. Sale of Assets. Seller shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase and accept at closing, substantially all of the assets and properties of the Company owned by Seller, or in which Seller has any right, title, or interest of every kind and description, wherever located (hereinafter "Assets"), including:

1.1 Tangible Personal Property.

(a) All fixtures, equipment, tools, knives, patterns, substances used in manufacturing, devices, and other tangible personal property (hereinafter "Furniture, Fixtures and Equipment") owned by Seller and used in the operation of the Company, which property shall be more fully described on the Furniture, Fixtures and Equipment List attached hereto as Exhibit "A,"

(b) All marketable inventory, goods, parts, stock, leather and supplies, and other materials necessary in the operation of the business (hereinafter "Inventory"), which property shall be included on a list provided by Seller and agreed upon by the parties at closing;

(c) All work in process.

1.2 Intangible Personal Property.

(a) ~~All rights to the name "ReactorPanel" wherein Seller shall release and waive any and all rights thereto and will not make use thereof after closing;~~

(b) ~~All rights to manufacturing techniques; and~~

(c) ~~All designs, patents, copyrights, and any other intellectual property rights relating to the design and manufacture of the Reactor Panel Saddles.~~

1.3 Bill of Sale. All Assets referenced herein shall be conveyed and transferred by means of a Bill of Sale, and/or a General Assignment, as is appropriate, wherein Seller shall warrant that it has good and marketable title to said Assets and that said Assets will be free and clear of all liens and encumbrances.

II. PURCHASE PRICE AND TERMS

2.1 Purchase Price. The Purchase Price shall be thirty-two thousand pounds sterling (£32,000) payable as follows:

2.2 Funds Due at Closing. The sum of twelve thousand pounds sterling (£12,000).

2.3 Royalty Payments. A royalty payment of one hundred pounds sterling (£100) for each of the first two hundred (200) newly manufactured ReactorPanel Saddles received into Purchaser's inventory after May 1, 2000. Royalty payments shall be made on a monthly basis within five days of the end of each calendar month for all ReactorPanel Saddles received into inventory during that calendar month.

III. ALLOCATIONS, PRICE ADJUSTMENTS, AND PRORATIONS

3.1 Purchase Price Allocation. The Purchase Price of ~~twenty-two~~ ^{thirty two} thousand pounds sterling (£32,000), subject to any adjustment as hereinafter provided, shall be allocated to the various Assets of the Company as follows:

Fixtures and Equipment	\$	To be advised by each party's accountants/advisors, and completed prior to 31 May 2000. <i>cjr CA</i>
Contract Rights and Customer Lists	\$	
Inventory	\$	
Covenant Not to Compete	\$	
Goodwill	\$	
Total:	£	

3.2 Accounts Receivable and Accounts Payable. All accounts receivable accruing to the date of closing shall remain the property of the Seller and are not included as part of this transaction. Any and all accounts payable accruing to and existing at the date of closing are, and shall remain, the sole responsibility of the Seller and are not included as part of this transaction. Any and all accounts receivable and payable which shall accrue after closing shall be the sole property and obligations, respectively, of Purchaser.

3.3 Company Deposits. Any and all amounts currently on deposit for the benefit of the Company, including but not limited to leases, utility services, insurance and rent, are and shall remain the sole property of Seller.

IV. REPRESENTATIONS & WARRANTIES OF THE SELLER

4.1 Corporate Standing. Seller is a company duly organized and existing, and in good standing under the laws of England.

4.2 Authority. Seller has the full power and authority to enter into this Agreement and to conclude the transaction described herein, and no other contract or agreement to which it is a party prevents it from concluding the transaction described herein.

4.3 Outstanding Liabilities. Seller represents, warrants and agrees that all outstanding liabilities of Company shall be paid in full on or before closing and that Purchaser shall receive possession and control of the Assets and all other rights acquired herein, free and clear of any lien or encumbrance. Seller further warrants that it has paid and will pay all taxes, as they come due, including but not limited to all social security, withholding, head, sales, personal property and unemployment insurance, and income taxes to date of closing to all applicable taxing authorities.

4.4 Condition of Assets. To the best of Seller's knowledge all Assets included in this sale are being purchased on an "as is" basis without warrant of merchantability or fitness for any particular purpose. However, at closing all such Assets, other than disclosed as not working, shall be in good working condition, and Seller shall repair or replace any Assets not in working condition.

4.5 Licenses, Certificates, or Permits. Seller hereby warrants that any and all licenses, certificates, or permits necessary to continue the operation of the Company are current and valid as of closing and can be renewed at no expense to Purchaser other than the normal renewal fees. Seller, to the best of its knowledge, hereby warrants that said licenses, certificates, or permits have never been

suspended or revoked and that there are no proceedings, in process or threatened, to suspend or revoke said licenses, certificates, or permits.

4.6 Contractual Obligations. Other than expressly disclosed herein, Seller is not a party to any employment agreement, labor union agreement, agreement for the future purchase of materials, supplies or equipment, sales agreement, pension, profit-sharing, or retirement plan or agreement, distributorship or sale agency agreement, or lease agreement that relates to any period beyond closing, whether written or oral, unless otherwise disclosed herein.

4.7 Litigation. To the best of the Seller's knowledge, there is no litigation or proceeding, threatened or pending, against or relating to Company, its properties, businesses, or Assets.

4.8 Effectiveness at Closing. All representations and warranties contained herein shall be correct, accurate, and effective at closing.

V. REPRESENTATIONS AND WARRANTIES OF PURCHASER

5.1 Corporate Standing. Purchaser is a limited liability company duly organized and existing, and in good standing under the laws of the State of Colorado, and authorized and entitled to carry on its business in all places in which it is presently doing business.

5.2 Authority. Purchaser has the full power and authority to enter into this Agreement and to conclude the transactions described herein and no other contract or agreement to which it is a party prevents its from concluding the transactions described herein.

VI. NON-COMPETITION

6.1 Non-Competition. At closing, the Seller and its sole principal, Charles Steadman, will agree that each shall not, and will not, for a period of three (3) consecutive years after closing, engage in the retail business of manufacture and sale of saddles within any geographic region.

VII. PURCHASER'S CONTINGENCIES

7.1 Right of Inspection and Operation. Purchaser, after execution of this Agreement, shall have the right to inspect any and all items referenced herein including, but not limited to, the financial information and Assets, in a manner which does not unreasonably interfere with the Seller's operation. In the event that during such inspection Purchaser determines that there are material discrepancies between Seller's representations and the actual status of these items, Purchaser shall have the right to notify Seller in writing in which case this Agreement shall become null and void.

VIII. OPERATIONS PRIOR TO CLOSING

8.1 Loss/Damage. In the event there is any loss or damage to the Assets at any time prior to closing, the risk of loss shall be upon the Seller. From closing and thereafter, all risk of loss or damage shall be upon Purchaser.

IX. OBLIGATIONS AT CLOSING

9.1 Execution and Delivery of Documents. At closing, Seller and Purchaser shall execute and deliver all such instruments and take all such other action as either party may reasonably request from time to time, in order to effect the transaction provided for herein. The parties shall cooperate with each other in connection with any steps to be taken as part of their respective obligations under this Agreement. This obligation shall extend to any matters arising after closing.

9.2 Funds. Purchaser shall deliver to Seller closing proceeds payable in a manner acceptable to Seller.

9.3 Company Books and Records. Seller shall have the right to retain its minute books, stock books, and other corporate records having exclusively to do with the corporate organization or capitalization thereof. Seller agrees to provide Purchaser with the following documents: A complete supplier list, with contact and ordering information sufficient to procure each of the components and raw materials required to fully assemble the ReactorPanel saddles. A Bill of Materials, with last known cost for each of these components. A customer list, showing name and address of all past Roe Richardson customers, and the date and model of each saddle that they purchased.

9.4 Costs and Expenses. Each party hereto shall bear its own costs and expenses incurred in connection with the negotiation, preparation, and performance under this Agreement, and all matters incident thereto, except as otherwise set forth herein.

X. INDEMNIFICATION SURVIVAL OF REPRESENTATIONS AND WARRANTIES

10.1 Post-Closing Survival. All representations, warranties and covenants made as of closing, as provided herein, shall survive closing for the applicable period of limitations.

10.2 Indemnification by Seller. Seller agrees to indemnify Purchaser against any loss, cost, expense, damage or liability (including, without limitation, interest at the rate of twelve percent (12%) per annum on money expended from the date expended and attorney fees and other expenses incurred in defending against litigation, either threatened or pending) incurred or sustained by Purchaser with respect to or arising out of (a) any breach of or incorrectness of any representation or warranty made by Seller in or pursuant to this Agreement or failure by Seller to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (b) any liability of or claim against Purchaser relating to any state of facts, events or omissions existing or occurring prior to closing, provided that Seller could be reasonably expected to be in possession of such information at the time.

10.3 Indemnification by Purchaser. Purchaser agrees to indemnify Seller, its directors, officers, shareholders and affiliates against any loss, cost, expense, damage or liability (including, without limitation, interest at the rate of twelve percent (12%) per annum on money expended from the date expended and attorney fees and other expenses incurred in defending against litigation, either threatened or pending) incurred or sustained by any one or more of them with respect to or arising out of (a) any breach of or incorrectness if any representation or warranty made by Purchaser in or pursuant to this Agreement or failure by Purchaser to perform or comply with any covenant or agreement made by him in or pursuant to this Agreement, or (b) any liability of or claim against Seller relating to any state of facts, events or omission existing or occurring after closing provided that Purchaser could be reasonably expected to be in possession of such information at the time.

XI. DEFAULT AND REMEDIES

Time is of the essence hereof. If any payment due herein is not paid on or tendered when due, or if any other obligation herein is not performed as herein provided, there shall be the following remedies:

11.1 If Purchaser is in Default. (a) Seller may elect to treat this Agreement terminated, in which case all payments and things of value received herein shall be returned to Seller and Seller may recover such damages as may be proper; or (b) Seller may elect to treat this Agreement as being in full force and effect, and Seller shall have the right to an action for specific performance or damages, or both.

11.2 If Seller is in Default. (a) Purchaser may elect to treat this Agreement terminated, in which case all payments and things of value received herein shall be returned to Purchaser and Purchaser may recover such damages as may be proper; or (b) Purchaser may elect to treat this Agreement as being in full force and effect, and Purchaser shall have the right to an action for specific performance or damages, or both.

12.7 Right to Counsel. Purchaser and Seller hereby acknowledge that they have every right to consult a licensed attorney and CPA, and have done so to the extent of their desires.

12.8 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Colorado and, subject to the provisions of paragraph 12.4 hereof, any suit to enforce any of the terms hereof shall be brought in the District Court in and for the County of Boulder, State of Colorado, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction of said court.

XIII. DATES AND TIMES

13.1 Closing Date. The closing date shall be on or before April 30, 2000.

THE ABOVE CONDITIONS ARE APPROVED AND ACCEPTED:

THE UNDERSIGNED PURCHASER EXPRESSLY ACKNOWLEDGES FULLY READING, UNDERSTANDING, AND RECEIVING A TRUE COPY OF THIS DOCUMENT.

PURCHASER:

Reactor Panel Saddle Company, LLC

By: 

Carmi Weininger, Manager

SELLER'S ACCEPTANCE: THE UNDERSIGNED SELLER ACCEPTS THE FOREGOING OFFER AND AGREES TO SELL THE ABOVE-DESCRIBED ASSETS ON THE TERMS AND CONDITIONS OF THE FOREGOING CONTRACT.

SELLER:

Reactor Panel Limited

By: Charles Steadman 

Title: _____

11.3 Fees and Costs. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation arising out of this Agreement, the court or tribunal shall award to the prevailing party all reasonable costs and expenses, including attorney's fees.

11.4 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration before a single arbitrator in accordance with the Uniform Arbitration Act of 1974, Section 13-22-201, et seq., C.R.S., as amended, except insofar as this Agreement expressly and specifically provides to the contrary. If the parties fail to agree upon an arbitrator, the two arbitrators selected by the parties shall select a third arbitrator, and all three arbitrators shall arbitrate the controversy or claim. The results of the arbitration shall be final and binding, and not subject to appeal. The rights under this paragraph shall inure to the benefit of the Seller, Purchaser, ~~and Broker,~~ respectively.

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XII. GENERAL PROVISIONS

12.1 Entire Agreement. This Agreement contains the entire understanding of the parties with regard to the subject matter hereof and no warranties, representations, promises or agreements have been made between the parties other than as expressly herein set forth, and neither Purchaser nor Seller shall be, nor are they bound, by any warranties, representations, promises or agreements not set forth herein. This Agreement supersedes any previous agreement or understanding and cannot be modified except in writing by all of the parties hereto.

12.2 Binding Effect. Upon execution, this Agreement shall be absolutely binding and fully enforceable and shall inure to the benefit of the parties hereto, their successors, personal representatives, and heirs.

12.3 Notices. All notices as may be required by this Agreement shall be sent to the respective parties at the addresses set forth below. The place of notice may be modified by appropriate registered or certified mail to the parties.

Purchaser: Reactor Panel USA, LLC
5508 Gunbarrel Road
Longmont, Colorado 80503

Seller: Reactorpanel Ltd
Heritage House
34 North Cray Road
Bexley
Kent DA5 3LZ
UK

12.4 Time of Possession. Purchaser shall be deemed to be in possession of the ~~Company~~ on the day and time of closing. All things of value shall be delivered at closing.

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assets gw*

12.5 Severability. In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court or tribunal of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby and effect shall be given to the intent manifested by the provisions, or portions thereof, held to be enforceable and valid.

12.6 Construction. Throughout this Agreement the singular shall include the plural, and the plural shall include the singular, and masculine shall include the feminine wherever the context so requires.