

O-436-11

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO 2040465**

**IN THE NAME OF**

**DILLY BRAIMOH**

**OF THE TRADE MARK:**

The logo for Brightspark features a stylized starburst icon to the left of the word "Brightspark" in a blue, serif font. The starburst has multiple points radiating from a central point.

**IN CLASSES 35, 38 AND 41**

**AND THE APPLICATION FOR REVOCATION**

**THERE TO UNDER NO 83815**

**BY**

**PARRAGON BOOKS LIMITED**

1) Section 46 of the Trade Marks Act 1994 (the Act) states:

“(1) The registration of a trade mark may be revoked on any of the following grounds—

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;

(d) that in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made.

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation 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.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from——

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

Section 100 of the Act states:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

Consequent upon section 100, in revocation for non-use proceedings the onus is upon the registered proprietor to prove that it has made genuine use of a trade mark, or that there are proper reasons for non-use.

2) The registration process for the trade mark:



was completed on 13 September 1996. The registration is in the name of Mr Dilly Braimoh. The trade mark is registered for:

*personnel recruitment; advertising, modelling for advertising or sales promotion, public relations, publication of publicity texts, publicity, television advertising, television commercials, radio advertising, radio commercials, sales promotion;*

*telecommunications;*

*club services, entertainment information, organisation of education and entertainment competitions, television entertainment, production of shows, presentation of live performances, entertainer services, production of radio and*

*television programmes, publication of texts, publication of books, publication of educational books and texts, recording studio services.*

The above services are in classes 35, 38 and 41 respectively of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended. The trade mark is not limited to colour.

3) On 9 July 2010 Parragon Books Limited (Parragon) filed an application for the revocation of the registration on grounds of non-use. Parragon seeks revocation under sections 46(1)(a) and 46(1)(b) of the Act. Under section 46(1)(a) it seeks revocation of the registration from 14 September 2001. Under section 46(1)(b) of the Act, Parragon relies upon three periods of non-use:

14 September 1996 to 13 September 2001, 14 September 2001 to 13 September 2006 and 10 July 2005 to 9 July 2010.

In relation to the above claimed periods of non-use, Parragon seeks revocation of the registration from 14 September 2001, 14 September 2006 and 10 July 2010.

4) Parragon states that it informed Mr Braimoh of its intention to seek revocation of the registration on 17 June 2010.

5) Mr Braimoh filed a counterstatement in which he claims to have used the trade mark for all of the services of the registration. He states:

“Registering as a Limited Company (Company No. 03112931), Brightspark Communications was incorporated on 12 October 1995. As a limited company, it continues to fulfil its annual obligation of submitting the company’s Annual Return. (See attached sheets 1-4: Annual Returns 2005-2009)<sup>1</sup>

Created as an independent television production company, its first televised production was ‘The Gospel Truth’ (1996) for Carlton Television plc.

Brightspark continues as a registered, limited company, which includes submitting proposals for the production of television programmes and series to terrestrial and satellite television companies. This may invariably utilise publishing, transmission and non-transmission potential across

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<sup>1</sup> The attachments to form TM8 were returned to Mr Braimoh on 10 November 2010 by the Intellectual Property Office. In the accompanying letter Mr Braimoh was advised that the attachments should be adduced as exhibits to a witness statement, statutory declaration or affidavit. They have not been adduced into the proceedings.

those company's associated multimedia platforms, such as print, games and advertising.

The name 'Brightspark™' and accompanying logo is integral to the company's identity in the current media market place.

Under Tribunal Practice Notice (TPN 1/2005) (2.2) "Evidence of Use", *...where the applicant has stated more than one 5 year period and sought more than one date of revocation the registered proprietor does not have to provide proof of use for all of the periods stated. The registered proprietor need only address the most recent 5 years period claimed as this is likely to reflect the current state of the marketplace or at the least demonstrate that the trade mark was in use at the most recent relevant period.*

Recently, the use of the company, its name and its logo has been utilised in the approach for the procurement of business as part of the commissioning process for BBC, ITV and Channel Four Television.

BBC, ITV and Channel Four Television will only grant registration for the e-Commissioning process to bona-fide production companies.

It can clearly be seen from the commissioning process documentation (See attached sheets 5-8 & 9-11), that the use of the company name Brightspark™ and its associated services as a television production company were utilised before the application to revoke the registration was received by the Intellectual Property Office and/or any alleged communication by the applicant to the proprietor.

This illustrates that participation in the commissioning process wasn't a reaction by Brightspark™ to retrospectively provide the company with trading credence. It also demonstrates the company's involvement as an essential and integral part of the trading process with media marketplace and the clear intention of Brightspark™ to continue trading."

6) A hearing was held on 16 November 2011. Mr Braimoh represented himself. Parragon was represented by Mr Peter Cornford of Stevens Hewlett & Perkins.

***Witness statement of Dilly Braimoh of 20 March 2011***

7) Mr Braimoh states that he is a journalist and a television producer. He states that the trade mark Brightspark was first used by him in 1995. He states that the trade mark has been used in respect of services in classes 35 and 41.

8) Mr Braimoh states:

“I refer to television game show pilot ‘**Trial By Television**’ (Central TV – 1996) marked exhibit **DB1**; television documentary production, ‘**Syncro – The Gospel Truth**’ (Carlton TV – 1995) marked exhibit **DB2**; Programme Format Submissions ‘**Recipes of the World**’ (1997) marked exhibit **DB3**; ‘**Kaos in the Kitchen!**’ (1997) marked exhibit **DB4**; ‘**Refugee Recipes**’ (1999) marked exhibit **DB5**; ‘Return of the Rock (BBC-2010) marked exhibit **DB6**; ‘Return of the Rock’ (Channel Four – 2010) marked exhibit **DB7.**”

DB1 appears to be a pitch to television companies for a programme that Mr Braimoh wished to make. DB1 shows use of the trade mark on the title page. Also on the title page “Brightspark Communications Ltd” appears. On several of the other pages, at the bottom, Brightspark Ltd © 1996 appears. Exhibit DB2 is a recording of a programme called *Synchro*. The credits refer to it being programme 1, version 1 and to Carlton Television. The date of 4 December 1993 appears on the credit page. There is no reference to the trade mark or Brightspark in the recording. This emanates from prior to the date of registration and so is not relevant to these proceedings. (It is also prior to the date of application for registration, 6 October 1995.) DB3 is a sheet headed *Recipes of the World* which is described as “A Studio-Based 26 x 36 Min. Cookery Show”. There is no use of the trade mark as registered. At the bottom of the page © Brightspark 1997 appears. There is nothing to indicate that the programme was ever produced. DB4 is headed “Kaos In The Kitchen! A 30min Children’s Gameshow”. The trade mark does not appear on the page. At the bottom of the page © Brightspark 1997 appears. The exhibit appears to be a pitch by Mr Braimoh for a television series. DB5 is headed “Refugee Recipes A Proposal for 6 x 30 minute programmes”. There is no use of the trade mark. At the bottom of the page © Brightspark 1999 appears. DB6 consists of a proposal for a documentary called *Return of The Rock*. The proposal was registered by the BBC on 2 June 2010. There is no use of the trade mark or reference to Brightspark. DB7 is a proposal for the same programme as DB6, but made to Channel 4. It was registered by Channel 4 on 2 June 2010, and rejected by it on 24 November 2010. The proposer is identified as Dilly Braimoh of Brightspark Communications. In the proposal the following appears: “A Brightspark Communications production, this is billed as: ‘Out of Africa’ meets ‘Orphan Annie’ meets ‘My Hero’”. The communications from the BBC and Channel 4 are addressed directly to Mr Braimoh.

9) Exhibits DB8, 9 and 10 are telephone bills made out to Brightspark Management. They are dated 7 February 1996, 7 April 1996 and 7 September 1996.

10) Exhibit DB11 is a letter headed Brightspark Management (with the device before Brightspark). The letter is dated 15 September 1995 and so prior to the date of registration and application for registration. The letter advises Mr Braimoh that he has joined the “selective client list of Brightspark Management”

who will be representing him. Exhibit DB6 is an unsigned letter dated 10 February 1996, so prior to the date of registration, headed Brightspark Management (with the device before Brightspark). It is written to Neil Sean Esq, however, it is addressed "Dear Sean". It refers to a conversation that the writer had with Neil Sean Esq. Exhibit DB13 is a copy of a CV for Claire Pentulengro. The contact address is Brightspark Management. The CV is dated September 1995. Exhibit DB14 is a draft letter, dated 2 October 1995, to the controller of factual programmes at Carlton Television. The letter is "to introduce Brightspark Management and say how delighted we are to be representing Dilly Braimoh". Exhibit DB15 is a status report dated 21 October 1995 from Brightspark Communications Limited, it relates to a project entitled National Children's Week 1997. Exhibit DB16 is a copy of report from a meeting with the James Grant group of companies on 21 November 1995. The heading of the page reproduced bears the name Brightspark Management (with the device before Brightspark). Included in the report is the advice. Exhibit DB17 is a sales invoice, dated 17 March 2007, from Makro for a Power Rangers bucket and a kettle. The customer is identified as Brightspark Productions. Exhibit DB18 is another sales invoice, dated 17 April 2009, from Marko; the customer is identified as Brightspark Productions. Exhibit DB19 is a sales receipt from Makro, dated 24 December 2009. The customer is identified as Brightspark Productions. Makro is described as a cash and carry undertaking. Exhibit DB20 is a further sales receipt from Makro, dated 26 January 2010. The customer is identified as Brightspark Productions. It is for wet and dry vacuum powder, a grinding disc set, and an angle grinder.

11) Mr Braimoh states:

"Brightspark continues to utilise its trade mark, which includes the submissions for the production of television programmes and series to terrestrial and satellite television companies".

Mr Braimoh states that he is the proprietor of Brightspark Communications.

12) On 14 November 2011 at 17:27 Mr Braimoh sent an e-mail to the Intellectual Property Office containing additional evidence.

13) In *Yosif Abdulrahman Al-Bassam Trading Establishment's Application* BL O/467/02 Mr Geoffrey Hobbs QC, sitting as the appointed person considered how requests to file additional evidence should be viewed:

"38. The filing of additional evidence under Rule 13(11) requires leave so that the Registrar can be satisfied that an extension to the expired timetable for the filing of evidence in the prescribed sequence should be granted in the particular circumstances of the case in hand. The Rule specifically envisages that leave may be given "at any time". The burden of persuasion is clearly upon the party asking for the indulgence. The

position adopted by the opposite party may well have a bearing on the answer to be arrived at. In a case such as the present, where rectification of a procedural irregularity is required, I think it is necessary to consider: (1) the materiality of the evidence in question to the issues that the Registrar has to determine; (2) the seriousness of the irregularity which the Registrar is being asked to rectify; and (3) the justice and fairness of subjecting the opposite party to the burden of the evidence in question at that stage of the Registry proceedings. These are matters of degree. Over and above that, a judgment must be made as to their relative weight in the context of the given case.”

14) The Trade Marks Rules 2008 rule 38(8) states:

“The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

In his e-mail Mr Braimoh writes:

“This crucial evidence has not previously been submitted because the letters were computerised in an out-dated software application (Lotus Word Pro) and presumed deleted.”

It is not considered that this is a very good reason for the evidence not having been submitted at the appropriate time. Mr Braimoh has had plenty of time to file this evidence. He had plenty of time to investigate his records. However, it is not considered that this new evidence puts Parragon to any great inconvenience. Mr Cornford was content for the evidence to be admitted. Consequently, the evidence was admitted into the proceedings. The additional evidence has been attached to the end of the decision.

### **Decision**

15) A convenient summary of the criteria relating to genuine use was given by the General Court (GC) (if in relation to a Community trade mark) in *Anheuser-Busch Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-191/07*:

“99 In interpreting the concept of genuine use, account should be taken of the fact that the ratio legis of the requirement that the earlier mark must have been put to genuine use if it is to be capable of being used in opposition to a trade mark application is to restrict the number of conflicts between two marks, in so far as there is no sound economic reason resulting from an actual function of the mark on the market (Case T-174/01 *Goulbourn v OHIM – Redcats (Silk Cocoon)* [2003] ECR II-789, paragraph 38). However, the purpose of the provision is not to assess commercial success or to review the economic strategy of an



undertaking, nor is it intended to restrict trade-mark protection to the case where large-scale commercial use has been made of the marks (Case T-203/02 Sunrider v OHIM – Espadafor Caba (VITAFRUIT) [2004] ECR II-2811, paragraph 38, and judgment of 8 November 2007 in Case T-169/06 Charlott v OHIM – Charlo (Charlott France Entre Luxe et Tradition), not published in the ECR, paragraph 33).

100 There is genuine use of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the registration (Case C-234/06 P II Ponte Finanziaria v OHIM [2007] ECR I-7333, paragraph 72; see also, by analogy, Case C-40/01 Ansul [2003] ECR I-2439, paragraph 43). In that regard, the condition of genuine use of the mark requires that the mark, as protected on the relevant territory, be used publicly and externally (Silk Cocoon, paragraph 99 above, paragraph 39; VITAFRUIT, paragraph 99 above, paragraph 39; Charlott France Entre Luxe et Tradition, paragraph 99 above, paragraph 34; see also, by analogy, Ansul, paragraph 37).

101 When assessing whether use of the trade mark is genuine, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark (VITAFRUIT, paragraph 99 above, paragraph 40; Charlott France Entre Luxe et Tradition, paragraph 99, paragraph 35; see also, by analogy, Ansul, paragraph 100, paragraph 43).

102 As to the extent of the use to which the earlier trade mark has been put, account must be taken, in particular, of the commercial volume of the overall use, as well as of the length of the period during which the mark was used and the frequency of use (VITAFRUIT, paragraph 99 above, paragraph 41, and Charlott France Entre Luxe et Tradition, paragraph 99 above, paragraph 36).

103 The question whether use is sufficient to maintain or create market share for the goods or services protected by the mark thus depends on several factors and on a case-by-case assessment. The characteristics of those goods and services, the frequency or regularity of the use of the trade mark, whether the mark is used for the purpose of marketing all the identical goods or services of the proprietor or merely some of them, or evidence of use which the proprietor is able to provide, are among the

factors which may be taken into account (Case C-416/04 P *Sunrider v OHIM* [2006] ECR I-4237, paragraph 71).

104 To examine whether an earlier trade mark has been put to genuine use, an overall assessment must be carried out, which takes into account all the relevant factors of the particular case (*VITAFRUIT*, paragraph 99 above, paragraph 42; *Charlott France Entre Luxe et Tradition*, paragraph 99 above, paragraph 37; see also, by analogy, *Ansul*, paragraph 100 above, paragraph 39).

105 Moreover, the Court of First Instance has held that genuine use of a trade mark could not be proved by means of probabilities or suppositions, but had to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (Case T-39/01 *Kabushiki Kaisha Fernandes v OHIM – Harrison (HIWATT)* [2002] ECR II-5233, paragraph 47).”

16) In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T- 325/06 the GC stated:

“32 To examine whether an earlier trade mark has been put to genuine use, an overall assessment must be carried out, which takes into account all the relevant factors of the particular case. That assessment entails a degree of interdependence between the factors taken into account. Thus, the fact that commercial volume achieved under the mark was not high may be offset by the fact that use of the mark was extensive or very regular, and vice versa. In addition, the turnover and the volume of sales of the product under the earlier trade mark cannot be assessed in absolute terms but must be looked at in relation to other relevant factors, such as the volume of business, production or marketing capacity or the degree of diversification of the undertaking using the trade mark and the characteristics of the products or services on the relevant market. As a result, the Court has stated that use of the earlier mark need not always be quantitatively significant in order to be deemed genuine. Even minimal use can therefore be sufficient to be deemed genuine, provided that it is viewed as warranted in the economic sector concerned in order to maintain or create a share in the market for the goods or services protected by the mark (*VITAFRUIT*, paragraph 27 above, paragraph 42, and *LA MER*, paragraph 26 above, paragraph 57; see, by analogy, *Ansul*, paragraph 24 above, paragraph 39, and the order in Case C-259/02 *La Mer Technology* [2004] ECR I-1159, paragraph 21).”

There is, therefore, no de minimis level of use to establish genuine use (also see inter alia *Sonia Rykiel création et diffusion de modèles v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-131/06 and *The Sunrider Corp v Office for Harmonization in the Internal Market (Trade Marks*

and Designs) (OHIM) Case C-416/04 P). In *Ajax Brandbeveiliging BV v Ansul BV* Case C-40/01 the Court of Justice of the European Union (CJEU) held that it is necessary to establish whether the use “is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of the goods or services at issue, the characteristics of the market and the scale and frequency of use of the mark”. In *Il Ponte Finanziaria SpA v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case C-234/06 P the CJEU stated:

“73 The question whether use is sufficient to maintain or create market share for the goods or services protected by the mark thus depends on several factors and on a case-by-case assessment. The frequency or regularity of the use of the trade mark is one of the factors which may be taken into account (see *Sunrider v OHIM*, paragraph 71; see also, to that effect, *La Mer Technology*, paragraph 22).”

17) The claimed use must be considered within the context of the specification. In “construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade<sup>i</sup>”. Words should be given their natural meaning within the context in which they are used, they cannot be given an unnaturally narrow meaning<sup>ii</sup>. Consideration should be given as to how the average consumer would view the services<sup>iii</sup>. The class in which goods and services are placed may be relevant in determining the nature of the goods or services<sup>iv</sup>. Jacob J in *Avnet Incorporated v Isoact Ltd* [1998] FSR 16 stated:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

18) Material that can be identified as emanating from after the date of the completion of the registration process (13 September 1996) and prior to the date of application for revocation (9 July 2010) is identified below:

DB3 – A proposal for a cookery show called *Recipes Of The World* devised by Dilly Braimloh. ©Brightspark 1997 appears at the bottom. No indication as to whom it was sent.

DB4 – A proposal for a show called *Kaos In The Kitchen!* devised by Dilly Braimloh. ©Brightspark 1997 appears at the bottom. No indication as to whom it was sent.

DB5 – A proposal for a show called *Refugee Recipes* devised by Dilly Braimloh. ©Brightspark 1999 appears at the bottom. No indication as to whom it was sent.

DB6 - A proposal for a documentary called *Return of The Rock*. The proposal was registered by the BBC on 2 June 2010. There is no reference to Brightspark. The response from the BBC is addressed to dilly.b@virgin.net.

DB7 - A proposal for the same programme as DB6, but made to Channel 4. It was registered by Channel 4 on 2 June 2010, and rejected by it on 24 November 2010. The proposer is identified as Dilly Braimoh of Brightspark Communications. In the proposal the following appears: "A Brightspark Communications production, this is billed as: 'Out of Africa' meets 'Orphan Annie' meets 'My Hero'." The response from the BBC is addressed to dilly.b@virgin.net.

DB17, DB18, DB19 and DB20 relate to sales made by Makro Cash & Carry Ltd to an account in the name of Brightspark Productions. These sales have no pertinence to the issue of establishing genuine use for the services of the registration.

DB21 – a letter dated 19 October 1997 addressed to the controller of factual programmes at Carlton Television. There is no indication as to who sent the letter. It refers to a proposal being sent about life on the canal network in and around London. A letter dated 10 January 1999 addressed to the head of multicultural programming at Carlton Television from Mr Braimoh which states that he has enclosed "a few proposals".

DB23 – a letter dated 30 January 1998 addressed to the commissioning editor of Channel Four Television from Mr Braimoh. It refers to a proposal for a documentary. A letter dated 4 December 1997 to an assistant editor at Channel Four Television from Mr Braimoh, re the same proposal as DB6 and DB7. A letter dated 19 June 1997 to an assistant editor at Channel Four Television re a programme called *Planet Nosh*. It appears that the letter is from Mr Braimoh. A VHS copy of the programme was enclosed with the letter. The letter states:

"Although my primary role was as Producer of **Nosh**, when the presenter, Trish Williamson, fell ill just before recording, *someone* had to step in at short notice, so why not *me*!

Bearing in mind the budget limitations (£3000/show), no allotted rehearsal time, recording the entire show in a 2 hour 'window' between the news (it's actually a news/weather/bulletin studio) *and* clearing the studio after the first ½ hour for a ½ hour break to record the network weather... I feel the programme holds up well."

DB26 – a letter dated 5 August 1997 address to the director of programming at GSkyB from Mr Braimoh. The letter refers to proposals for programmes. A letter dated 30 April 2001 addressed to the controller of programmes of the BBC from Braimoh seeking a position in a presentation team. A letter dated 27 April 2001

addressed to the creative director of consumer programmes at the BBC from Mr Braimoh seeking a position in the *Watchdog* programme.

DB27 - A letter dated 28 September 1997 to the executive producer of London News Network Enterprises, presumably from Mr Braimoh. The letter advises that an expenses sheet and receipt for phone calls was attached. There is no indication as to what these relate. A letter dated 23 August 1997 to the general manager of London News Network enclosing expenses claims. There is no indication as to what the expenses relate.

The letters exhibited at DB21 are headed Brightspark Communications, at the bottom of the letter the following appears: "Brightspark™ Communications Ltd., Registered Office: As Above; 'Brightspark' is a Registered Trademark". The letters exhibited at DB23 are headed Brightspark Productions. At the bottom of the letters the following appears: "Brightspark™ Communications Ltd. Registered Office: As Above. Registration No. 3112931. 'Brightspark' is a Reg. Trademark". The letters exhibited at DB26 are headed Brightspark Ltd. At the bottom of the letters the following appears: "Brightspark™ Communications Ltd. Registered Office: As Above. Registration No. 3112931. 'Brightspark' is a Reg. Trademark". The letters exhibited at BD27 are headed Brightspark Ltd. At the bottom of the letters the following appears: "Brightspark Communications Ltd., Anolia House, Woodlea Road, Worthing, W. Sussex BN13 1BP Registered Office: As Above. (Registration No. 3112931). Tel: 01903 527000".

DB29 is a witness statement from Robert Coyle which is produced below:

Trade Marks Act 1994

In the matter of Registration  
No. 2040465 Brightspark (device)  
(the "Mark") in the name Dilly  
Braumoh and the application  
for the revocation thereof by  
Parragon Books Limited

Witness Statement of Robert Coyle

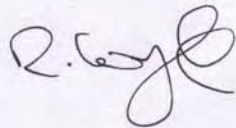
I, Robert Coyle, of Little Firs, Back Lane, Rushlake Green, East Sussex TN21 9QW, am a film producer and owner of Lattitude Productions Limited.

1. Before I established Lattitude Productions in 2006 I was co-owner and Managing Director of 'Out Takes', a company specialising in the production and distribution of safety management training films.
2. Between the years 1997 and 2006, 'Out Takes' was based in High Street, Beckenham, Kent.
3. Several times, during the years 1994 and 2006, I employed the services of Dilly Braimoh, trading as Brightspark Productions, as an on-screen Presenter for several of our safety training films.
4. These films were for corporations such as Corus, British Telecom and Coca Cola.
5. Written communication between Out Takes and Dilly Braimoh was under the premise of 'Brightspark Productions'.
6. When Dilly Braimoh invoiced Out Takes for works that he had carried out, the invoices were on 'Brightspark' headed paper.
7. As such, all remuneration in the form of cheques, which were made out to 'Brightspark'.
8. The approximate remuneration to Brightspark during the stated period was approximately £4800.

STATEMENT OF TRUTH

I Robert Coyle, owner of Lattitude Productions, believe that the facts submitted in this Witness Statement are true.

Signed:



Date:

14/11/11

19) There is nothing to support any claim to use in relation to the following services:

*advertising, modelling for advertising or sales promotion, public relations, publication of publicity texts, publicity, television advertising, television commercials, radio advertising, radio commercials, sales promotion;*

*telecommunications;*

*club services, entertainment information, organisation of education and entertainment competitions, presentation of live performances, production of radio programmes, publication of texts, publication of books, publication of educational books and texts, recording studio services.*

20) There is no evidence that in any of the material periods that Mr Braimoh produced any television shows that were broadcast. A period of almost 14 years passed between the completion of the registration process and the application for revocation. It appears that Mr Braimoh produced a specimen programme in 1997, from the letter exhibited at DB23, in which he was producer and presenter but there is nothing to suggest that it was ever broadcast. Mr Braimoh over a period of years has pitched ideas for television programmes none of which have been accepted. His attempts to create a market for television productions has been limited to sending pitches to television companies. The one specimen programme he produced was completed in the time allocated to him between weather broadcasts. There is nothing to indicate that Mr Braimoh has any infrastructure to produce television programmes. There is no evidence as to his bringing on board any technical crew to produce any of his proposals. There is no evidence of Mr Braimoh advertising his services in trade publications. The use shown by Mr Braimoh in respect of *production of television programmes* and *production of shows* cannot be considered to be creating a market for these services that is warranted in the economic sector; taking into account the size of the market and the length of time since the trade mark was registered.

21) Mr Braimoh has been a presenter of safety training films. It is not considered that this can be characterised as maintaining or creating a market for *television entertainment* or *entertainer services* at all.

22) This leaves *personnel recruitment*. At the hearing Mr Braimoh referred to exhibits DB24 and DB25 as showing that the trade mark was being used for representing persons. DB24 and DB25 emanate from prior to the date of the completion of the registration of the trade mark and so do not assist Mr Braimoh. Mr Coyle's evidence might be suggestive of Brightspark Productions representing Mr Braimoh. However, this is not clearly established by the statement. All it does establish is that payments were made to Brightspark, which could be for a variety of reasons; such as for tax purposes. Even if this

were showing that Brightspark was representing Mr Braimoh, this is not a recruitment service. There has been no use in relation to *personnel recruitment*.

23) Mr Cornford queried whether, if that had been any use, whether it was use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered. For the sake of completeness this matter will be considered, although it does not have a bearing upon the outcome of the case, as it has been decided that there has been no genuine use under any trade mark.

24) The use of © Brightspark is not use of a trade mark, ie use of a sign to create or maintain a market in services, but a statement as to the ownership of copyright.

25) In *Budejovicky Budvar Narodni Podnik v Anheuser-Busch Inc* [2003] RPC 25 the Court of Appeal dealt with issues relating to use of a trade mark in a form which does not alter the distinctive character of the mark in the form in which it was registered. Lord Walker stated:

“43 I have no wish to be overcritical of the way in which the deputy judge expressed himself, especially since I think he was a little overcritical of the way in which the hearing officer had expressed himself. But I am inclined to think that the deputy judge made the issue rather more complicated than it is. The first part of the necessary inquiry is, what are the points of difference between the mark as used and the mark as registered? Once those differences have been identified, the second part of the inquiry is, do they alter the distinctive character of the mark as registered?”

44 The distinctive character of a trade mark (what makes it in some degree striking and memorable) is not likely to be analysed by the average consumer, but is nevertheless capable of analysis. The same is true of any striking and memorable line of poetry:

"Bare ruin'd choirs, where late the sweet birds sang"

is effective whether or not the reader is familiar with Empson's commentary pointing out its rich associations (including early music, vaultlike trees in winter, and the dissolution of the monasteries).

45 Because distinctive character is seldom analysed by the average consumer but is capable of analysis, I do not think that the issue of "whose eyes?-- registrar or ordinary consumer?" is a direct conflict. It is for the registrar, through the hearing officer's specialised experience and judgment, to analyse the "visual, aural and conceptual" qualities of a mark and make a "global appreciation" of its likely impact on the average



consumer, who "normally perceives a mark as a whole and does not proceed to analyse its various details."

In *Boura v Nirvana Spa & Leisure Ltd* BL O/262/06 Mr Richard Arnold QC, sitting as the appointed person, stated:

"15. It is clear from BUD and BUDWEISER BUDBRÄU and the four Court of First Instance cases that the normal approach to the assessment of distinctive character applies in this context. As the European Court of Justice has reiterated in numerous cases, the distinctive character of a trade mark must be assessed (i) in relation to the goods or services in question and (ii) according to the perception of the average consumer of those goods or services, who is deemed to be reasonably well-informed and reasonably observant and circumspect."

He went on to state:

"34 The second question is whether that sign differs from the registered trade mark in elements which do not alter the latter's distinctive character. As can be seen from the discussion above, this second question breaks down in the sub-questions, (a) what is the distinctive character of the registered trade mark, (b) what are the differences between the mark used and the registered trade mark and (c) do the differences identified in (b) alter the distinctive character identified in (a)? An affirmative answer to the second question does not depend upon the average consumer not registering the differences at all."

26) It is necessary to consider the difference(s) between the trade mark as registered and as used. It is not necessary that the average consumer does not register any differences at all.

27) Use involving the word Brightspark, after the date of the completion of the registration process, is in the following manner:

Brightspark Communications;

Brightspark™ Communications Ltd., Registered Office: As Above; 'Brightspark' is a Registered Trademark";

Brightspark Productions;

Brightspark™ Communications Ltd. Registered Office: As Above. Registration No. 3112931. 'Brightspark' is a Reg. Trademark";

Brightspark Ltd;

“Brightspark™ Communications Ltd. Registered Office: As Above. Registration No. 3112931. ‘Brightspark’ is a Reg. Trademark”;

“Brightspark Communications Ltd., Anolia House, Woodlea Road, Worthing, W. Sussex BN13 1BP Registered Office: As Above. (Registration No. 3112931). Tel: 01903 527000”.

28) There has been no use, since the completion of the registration process, of the device element with the word element. The trade mark consists of two elements, one of which is absent in all forms of use. Each element of the trade mark has distinctive character. The two elements in combination create a distinctiveness that is greater than the separate elements; this is the actual distinctive character of the trade mark. Applying the test advocated by Mr Arnold, the use of the sign, even outwith the additional elements, is use in a form which alters the distinctive character of the trade mark as registered. Consequently, Mr Braimoh’s defence fails on this basis also.

29) Mr Braimoh has not established that there has been genuine use of the trade mark in respect of the services for which it is registered. **The registration is revoked in its entirety, under section 46(1)(a) of the Act, from 14 September 2001.**

## **COSTS**

30) Parragon having been successful is entitled to a contribution towards its costs. Costs are awarded upon the following basis:

Revocation fee:	£200
Preparing a statement and considering the statement of Mr Braimoh:	£200
Considering evidence of Mr Braimoh:	£300
Preparation for and attendance at a hearing:	£300
Total:	£1,000

Mr Dilly Braimoh is ordered to pay Parragon Books Limited the sum of £1,000. 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 5<sup>th</sup> day of December 2011**

**David Landau  
For the Registrar  
the Comptroller-General**

## Brightspark Productions Ltd

Anolia House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

### **David Mason - Development Producer**

Thames Television  
Teddington Studios  
Broom Road  
Teddington  
Middx TW11 9NT

5 February 1996

Dear David,

Many thanks for last week's cup of coffee and chat. It was greatly appreciated!

As promised, please find enclosed "Trial By Television". I hope that the hard copy holds as much excitement as me vocalising the concept!

Do ring and tell me what you think - either at the office or at home (01883 347974).

Warm regards,

Dilly Bramford

Enc.

## Brightspark Ltd

Annie House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Roy Addison - Head of Press**  
Thames/Pearson Television  
Teddington Studios  
Broom Road  
Teddington  
Middx TW11 9NT

30 August 1995

Dear Roy,

What a pleasure it was to see you the other evening - it's been a long time!

We didn't have the opportunity then for any more than a brief chat, so if you're not too busy in the next couple of weeks, let me buy you lunch.

I've got a multitude of ideas and your advice would be invaluable.

I'll telephone you to arrange a suitable date.

Warm regards

## Brightspark Management Ltd

Anola House, / Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Shu Richmond - Producer: Thames Development**  
Thames Television Ltd  
Ueddington Studios  
Ueddington Lock  
Midex TW11 9NT

18 April 1996

Dear Shu,

Re: **HerbLife**

I think I may have verbally proposed **HerbLife** to you, either in a shortened version as an integral strand within a magazine format or as a programme series in its' own right. Please find enclosed the hard copy.

It may be that Dawn Airey has already made her decisions on future programming. Either way, it would be interesting to see if this particular proposal is right for Channel 5 - or for that matter, a future Thames development.

I'm sure that I can count on your discretion so let's talk soon as I'm eager to advance this further.

That aside, I hope life's treating you well and you're withstanding the pressure!

Warm regards,

Enc.

## Brightspark Ltd

Anolis House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

Lindsay Charlton - Executive Producer  
London News Network Enterprises  
4th Floor  
Bastille Court  
Paris Garden  
London SE1 8ND

28 September 1997

Dear Lins,

Hope everything went well down at MIPCOM. No doubt that your cards were snapped up and the world market is now clamouring for your prog!

Please find enclosed an expense sheet and (revised) receipt for phone calls. This one should go through Accounts without hitch! Sorry about the previous glitch.

All the best ... and do stay in touch.

Enc

Brightspark Communications Ltd., Anolis House, Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Registered Office: As Above. (Reg No. 311293) Tel: 01903 527000

## Brightspark Ltd

Anolis House, 1 Woodlea Road, Worthing, W. Sussex. BN15 1EP  
Tel/Fax: 01903 527000

**Jane Tatnall - General Manager**  
London News Network  
London Television Centre  
Upper Ground  
London SE1 9LT

23 August 1997

Dear Jane,

**Re: Invoice & Expense Claim Forms.**

Please find enclosed 3 x expenses claim forms - along with their associated receipts, and an invoice for telephone expenses, submitted with the associated telephone bills.

As you will see by their dates, they've been submitted embarrassingly late.

Acknowledging that Lindsay will have to corroborate and countersign, I hope my tardiness doesn't cause too much of a problem!

Kind regards,

Ehc.

Brightspark Communications Ltd, Anolis House, Woodlea Road, Worthing, W. Sussex. BN15 1EP  
Registered Office: As Above. (Reg No 311293) Tel: 01903 527000



## Brightspark Ltd

Anclia House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Dianne Nelmes - Director of Programming: GSkyB**  
Granada Television  
Franciscan Court  
16 Hatfields  
London SE1 8DJ

5 August 1997

Dear Dianne,

I was pleased that you so liked my proposal on Herbs. Thank you for passing it onto Debbie Pollitt.

As you suggested, I later contacted Debbie, and despite liking the proposal, felt that, as far as herbs were concerned, she was served within existing programmes.

That aside, I won't be daunted from sending in further proposals!

Are you still interested in the premise of doing something on canals? If so, unless you've already got something in mind, how about if I put something down on paper?

Keep well, and I hope to talk with you soon.

Kind regards,

Dilly

## Brightspark Management Ltd

Anchor House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Lorraine Heggsey - Controller of Programmes**

Room 6063  
BBC Television Centre  
Wood Lane  
London  
W12 7RJ

30 April 2001

Dear Lorraine,

**Re: Presenter - Weekend Live**

I understand that you are expanding and developing several brands, (*Broadcast 20/4/2001*) seeking to keep already highly successful programmes fresh and lively.

With my experience in leisure and entertainment television, should the opportunity arise, I would like to be considered as part of your presentation team.

My broadcast experience, coupled with my Nigerian/Jewish (?) background - currently provide a somewhat disarming approach to my work. Have a look at my showreel and see if you agree.

As an aside, I combine my broadcasting career with the successful enterprise of property development. Bringing me into all aspects of purchase, sale, trades, building regs, planning and legal, it's experience which may prove useful to consumer television.

To that end, I've also enclosed a c.v. of 'trade' experience.

So, any opportunities for plumber, turned night club bouncer, turned journalist, turned presenter? I know you're up to your ears in work, but if you can spare a few minutes, any chance of a chat would be much appreciated.

I look forward to hearing from you.

Sincerely yours,

Dilly Braimah

Enc.

## Brightspark Management Ltd

Arolia House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

### Mark Killick - Creative Director, Consumer Programmes

Room 4220 White City  
BBC Television  
201 Wood Lane  
London  
W12 7TS

27 April 2001

### Beth Levinson - Mark's PA

Received reply 17/5. Mark out of office. Will look at showreel on return.

Dear Mark,

### Re: Presenter - Weekend Watchdog

I understand that you are expanding and developing the *Watchdog* brand (*Broadcast* 20/4/2001) building on an already highly successful programme.

With my experience in leisure and entertainment television, should the opportunity arise, I would like to be considered as part of your presentation team.

My broadcast experience, coupled with my Nigerian/Jewish (?) background - currently provide a somewhat disarming approach to my work. Have a look at my showreel and see if you agree.

As an aside, I combine my broadcasting career with the relatively successful enterprise of property development. Bringing me into all aspects of purchase, sale, trades, building regs, planning and legal, it's a experience which may prove useful to consumer television.

To that end, I've also enclosed a c.v. of 'trade' experience

I know you're up to your ears in work, but if you can spare a few minutes, any chance of a chat?

I look forward to hearing from you

Sincerely yours,

Diy Brainoh

Enc.

\*Brightspark Management  
*representing*

**CLAIRE PETULENGRO**



# CLAIRE PETULENGRO

## Curriculum Vitae

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**Age:** 23  
**Date of Birth:** 30 October 1973  
**Contact Address:** Brightspark Management  
1 Woodlea Road  
Worthing  
West Sussex BN13 1BP  
**Contact Tel/Fax:** 01 903 52 7000

### TELEVISION/RADIO

**Motermouth - TVS**  
**Late Night Late - TVS**  
**Dilly Dines Out - Carlton/London News Network**  
**The Soap Channel - BSkyB**  
**Eleventh Hour - Southern Sound Radio**  
**WRKB - New Jersey (USA)**

### PUBLICATIONS

**'Woman's Own'**  
**'Midweek'**  
**'Girl About Town'**  
**Voted 'Best Clairvoyante in Britain' ('Woman's Own')**

Brightspark Management  
Tel/Fax: 01 903 52 7000  
February 1996

## BIOGRAPHY

Where current astrologers claim to simply look at the stars in a bid to guess the future, **Claire Petulengro**, as well as being an astrologer, is a professional clairvoyante, asserting that she is genuine when it comes to revealing what lies ahead.

With the additional talents of Tarot, palmistry, astrology, financial and crystal ball reading, it is *crystal* clear what sets Claire apart from the others!

Descended from a long line of pure bred Romanies with a proven family pedigree going back to the Middle Ages, 22 year old Claire is the fresh, vivacious face of the future!

While her famous mother and grandmother foretold the future of Royalty and innumerable celebrities, Claire has gone from being a young teenager practising in a kiosk on Brighton pier, to telling the fortunes of the youth market and more mature audiences in 'phone-in' radio and television shows in Britain and America.

Now, as well as giving regular readings in London and the Home Counties, she runs a successful practice of horoscopy and clairvoyancy in the West Country.



Brightspark Management - Tel/Fax: 01 903 52 7000

Brightspark Management  
*representing*

**DILLY BRAIMOH**



## DILLY BRAIMOH

### Curriculum Vitae

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Age: 37  
Date of Birth: 5 January 1959  
Contact Address: Brightspark Management  
1 Woodlea Road  
Worthing  
West Sussex BN13 1BP  
Contact Tel/Fax: 01 903 52 7000

#### TELEVISION

Presenter - "Dilly Down Town" - *Series 1995* (Carlton)

Presenter - "Dilly Dines Out" - *1994/95* (London News Network)

Presenter - "Dilly Down Town" - *Series 1994* (Carlton)

Producer/Director - "The Gospel Truth" (Carlton)

Presenter - "Dilly Down Town" - *Series 1993* (Carlton)

Presenter/Reporter - "This Morning" (Granada)

Presenter/Reporter - "Don't Just Sit There!" (C4)

Presenter/Reporter - "The Treatment" (Thames)

Presenter/Reporter - "Advice Shop" (BBC)

Presenter/Reporter - "Education Extra" (C4)

Presenter/Reporter - "Afternoon Plus" (Thames)

Presenter/Reporter - "Ebony" (BBC)

*...continued*



**TELEVISION *(continued)***

Researcher - "Motormouth" (TVS)

Researcher - "Get Fresh" (TVS/Tyne Tees)

Script Consultant - "Desmond's" (C4)

**CORPORATE FILMS**

Nestle

British Steel

British Telecom

**RADIO**

Reporter - BBC Radio 5

Reporter - BBC World Service

Reporter - BFBS

Reporter - SSVC

Reporter - Capital Radio

Reporter - GLR

Reporter - Radio Mercury

Reporter - LBC

Reporter - BBC Schools Radio

**AWARD**

By the Society of Black Arts *"in recognition to Dilly's invaluable contribution to Black Arts in Britain"*.

Brightspark Management - Tel/Fax: 01 903 52 7000  
February 1996

## Brightspark Productions

Anella House, 1 Woodlea Road, Worthing, W. Sussex, BN15 1BP  
Tel/Fax: 01903 527000

**Yasmin Anwar - Commissioning Editor**  
Channel Four Television  
124 Horseferry Road  
London SW1P 2TX

30 January 1998

Dea Yasmin,

**Re: *In The Mix* - "That Black Thing"**

Please find enclosed a proposal for an upbeat, irreverent single documentary on black culture, which should fit into the remit of *In The Mix*.

Although, as such, the subject matter is 'common knowledge', because some see it as rather sensitive, handled in the right way, not only does it make a social comment, it could be really good fun.

I look forward to hearing what you think.

Yours sincerely,

Dilly Braimah

Enc

## Brightspark Productions

Anolia House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Sarah Baynes - Asst Editor**  
Channel Four Television  
124 Horseferry Road  
London SW1P 2TX

4 December 1997

Dear Sarah,

How are you? I hope life's treating you well!

I would appreciate your thoughts on the enclosed, **The Rock**, a proposal that I intend to send to Yasmin Anwar.

Earlier this year I was in South Africa filming a holiday programme for NBC Europe. Although not on the itinerary, I took the opportunity to go to Robben Island and film some material for my own use.

With an ex-inmate as my interviewee and guide, I had a brief, yet revealing tour of the prison and island.

We know much about Mandela the man, but not about Robben Island, the prison where he and members of the current government spent so many years and where, arguably, they presented more powerful figures than if they had been free men.

I have all the rushes my filming on Robben Island, and to illustrate what can be done on a larger scale, I would like to make a short, 5 minute documentary.

As far as I can gather, a piece like this hasn't been done before. What do you think?

I'll give you a ring next week.

Best wishes,

Dilly Braimah

Enc

## Brightspark Productions

Anofa House, 1 Woodlea Road, Worthing, W. Sussex, BN13 4BP  
Tel/Fax: 01903 527000

**Sarah Baynes - Asst Editor**  
Channel Four Television  
124 Horseferry Road  
London SW1P 2TX

19 June 1997

Dear Sarah,

It was good to meet again after such a long time...and may I say how much I appreciated the time and extremely helpful suggestions you gave me.

As promised, please find enclosed a VHS copy of '*Planet Nash*'.

Although my primary role was as Producer of *Nash*, when the presenter, Trish Williamson, fell ill just before recording, *someone* had to step in at short notice, so why not *me*!

Bearing in mind the budget limitations (£3000/show), no allotted rehearsal time, recording the entire show in a 2 hour 'window' between the news (it's actually a news/weather/bulletin studio) and clearing the studio after the first ½hour for a ½hour break to record the network weather... I feel the programme holds up well.

Vanessa Chapman has shown an interest. What do you think? Any mileage on Four?

Many thanks again - and I look forward to speaking to you soon.

With my very best wishes,

Enc.

## Brightspark Productions

Anolia House, 1 Wexley Road, Worthing, W Sussex BN13 1BE  
Tel/Fax: 01903 527000

**Karen Brown - Commissioning Editor: Education**  
Channel Four  
124 Horseferry Road  
London SW1P 2TX

25 March 1996

Dear Karen,

**Re: "Dilly Dines Out"**

I currently produce, direct and present for London News Network, "**Dilly Dines Out**".

"**Dilly Dines Out**" is an upbeat 5 - 8 minute strand which explores the lifestyles, traditions and heritage of the many communities throughout London and the South East, using their culinary expertise as the primary focus and finishing with a recipe that can be copied and cooked by the viewer.

Consistently the highest (BARB) rated strand within Carlton's afternoon output over the last 18 months, I now want to expand "**Dilly Dines Out**" into a series of 30 minute programmes for Channel Four, allowing me to cover the whole of Britain.

Whether Hungarian, Afghan, Tibetan, Bengali or Rumanian, my goal has always been to reflect the true heritage of my hosts and share with a wider audience the experience and pleasure that I've already encountered, giving the viewer an opportunity to taste (*literally*) the amazing variety of cultures there are on our very doorstep and make accessible their wonderful recipes.

I hope that the enclosed showreel gives you an indication of the style and content of the proposed programme and I welcome any opportunity of meeting you to discuss the possibilities.

Yours sincerely,

Dilly Braimah

Enc.

## Brighspark Productions

Anolla House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Farrukh Dhondy** - Commissioning Editor: Multicultural Programming  
Channel Four  
124 Horseferry Road  
London SW1P 2TX

2 February 1996

Dear Farrukh,

**Re: "Dilly Dines Out"**

For the past 18 months I've had the ongoing pleasure of presenting "Dilly Dines Out" for London News Network.

"Dilly Dines Out" is an upbeat 5 - 10 minute strand which explores the lifestyles, traditions and cultures of the many communities throughout London and the South East, using their culinary expertise as the primary focus.

Whether Hungarian, Afghan, Tibetan, Bengali or Romany, my goal has always been to reflect the true heritage of my hosts, finishing with a recipe that can be copied and cooked by the viewer.

"Dilly Dines Out" has proved to be so popular that audience research shows that it is consistently the highest rated strand within Carlton's afternoon output.

I now want to expand "Dilly Dines Out" into a series of 30 minute programmes for Channel Four, allowing me to cover the whole of Britain and share with a wider audience the experience and pleasure that I've already encountered and, give the viewer the opportunity of tasting (*literally*) the amazing variety of cultures there are on our very doorstep and make accessible their wonderful recipes.

I hope that the enclosed showreel gives you an indication of the style and content of the proposed programme and I welcome any opportunity of meeting you to discuss the possibilities.

Yours sincerely,

Dilly Braimoh

Enc.

## Brightspark Productions

Anolis House, 1 Woodlee Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Seamus Cassidy - Commissioning Editor for Entertainment**  
Channel Four Television  
124 Horseferry Road  
SW1P 2TX

8 November 1995

Dear Seamus,

'Home From Home' - Outline for Situation Comedy

I think that the time is absolutely right for what advertisers would call "a middle-class, black sit-com" - a home-grown *Cosby Show*.

Please find enclosed an outline and sample script of 'Home From Home'.

I look forward to your reply.

Yours sincerely,

Dilly Braimah

Enc.

## Brightspark Management Ltd

Anolis House, 1 Woodlea Road, Worthing, W. Sussex, BN11 1BP  
Tel/Fax: 01903 527000

**Dawn Airey - Director of Programmes**  
Channel Five Broadcasting Ltd  
22 Long Acre  
London WC2E 9LX

23 May 1996

Dear Dawn,

**Re: Dilly Braimah**

You may know of Dilly from his current programme, "Dilly Dines Out" (*London News Network*), where BARB figures show that over the last 20 months, it has consistently proved to be the highest rated strand within the Carlton Television weekday afternoon output, with an above average audience of young, ABC1 housewives.

The popularity of its Presenter, **Dilly Braimah**, was also demonstrated by his last series of "Dilly Down Town" (Carlton) which managed to tempt half a million London viewers away from BBC1's incredibly strong *EastEnders*.

Dilly's experience (who, incidentally, is also a qualified electrician and plumber) as a Presenter could be applied to wide range of programmes - from LE 'people shows' to practical, lifestyle programmes.

Without wishing to appear presumptuous, I think that Dilly, with the proof that he delivers, would be a tremendous asset within the programming of Channel Five.

A well established, popular figure, well liked by audiences, Dilly would be a friendly, familiar face that viewers could identify, a personality right in at the launch of Channel Five.

Should you require further information, please do not hesitate to contact me.

Yours sincerely,

Barabara Moore

Enc.

Brightspark™ Communications Ltd., Registered Office: As Above. 'Brightspark' is a Registered Trademark.



## Brightspark Management Ltd

Analia House, 1 Woudles Road, Worthing, W Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Dawn Airey - Director of Programmes**  
Channel Five Broadcasting Ltd  
22 Long Acre  
London WC2E 9L Y

29 May 1996

Dear Dawn,

**Re: Claire Petulengro**

Whether or not you are a 'believer' - one of the millions of people who go through the ritual of consulting their daily horoscope - we are proud to represent **Claire Petulengro**, the freshest, youngest and certainly the best looking astrologer there's been for years.

**Claire Petulengro**, being a pure Romany and coming from a long line of astrological clairvoyants has, at the very least, a lineage that gives credibility to her profession.

Claire is also an expert on the history and many uses of herbs. I've already approached Shu Richmond (Producer, Development) at Thames with an outline proposal of Claire presenting **HerbLife**!, a lifestyle series that takes in the health, cooking and gardening aspects of herbs.

But whether on film or live in studio, aimed at 'youth' or a more mature audience, I believe that **Claire Petulengro** should be part of Channel Five's forthcoming programming - a face to take it into and beyond the next millennium.

Yours sincerely,

Barbara Moore

Enc.

## Brightspark Communications

Anellie House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Steve Clark - Controller of Factual Programmes**  
Carlton Television  
35-38 Portman Square  
London W1H 0NU

19 October 1997

Dear Steve,

Just a quick note to say thanks for taking the time to see me last week.

As you suggested, I'm sending Emma a proposal of a series about life on the canal network in and around the London region.

Among the many things we talked about were restaurant and I recommended *L'Odeon* in Regent Street. How about lunch there sometime? I'll give Jo a call.

All the best,

Enc.

PS. You'll find my little bit with Elena at L'Etoile at the end of the enclosed showreel.

## Brightspark Communications

Analia House, 1 Woodlka Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Richard Simons - Head of Features**  
Carlton UK Television  
35-38 Portman Square  
London W1H 0NU

10 September 1996

Dear Richard,

Many thanks for your letter.

I was really chuffed when I heard the news of you becoming Controller of Programmes at Meridian.

Not only does it give me immense pleasure to see your upward progress, but also great delight in the unspoken belief that you've given certain doubters, the "finger"... if you get my drift.

Ever onwards, mate - and I'll have to investigate some decent eateries where we can dine out, down Southampton way.

Best regards,

# Brightspark Communications

Annika House, 1 Woodlea Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

**Emma Barker - Commissioning Editor**

Carlton Television  
35-38 Portman Square  
London W1H 0NU

31 July 1996

Dear Emma,

Many thanks for taking the time to see me on Monday. It was much appreciated.

I write to you under my production company, 'Brightspark', through which I market quiz and gameshow proposals.

As you suggested, I've enclosed the proposal for the quiz "**A Question Of Taste**". Hopefully, it looks as good on paper as my flowery description of it in your office!

Acknowledging the risks we discussed about ideas, format and copyright, I trust your discretion in passing "**A Question Of Taste**" to those you feel may appreciate its' potential for future programming.

I look forward to speaking to you in the very near future.

Warmest regards,

Dilly Braimah

Enc.

Brightspark™ Communications Ltd., Registered Office: As Above; 'Brightspark' is a Registered Trademark

## Brightspark Communications

Arofia House, 1 Woodca Road, Worthing, W. Sussex, BN13 1BP  
Tel/Fax: 01903 527000

Dele Oniya - Head of Multicultural Programming  
Carlton Television  
35-38 Portman Square  
London W1H 0NU

10 January 1999

Dear Dele,

Once again, congratulations on your new post... and I hope that you've now found a desk!

Following last week's conversation, as promised, I'm enclosing a few proposals.

Acknowledging that Carlton is a regional broadcaster (and that I'm always eager to work on stories with a regional slant - *'Dilly Down Town'* & *'Dilly Dines Out'*), these particular proposals may be more promising for Network - a mixture of serious and lighthearted.

Please let me know what you think ... and I would welcome a chat over a cup of coffee.

I've also enclosed a c.v. It'll give you a laugh if nothing else!

Kind regards,

Dilly Braimoh

Enc.

Trade Marks Act 1994

In the matter of Registration  
No. 2040465 Brightspark (device)  
(the "Mark") in the name Dilly  
Bramoh and the application  
for the revocation thereof by  
Parragon Books Limited

Witness Statement of Robert Coyle

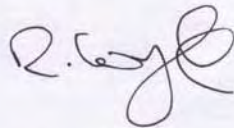
I, Robert Coyle, of Little Firs, Back Lane, Rushlake Green, East Sussex TN21 9QW, am a film producer and owner of Lattitude Productions Limited.

1. Before I established Lattitude Productions in 2006 I was co-owner and Managing Director of 'Out Takes', a company specialising in the production and distribution of safety management training films.
2. Between the years 1997 and 2006, 'Out Takes' was based in High Street, Beckenham, Kent.
3. Several times, during the years 1994 and 2006, I employed the services of Dilly Bramoh, trading as Brightspark Productions, as an on-screen Presenter for several of our safety training films.
4. These films were for corporations such as Corus, British Telecom and Coca Cola.
5. Written communication between Out Takes and Dilly Bramoh was under the premise of 'Brightspark Productions'.
6. When Dilly Bramoh invoiced Out Takes for works that he had carried out, the invoices were on 'Brightspark' headed paper.
7. As such, all remuneration in the form of cheques, which were made out to 'Brightspark'.
8. The approximate remuneration to Brightspark during the stated period was approximately £4800.

STATEMENT OF TRUTH

I Robert Coyle, owner of Lattitude Productions, believe that the facts submitted in this Witness Statement are true.

Signed:



Date:

14/11/11

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<sup>i</sup> *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281.

<sup>ii</sup> *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267.

<sup>iii</sup> *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32:

“In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under section 10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use”

<sup>iv</sup> *Altecnic Ltd's Trade Mark Application* [2002] RPC 34.