

O-209-13

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO 2567477
IN THE NAME OF RITU SHARMA
OF THE TRADE MARK**

SHOBHA'S

IN CLASSES 29, 41 AND 43

AND

**THE APPLICATION FOR A DECLARATION OF INVALIDITY THERETO
UNDER NO 84118
BY
SHOBHA'S LIMITED**

Background and pleadings

1. Shobha's is a trade mark registration standing in the name of Ritu Sharma. Miss Sharma applied for the mark on 20 December 2010. The registration procedure was completed on 1 April 2011. Shobha's is registered for the following goods and services in classes 29, 41 and 43:

Frozen foods (class 29);

Organising of entertainment and social events (class 41);

Catering services (class 43).

2. Shobha's Limited ("the applicant") filed an application on 25 July 2011 to have the trade mark declared invalid under section 47(1) of the Trade Marks Act 1994 ("the Act"). Section 47(1) states:

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

3. The applicant claims that the trade mark was registered in breach of Section 3(6) of the Act, which states:

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

The section 3(6) claim is that Miss Sharma applied for the mark in bad faith because she was already aware that the mark belongs to the applicant, in relation to which an explanation is given in a witness statement, made on 15 August 2011, by George Myrants. Mr Myrants is a trade mark attorney with the firm Trade Mark Consultants Co, the applicant's professional representatives in these proceedings. Mr Myrants has requested that this witness statement should form part of the evidence in these proceedings. Accordingly, I will describe its contents as part of my summary of the parties' evidence.

4. Miss Sharma filed a counterstatement in which she denies the applicant's claim as being unsupported and factually incorrect/false. Both parties filed a mixture of evidence and submissions. Neither wished to be heard, choosing instead for this decision to be made on the basis of the papers filed.

Evidence

5. The applicant's evidence comes from Mr Myrants, Ashvin Patel and Vinod Chohan. Miss Sharma's evidence comes from herself and also from Vinod Chohan. The summary sets out both facts and submissions, which are closely related, as far as they appear to be relevant to the issue to be decided. Both parties have accused each other of filing forged evidence. The accusations resulted in the parties being directed to re-file Mr Chohan's witness statements as affidavits.

Applicant's evidence in support

6. Mr Myrants has made three witness statements. The first of these is dated 15 August 2011 and sets out the basis of the applicant's claim. He states that he is authorised by the applicant to make his statement from information in his possession and from information supplied by the applicant. Mr Myrants states that the applicant is the successor in business of a catering partnership founded in about 2002 by Mrs Shobha Tailor (now deceased) and Mr Ashvin Patel. The catering business was known by the name SHOBHA'S. Mr Myrants exhibits sample pages from its website, first published on 6 August 2002, and testimonials from customers, from three dates in 2003, 2004 and 2006 (exhibit GM1).

7. Mr Myrants states that Miss Sharma was an employee in the business of her mother, Mrs Shobha Sharma. Mrs Sharma was a tenant of the applicant's business premises in Luton. Mr Myrants states that Miss Sharma claims that her mother was her licensee (under the attacked trade mark). Mr Myrants' reference to this claim emanates from a letter from Miss Sharma's solicitors (9 June 2011)¹ to the applicant in which the solicitors write "Mrs Shobha Sharma operates her use of our client's registered trade mark under a license" [sic]. Mr Myrants states that as Miss Sharma is the daughter of the alleged licensee and an employee working in her mother's business rented from the applicant, Miss Sharma was well aware of the applicant's large display board attached to the front of the premises, as shown in exhibit GM2. The sign was fixed by the applicant's predecessors in business in 2002. Mr Myrants refers to the delivery van pictured alongside the building, acquired by the applicant in 2002, which shows the sign Shobha's along the sides and the back of the van. He points out the vehicle licence plate, S70 BHA which he states was bought for Mrs Shobha Tailor (the deceased founder) by her son. Mr Myrants claims that Miss Sharma would have been well aware of the use of the sign and the van and that the trade mark did not belong to her.

8. Mr Myrants states that the 9 June 2011 letter from Miss Sharma's solicitors asserts on the basis of false instructions that Mrs Sharma bought the applicant's business with all tangible and intangible assets, including the name SHOBHA'S. Mr Myrants states that evidence will be filed from Mrs Sharma's accountant that "she acquired nothing of the kind and that the money was exclusively in respect of rent for the premises". Mr Myrants states that even if the assertion were to be true, it contradicts the claim (as above) that Mrs Sharma was a licensee of Miss Sharma because, Mr Myrants states, if the mother was the owner, then her daughter could have been no more than a non-exclusive licensee under the trade mark which she registered in bad faith as her own property. Mr Myrants claims that neither mother nor daughter owned the trade mark with which the applicant had no intention of parting, and which it continues to use.

9. Mr Myrants states that Mrs Sharma's business was terminated and her company dissolved on 9 August 2011. He states that she is no longer a tenant of the applicant's premises.

¹ Exhibit GM2.

10. Mr Myrants' second witness statement is dated 9 February 2012. He adds some detail about the applicant's predecessors, which is that, as described above, a catering partnership called Shobha's was founded in about 2002 by Mrs Shobha Tailor and Mr Ashvin Patel, but in this statement Mr Myrants explains that he has since discovered that the partnership existed even earlier. The partners had a company called Shobha's Catering Limited, incorporated on 29 September 2000 (as shown in a print from the Companies House website, exhibit GM4). The two partners were equal shareholders and directors until Mrs Tailor's death on 21 February 2007. Afterwards, her children, Amit and Shima Tailor, were appointed directors. Mr Myrants exhibits (page 17 of GM4) a copy of a page from the company's website, obtained through the archive database Wayback Machine, dated 6 August 2002, which refers to both Shobha's Catering Limited and Shobha's. Mr Myrants states that Shobha's Catering Limited was dissolved on 17 March 2009 after the applicant had been incorporated on 24 April 2007 to carry on the catering business with Ashvin Patel and Amit Tailor as directors, and Shima Tailor also a shareholder.

11. Mr Myrants corrects what he said in his first witness statement about Mrs Sharma having not bought the business with all tangible and intangible assets and that money paid by Mrs Sharma was in respect only of rent for the applicant's premises. He states that, in fact, out of a total of £17,000 paid, £3,000 was in part-payment for stock that Mrs Sharma bought from the applicant, the remainder being in respect of rent. In this regard, Mr Myrants exhibits (page 18 of GM4) a copy of an executed agreement between the applicant (represented by one director, Ashvin Patel) and Mrs Sharma:

Agreement between Ashvin Patel (for Shobha's Ltd) and Shobha Sharma
Agreement date 15th May 2009


This agreement made on the 15th of May between Ashvin Patel (of 12 Westbury Gardens, Luton LU2 7DW) on behalf of Shobha's Ltd, and Mrs Shobha Sharma (of 25 Dexter Close, Luton LU3 4DX) in the presence of Mr. Vinod Chauhan (of Chauhan and Co. Accountants, 83B Tavistock Street, Bedford, MK40 2RR).


It is agreed by both parties that Mrs Shobha Sharma will conduct all daily business related with Shobha's Ltd. All business responsibilities will be conducted and all liabilities from the 15th May 2009 will be the sole responsibility of Mrs Shobha Sharma. This document will remain in place until the all legal formalities notably the Lease Agreement is fully agreed and signed by both parties. The legal documents will be completed as soon as possible by legal representatives of both parties.


Mrs Shobha Sharma will make a commitment of £17,000 (Seventeen Thousand Pounds Sterling). The constitution of this amount comprising of £9000 (Nine Thousand Pounds Sterling) last three months rent and the notice period, £3000 (Three Thousand Pounds Sterling) as a months rent in advance, And £5000 (Five Thousand Pounds Sterling) as stock deposit. The monies to be paid as follows; £10,000 (Ten Thousand Pounds) on the day of this agreement. The balance is to be paid no later than 22nd May 2009, and before the completion date.

The Stock is to be valued by either an Independent Stock takers, or jointly by both parties. All deposits collected by Shobha's Ltd with orders related to the catering after the 15th May 2009 will be refunded to Mrs. Shobha Sharma as a contra payment of the balance of the Stock Valuation.

All responsibilities of all the staff to be assumed by Mrs Shobha Sharma form the 15th May 2009. Shobha's Ltd will discharge all wages up to and including 15th of May.

 Date 15th May 2009. Agreement signed on behalf of Shobha's Ltd by Ashvin Patel, Director

 Date 15th May 2009. Agreement signed by Shobha Sharma

 Date 15th May 2009. Agreement witnessed By Mr. Vinod Chauhan of Chauhan & Co.

Mr Myrants states that the name of the witness to this agreement has been misspelt and should read "Mr. Vinod Chohan of Chohan & Company.

12. Mr Myrants exhibits a witness statement by Mr Chohan at page 19 of GM4 (page 20 is a replica of the agreement shown above). Mr Myrants states:

"It is emphasised that Mr. Chohan's Witness Statement confirms that the Proprietor's mother, Mrs. Sharma, was his client, that the payment made by his client was in respect of rent and a deposit in respect of stock, that he was present during the discussions, that he witnessed the signatures to the Agreement and that to the best of his knowledge and belief the Agreement as discussed and signed was not intended as a purchase of the company as a whole nor of its name nor any of its assets other than stock."

Mr Myrants submits that even if the whole business had been sold to Mrs Sharma, it would not entitle Miss Sharma to register the mark in her own name. Mr Chohan's witness statement is shown below (his reference to the agreement is to the agreement shown above):

WITNESS STATEMENT

I, Vinod Chohan, of Chohan & Company, "The Gables", 7 Park Road North, Bedford, Bedfordshire, MK41 7RH, hereby confirm that on 15th May 2009, Mr. Ashvin Patel acting on behalf of his company named Shobha's Limited concluded an agreement with my client Mrs. Shobha Sharma of 25 Dexter Close, Luton, Bedfordshire, LU3 4DX.

A copy of the agreement is attached hereto and it will be seen that it made provision for a payment in respect of the rental of the company's premises which are situated at The Whitehouse, Unit 14, Kingham Way, Luton, Bedfordshire, LU2 7RG and also for a payment being a deposit in respect of the company's stock.

I was present during the discussions at the company's premises, acted as a witness and the last signature on the agreement is my personal signature. To the best of my knowledge and belief, the agreement as discussed and signed was not intended as a purchase of the company as a whole nor of its name nor of any of its assets other than its stock.

I believe that the facts stated in this witness statement are true.

Signature: 

Date: 28/12/11

13. Following the filing of Mr Myrants' second witness statement, Miss Sharma filed evidence. It consists of a witness statement dated 23 October 2012², exhibits and appendices. The nature of Miss Sharma's statement is to reply to the points in Mr Myrants' evidence. Miss Sharma disputes Mr Myrants' statement that Mrs Tailor's children, Amit and Shima Tailor, were appointed directors of Shobha's Catering Limited. She states that they became directors of another company, Shobha's Ltd, set up by Mr Patel after Mrs Tailor's death.

14. Miss Sharma makes allegations that the applicant's evidence is forged, in particular that of Mr Chohan, her mother's accountant. Miss Sharma states that it is obvious that the witness statement shown above (Miss Sharma calls it a letter) was

² It was filed earlier than this date, but was undated at the time of filing. Ms Sharma entered the date after a case management conference on 11 October 2012.

forged as it has been written in a completely different font to his usual professional letters, it does not have his name printed under the signature, and the signature looks questionable. Miss Sharma states that she possesses a recording of a telephone conversation which she had with Mr Chohan in which he confirms that he did not write the letter (witness statement). Miss Sharma refers to written confirmation of this, as shown below as her exhibit E1:

CHOHAN & CO

Accountants

'The Gables'
7 Park Road North
Bedford
Beds
MK41 7RH

23rd March 2012

Re: Letter Dated 28/12/11

I Vinod Chohan wish to state that the "witness statement" dated 28th December 2011 was not written by me and therefore the signature on the document is not mine.

I had written a letter in the past for Mr Patel which he stated he needed for bank purposes which merely was in reference to rent.

I can confirm however this latest letter was not written by me.



V Chohan
CHOHAN & CO

15. Miss Sharma gives her version of the history of the name Shobha's. She states that Shobhna Tailor (she highlights the 'n') founded Shobha's in 1991 and that it was "bankrupt" before 2000. Mrs Tailor then registered Shobha's Catering Ltd at Companies House in 2001, with Ashvin Patel as secretary (2001) and director (2002). Miss Sharma states that Mr Patel's role was investment; he has no knowledge of Indian catering. After Mrs Tailor's death, Shobha's Catering Limited stopped trading and was dissolved, following which Mr Patel set up another company called Shobha's in 2007. Miss Sharma states that this company began to plunge into debt and stopped trading in 2009; according to Miss Sharma, the company was "kept open" at Companies House because the debt owed to the bank would not allow the company to be closed.

16. Miss Sharma states that, shortly before Mrs Tailor's death, Shobha's was put up for sale but, unable to find a buyer, Shobha's Limited was set up and a manager was employed to run the business. Miss Sharma states that Mr Patel was not present much as he had other businesses to attend to. She states that, in 2008, Mr Patel approached her mother to buy Shobha's for £500,000. Miss Sharma states that her mother declined because she had her own catering business to run. Miss Sharma states that Mr Patel approached her mother again, in 2009, as he was desperate; the bank was going to seize the property. She states that he had an intention to sell because he showed her mother documents reflecting promised business contracts for Mrs Sharma to take over. Miss Sharma states that Appendix 5 shows 'real accounts' which she states show the losses being sustained. The appendix shows a single page with a list of customers, the charge for the service, the deposit and what the customers owe, plus of a lot of scribbling and crossings-out.

17. Miss Sharma states that her mother only took over the business because it is named after her birth name (she exhibits a page from her mother's passport to show this³.) Miss Sharma also exhibits (appendix 7) a copy of the agreement (which also appears in Mr Myrants' evidence, as reproduced at paragraph 11 of this decision). She states:

"Shobha the person is the Company. The Company is not due to the name. Shobha's Catering dissolved with the decease of Shobhna Tailor. Shobha's is in existence because of Shobha Sharma's personal touch and culinary flavours."

The Verbal Agreement for the £3000 rent was for the premises, facilities, walk in fridge etc. By no means was "a business" as there was no profitable business to rent, also a rental agreement would not agree to somebody marketing themselves as "The Shobha" or the face of. Also throughout all the documents submitted by the opposition, It seems the opposition are somewhat unsure of what they had done with "their" business. On one occasion they are attempting to portray that my Mother and I traded with the name Shobha's without their knowledge or consent and on other occasions they had consented but on a "rental" basis.

If Shobha's Limited had been successfully running consecutively all along, then what was the need to rent its operating premises?

Shobha Sharma also paid a sum for the packaging. If the Business does not belong to us then why were made to PAY for the packaging. If we were just carrying on a business then we would be simply be provided the materials to utilize.

Shobha Sharma only agreed to pay for the packaging as a favour to Mr Patel as nobody would buy "Shobha" branded packaging...unless their name was Shobha."

³ Appendix 6, which is not open to public inspection.

18. Miss Sharma states that Mr Patel fully supported her/her mother's efforts in sending a public message that they were the new owners; Mr Patel updated the website shobha's.com to reflect her mother's details, although Miss Sharma states that Mr Patel did not give her/her mother the login details for the management of the website. The updated page is shown at Appendix 8. It includes "Shobha Sharma, born in Nakuru, founded Shobha's in 1991." On the evidence provided by both parties, this would not appear to be correct. It was Shobha/Shobhna Tailor who founded Shobha's in 1991.

19. Miss Sharma states that Mr Patel regularly attended events to show his support for Mrs Sharma as "the face of Shobha's". She refers to speeches at New Year's Eve and charity events and exhibits what she refers to as a witness statement at E3 from Bipin Mehta. It is not a witness statement: it is a plain, undated, sheet of paper headed "To whom it may concern". Mr Mehta refers to Mr Patel giving a speech at a promotional party on 31 December 2009 in which Mr Patel introduced Mrs Sharma as the new owner of Shobha's.

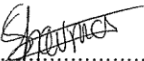
20. Miss Sharma refers to the assignment of goodwill from Shobha Sharma to herself and exhibits Appendix 9 to this effect:

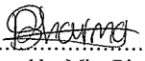
**Assignment of Goodwill
And Accrued Rights of Action**

This is an agreement made on 9th October 2010 between Mrs Shobha Sharma and Miss Ritu Shobha (together "the parties")

Now the parties hereby agree as follows:

In consideration of the payment by Miss Ritu Sharma of £1 to Mrs Shobha Sharma, receipt of which is hereby acknowledged, Mrs Shobha Sharma hereby assigns to Miss Ritu Sharma any and all Goodwill of Shobha's, together with all accrued rights of action in respect thereof.


..... Date: 09/10/10
Signed by Mrs Shobha Sharma


..... Date: 09/10/10
Signed by Miss Ritu Sharma

Miss Sharma states:

"As it was my Mother's decision to assign me her goodwill in order to help with my business and for the simple reason that she wanted to secure my future and it was always my desire to keep my Mother Shobha's legacy alive. The

name both holds sentimental and Business value to myself and my Mother. We request the opposition to stop making false claims on a brand my Mother and I have worked so hard for.”

21. Miss Sharma refers to the agreement (shown at paragraph 11) and the promise therein of a lease to be given to Mrs Sharma for the premises “as soon as possible”. She states that this was never done because Mr Patel does not have the lease for the property, it is with a trustee. Miss Sharma states that Mr Patel has been asked numerous times for documents to support his claims to the premises and to explain the delay in providing the lease, but these have never been produced. In relation to Mr Myrants’ statement concerning the SHOBHA’S sign outside the premises, Miss Sharma states that Shobha’s was not a viable business when “we” took it over and they left the sign up because there was no need to change it, Mrs Sharma’s name being Shobha.

22. With reference to the van described by Mr Myrants, Miss Sharma states that her mother is the registered owner of the van, which was bought with the business in 2009. She states that the vehicle was seized after Mr Patel allowed another company, Shobha’s Catering Ltd (registered as a company in February 2011) to drive without her knowledge and that she had to pay £190 to get the vehicle back from the authorities. The police notice exhibited at Appendix 10 shows that the driver was clearly male as it says “The driver did not hold a licence authorising him to drive a vehicle of that class”. The notice was sent to Mrs Sharma as the registered keeper of the vehicle. The DVLA Vehicle Registration certificate is exhibited at Appendix 11 which shows that Mrs Sharma acquired the van on 1 October 2009, the previous registered keeper, Shobha’s Catering Ltd having acquired it on 14 August 2001. Miss Sharma submits that if her mother had rented the business, as alleged by the applicant, then Mr Patel could have just added a driver to the van’s insurance without the need to sell the van and transfer the ownership to Mrs Sharma.

23. At paragraph 7 of her witness statement, Miss Sharma replies to the evidence regarding Mr Vinod Chohan. She states:

“Firstly it is illegal to approach our accountant under the data protection act. Mr Patel also lied and said he needed some sort of letter for bank purposes. See letter by accountant and date of letter. This was submitted in the other parties evidence which was submitted in February. It refers to the premises and in no way implies a “rented business”. The idea of a rented business is an infabricated by Mr Patel in an attempt to put forward manipulated, fraudulent evidence against me. Infact my Accountant was appalled that he was lied to and can provide a statement stating so. This is also irrelevant invalid evidence, the letter provides no details of dates and is extremely vague.

8. ...

Furthermore if a business was to be “rented” why did Mr Patel not simply add Mrs Shobha Sharma as a director to the company but assign the shares to himself? Why was Shobha Sharma made to develop her own company.”

24. Miss Sharma exhibits material showing her mother's use of the mark. Appendix 15 is an undated article from an unspecified newspaper. The journalist interviewed Mrs Sharma and wrote:

"When 49-year old Shobha...heard investors in the business were looking for someone to take over, she found it very hard to resist.

"It was very strange that my name was already there", Shobha said. The marketing was there for me. You can call it coincidence but I think it was God's wish for me to be here."

25. Appendix 16 is an article from a publication, dated August 2009, called *Business to Business*, published for the business community of Bedfordshire and Luton. It concerns an event attended by Vince Cable (then the Deputy Leader and shadow treasury spokesman for the Liberal Democrats) and refers to Mrs Sharma as the owner of Shobha's, the caterers for the business event. In Appendix 23, there is a press release by "Flowing Ink" dated 21 September 2009 entitled "Swift Action by Shobha's brings recession busting results". The article refers to Mrs Sharma as the owner of Shobha's (UK) Ltd. Another press release by "Flowing Ink" dated 27 October 2009, is entitled "Luton Businesswoman celebrates Divali at the House of Commons". The article is about Mrs Sharma and it refers to her as managing director of Shobha's (UK) Ltd.

Applicant's evidence in reply

26. Mr Ashvin Patel's witness statement is dated 10 December 2012. Mr Patel states that he is a director and shareholder of Shobha's Limited. He states that he agrees with everything which Mr Myrants has stated. Mr Patel strongly denies Miss Sharma's allegation that Mr Chohan's witness statement was forged. He states that the said witness statement was based upon Mr Chohan's letter to him dated 14 June 11:

CHOHAN & COMPANY

Accountants

'The Gables'
7 Park Road North
Bedford
Beds
MK41 7RH
Tel: 01 234 248966

14 June 2011

Our Ref: VC/159
You're Ref AP

Dear Sir

TO WHOM IT MAY CONCERN

Ashwin Patel rented the premises, 'The White House' Kingham Way, Luton Beds LU2 7DW, to Shobha Sharma including Equipment, Fixtures & Fittings, Plant and all the facilities thereon on monthly rental basis.

Shobha Sharma, was responsible and accountable for the repairs and maintenance of the property and the above facilities provided.



V Chohan
CHOHAN & COMPANY

27. This is, presumably, the letter to which Miss Sharma refers to as being vague. Mr Patel states:

“This letter was shown to my attorneys who advised that it was not suitable for filing as evidence and suggested that I should show Mr. Chohan their draft which was subsequently signed by him in my presence. I therefore agree with Mr Chohan when he says that his witness statement was not “written” by him because it was in fact typed on one of my attorneys’ word processors but it was certainly signed by him in my presence after having read it. In any case, no one has disputed the fact that the original Agreement between me and Mrs. Sharma that he witnessed in the presence of both of use was a genuine rental agreement and did not amount to a sale of the business, let alone pretend to be a trade mark assignment.”

28. Mr Patel states that, far from abandoning the Shobha’s business, he has orders pending the cancellation of the mark the subject of these proceedings. He exhibits (AP3) a witness statement from Mr Khalil Rahman, whom Mr Patel states to be the former manager of his business, of his predecessor’s business and also of Mrs Sharma’s business. Mr Rahman states:

“I, Khalil Rahman, of The Grove, Flat 3, Barton Road, Barton le Clay, MK 45 4RA, hereby confirm that I was in employment with Shobha’s Catering Ltd, as a manager from April 2004. I was present during the transition of the company to Shobha’s in April 2007, whereon I managed all the affairs of the company.

In May 2009, Mrs Sharma took over the day to day running of the business, under her own newly formed company Shobha (UK) Ltd, and my employment was carried forward into her company.

My role remained unchanged in Mrs Sharma’s company, and I can confirm that Mrs Sharma was only paying rent for the use of the premises, fixtures and fittings, and three vehicles, all belonging to Shobha’s Ltd.

I can also state that Mrs Sharma was in possession of all documents relating to the business and the vehicles, and that Mrs Sharma transferred the Mercedes Sprinter, registration S70 BHA, into her name, without any consent from Mr Patel, the Director of Shobha’s Ltd. I can also confirm that Mrs Sharma transferred the other two vehicles into her name but as these were lease purchase vehicles and were registered to Mr Patel, so Mrs Sharma could not claim ownership of these vehicles.

I can state that I was fully aware of all business activities of all three companies as I managed all the companies during my time there.

I am prepared to provide an affidavit to the facts I have provided in this witness statement, and attend any hearing as a witness.

I believe that the facts in this witness statement are true.”

The statement is signed and dated 27 November 2012.

29. Mr Myrants' third witness statement is dated 10 December 2012. It deals with Miss Sharma's allegation about the forging of Mr Chohan's witness statement dated 28 December 2011. Mr Myrants denies the claim. He explains that the letter dated 14 June 2011 from Mr Chohan to Mr Patel would, in his opinion, have been more suitable for the applicant's evidence if it formed the basis of a witness statement. Mr Myrants drafted the witness statement and sent it to the applicant by email to obtain Mr Chohan's signature, if he was in agreement with the contents. Mr Myrants states that he was told that Mr Chohan signed the witness statement in the presence of the applicant (he must mean Mr Patel) who then posted the statement to Mr Myrants to be filed as evidence.

30. Attached to Mr Myrants' witness statement is an email to Mr Myrants from Mr Patel dated 26 November 2012. This is a critique of Miss Sharma's evidence and contains fact, although it is not in the form of a witness statement. Mr Patel comments that Miss Sharma is wrong about what she said about bankruptcy (she uses this term in relation to the company), but Mr Patel says that no director or partner has ever been bankrupt (he does not say what the solvency situation is or was in relation to the business which Miss Sharma states her mother bought). He also says this:

"We have always tried to sell the business, and there were discussions with Mrs Sharma with regards to the sale of the business. However, this was for the freehold of a large property, and with goodwill, fixtures and fittings. I currently have a valuation of the property which valued the building alone at £370k. I fail to see how this is all relevant?"

Mrs Sharma did not have the capital to purchase the business and after many discussions a rental deal was agreed. Mr Chohan who was acting as Mrs Sharma's accountant and advisor, was present at most of the discussions, and a rental deal was agreed which was signed by myself as the Director of the company and Mrs Sharma with Mr Chohan as witness."

Mr Patel says that he owns the freehold of the property and that because Mrs Tailor's estate was "with the executor", he could not formally put into place a lease; therefore a rental agreement was made in the meantime.

31. In relation to ownership of the van, Mr Patel says:

"The documents regarding the van were transferred to Mrs Sharma, as she would have been the registered keeper of the vehicle. Mr Khalil Rahman who was manager of the business and remained manager after the transfer for one year after Mrs Sharma took over. I have a statement from Mr Rahman which is enclosed, and Mr Rahman is prepared to sign an affidavit if needed."

32. I held a case management conference on 11 October 2012 to deal with the issue of forgery of Mr Chohan's documents. It seemed to me that Mr Chohan had taken a diametrically opposed position in his evidence for both parties and that, as far as documents purportedly signed by him were concerned, the two sets of

evidence could not be reconciled. I decided that if Mr Chohan put his evidence in affidavit form, this may have helped to determine which side's Chohan evidence was 'true'. Both sides duly filed affidavits from Mr Chohan:

(i) from the applicant:

Mr Chohan replicated his witness statement of 28 December 2011, as I directed, with the addition of paragraph 5 (which I also directed):

4. *To the best of my knowledge and belief, the Agreement as discussed and signed was not intended as a purchase of the Company as a whole nor of its name nor any of its assets other than its stock.*

5. *I confirm that my surname and the trading style of my business Chohan & Company are misspelt as Chauhan in the Agreement but I did not deem it to be sufficiently important to require amendments to be made because the signature on the Agreement is genuinely mine and was applied in the presence of my client and the aforesaid Mr. Ashvin Patel.*



Vinod Chohan

Sworn at

Luton

this

23rd

day of

November

2012

before me



A solicitor entitled to administer oaths

Nicholas J Ginger, Partner
For and on behalf of
Machins Solicitors LLP
Victoria Street, Luton LU1 2BS

It will be seen that Mr Chohan's signature is consistent with that in the earlier documents. The affidavit appears to be original because the solicitor entitled to administer oaths has signed in blue ink (they have both also signed the first page of the affidavit and the exhibited agreement of 15 May 2009).

(ii) From Miss Sharma:

THE INTELLECTUAL PROPERTY OFFICE TRIBUNAL

Ref: INV 84118/TS/AP

REGARDING:-

TRADE MARK NO: 2567477
REGISTERED PROPRIETOR: RITU SHARMA

- and -

INVALIDITY NO: 84118
APPLICANT: SHOBHA'S LIMITED

AFFIDAVIT OF VINOD CHOCHAN

I, **VINOD CHOCHAN** of 60 Heronscroft, Bedford, Bedfordshire MK41 9LS MAKE OATH AND SAY AS FOLLOWS:

1. I am the owner, sole trader and proprietor of an accountancy business known as Chohan & Company of "The Gables", 7 Park Road North, Bedford, Bedfordshire MK41 7RH.
2. Miss Ritu Sharma of 25 Dexter Close, Luton, Bedfordshire, LU3 4DX has provided me with a document which appears on the letterhead of Chohan & Co Accountants. There is now shown to me marked "VC1" a true copy of the document.
3. The document is a letter purportedly written by me and dated 23 March 2012.
4. By way of description only, the letter states that "*I Vinod Chohan wish to state that the "witness statement" dated 28th December 2011 was not written by me and therefore the signature on the document is not mine.*"
5. At the bottom of the letter, there is signature above the words "*V Chohan*".
6. I confirm that, after reviewing the document provided to me by Miss Ritu Sharma, I am confident, sure and certain that I prepared this letter and that the signature at the bottom of the letter is mine.

Signed:
VINOD CHOCHAN



Sworn at: *1 Lurke Street Bedford*

In the County of Bedfordshire

this *22nd* day of *October* 2012

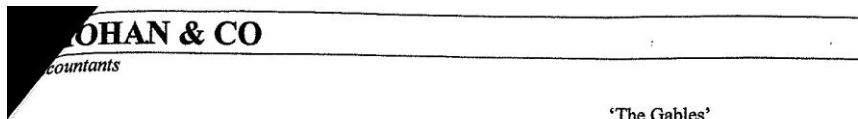
Before me a Solicitor

.....


(M. C. Harro)

Park Woodfine
Heald Mellows LLP
Solicitors
1 Lurke Street
Bedford MK40 3TN

The document "VC1" is the same as Ms Sharma's exhibit E1:



'The Gables'
7 Park Road North
Bedford
Beds
MK41 7RH

23rd March 2012

Re: Letter Dated 28/12/11

I Vinod Chohan wish to state that the "witness statement" dated 28th December 2011 was not written by me and therefore the signature on the document is not mine.

I had written a letter in the past for Mr Patel which he stated he needed for bank purposes which merely was in reference to rent.

I can confirm however this latest letter was not written by me.



V Chohan
CHOHAN & CO

33. This also appears to be an original affidavit; although the witnesses have used black ink, it is possible to feel on the paper the indentation made by a pen.

34. Bizarrely, the affidavits purportedly come from the same person, but are in direct contradiction to each other. A summary of the position is this:

(i) Vinod Chohan is (Mrs) Shobha Sharma's accountant.

(ii) Both sides appear to agree that the agreement dated 15 May 2009 is genuine. This was signed by Ashvin Patel, Shobha Sharma and Vinod Chohan.

(iii) For the applicant, Mr Chohan has filed an affidavit version of his witness statement of 28 December 2011 in which he states that the 15 May 2009 agreement made provision for a payment in respect of the rental of the company's premises and in respect of stock, but that (to the best of his knowledge) the agreement was not intended as a purchase of the company as a whole nor of its name nor any of its assets other than its stock.

(iv) However, for the proprietor (Miss Ritu Sharma), Mr Chohan states, in an affidavit, that he did not write the witness statement of 28 December 2011 and that the signature is not his.

35. Mr Patel, in his witness statement, states that Mr Chohan did not 'write' it because it was typed up on Mr Myrants' firm's equipment. Mr Chohan has said he did not write it (i.e. does not stand by its contents) and that the signature is not his.

The position is very unsatisfactory. I take the view that each party has cancelled out the other's evidence as far as Mr Chohan is concerned (apart from the existence of the agreement dated 15 May 2009, which both parties agree was made). Both sides have accused each other of fabricating evidence, but neither party wanted a hearing and neither asked to cross-examine each other or Mr Chohan.

36. Mr Chohan's contradictory evidence, and the references to signatures, puts doubts in my mind as to the reliability of the other evidence filed by both sides. If there are doubts as to reliability of evidence, this affects weight. The only evidence which neither disputes is the agreement of 15 May 2009. At paragraph 20, I have reproduced a purported assignment of goodwill from Mrs Sharma to the proprietor (Ritu Sharma) dated 9 October 2010. This was filed in response to Mr Myrants' point about hypothetical goodwill belonging to Mrs Sharma, not to the proprietor. The signature on that document which is purported to be that of (Mrs) Shobha Sharma, assigning goodwill to her daughter Ritu, does not look like Shobha Sharma's signature on the 15 May 2009 agreement (which all agree was made by the parties indicated on the agreement). It has more in common with Ritu Sharma's signature which appears below it.

37. A further consideration in relation to evidential weight is where hearsay evidence has been filed. Hearsay evidence is admissible under rule 64(1)(b) of the Trade Mark Rules 2008, but its weight has to be assessed according to the various factors set out in section 4 of the Civil Evidence Act 1995:

“4.— Considerations relevant to weighing of hearsay evidence.

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following—

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

38. The filing of a hearsay statement inherently comes with the risk that the tribunal may assess its weight at a lower level than that which the party considers it should carry (depending on the factors set out in section 4 of the Civil Evidence Act 1995). The hearsay evidence filed by Miss Sharma from Bipin Mehta, in which he refers to Mr Patel's 31 December 2009 speech, calling Shobha Sharma the 'new owner' of Shobha's, is hearsay and carries no weight⁴. This is because Mr Mehta's 'statement' is not contemporaneous: it has clearly been solicited for the proceedings because it has been made at the behest of Miss Sharma as a set of recollections, rather than being a record made at or around the time of the speech. Mr Mehta is not a witness because his recollections are not in the form of a witness statement. Since he is not a witness, the applicant cannot test Mr Mehta's recollections (by cross-examination). This is inherently unfair to the applicant and it would be wrong of me, both because the 'statement' is not contemporaneous, and because Mr Mehta's memory cannot be tested, to set any store by what has been filed.

39. The applicant's evidence contradicts itself in relation to the ownership of the van. Khalil Rahman states that Mrs Sharma transferred the van into her name "without any consent from Mr Patel". However, in the emailed critique of Miss Sharma's evidence which Mr Patel sent to Mr Myrants (described in paragraphs 30 and 31 above), Mr Patel says:

"The documents regarding the van were transferred to Mrs Sharma, as she would have been the registered keeper of the vehicle. Mr Khalil Rahman who was manager of the business and remained manager after the transfer for one year after Mrs Sharma took over. I have a statement from Mr Rahman which is enclosed, and Mr Rahman is prepared to sign an affidavit if needed."

So, Mr Patel himself says that the documents were transferred to Mrs Sharma because she was the registered keeper of the vehicle.

40. Mr Patel's critique, sent to Mr Myrants, is not a witness statement so has hearsay status. However, because Mr Patel is the controlling mind of the applicant and the email is, effectively, Mr Patel giving instructions to the attorney who is handling the proceedings, it has weight. On one view, Mr Patel's words may be said to have at least equal weight to Mr Myrants' witness statement, because Mr Myrants is not the one with first-hand knowledge of events: Mr Patel is. So, what Mr Patel says about selling the business is important:

"We have always tried to sell the business, and there were discussions with Mrs Sharma with regards to the sale of the business. However, this was for the freehold of a large property, and with goodwill, fixtures and fittings. I currently have a valuation of the property which valued the building alone at £370k. I fail to see how this is all relevant?"

⁴ I informed Miss Sharma at the case management conference that because the document is not a witness statement, its weight would be affected by its hearsay status.

Mrs Sharma did not have the capital to purchase the business and after many discussions a rental deal was agreed. Mr Chohan who was acting as Mrs Sharma's accountant and advisor, was present at most of the discussions, and a rental deal was agreed which was signed by myself as the Director of the company and Mrs Sharma with Mr Chohan as witness."

41. The said agreement, reproduced at paragraph 11 of this decision, says that it "will remain in place until all the legal formalities notably the Lease Agreement is fully agreed and signed by both parties". It appears that this was never done (Mr Patel states that the premises were going through probate). There are references to monies for rent. The agreement refers to independent valuation of stock, which would appear to indicate sale of the same. Miss Sharma refers to her mother buying the SHOBHA'S packaging and that the rental agreement was put in place pending Mr Patel being able to resolve the lease situation. Mr Patel speaks of an intention to sell the business with goodwill. The title of the agreement does not indicate its nature. Apart from the premises rental, all other parts of the agreement relate to Mrs Sharma being responsible for all aspects of the SHOBHA'S business including liabilities, staff wages and the taking over of outstanding catering contracts. There are no references to the inclusion or exclusion of goodwill or to the trade mark.

Decision

42. The law in relation to section 3(6) of the Act ("bad faith") was summarised by Arnold J in *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch):

"130. A number of general principles concerning bad faith for the purposes of section 3(6) of the 1994 Act/Article 3(2)(d) of the Directive/Article 52(1)(b) of the Regulation are now fairly well established. (For a helpful discussion of many of these points, see N.M. Dawson, "Bad faith in European trade mark law" [2011] IPQ 229.)

131. First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see Case C-529/07 *Chocoladenfabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH* [2009] ECR I-4893 at [35].

132. Secondly, although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date: see *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2008] EWHC 3032 (Ch), [2009] RPC 9 at [167] and cf. Case C-259/02 *La Mer Technology Inc v Laboratoires Goemar SA* [2004] ECR I-1159 at [31] and Case C-192/03 *Alcon Inc v OHIM* [2004] ECR I-8993 at [41].

133. Thirdly, a person is presumed to have acted in good faith unless the contrary is proved. An allegation of bad faith is a serious allegation which must be distinctly proved. The standard of proof is on the balance of probabilities but cogent evidence is required due to the seriousness of the

allegation. It is not enough to prove facts which are also consistent with good faith: see *BRUTT Trade Marks* [2007] RPC 19 at [29], *von Rossum v Heinrich Mack Nachf. GmbH & Co KG* (Case R 336/207-2, OHIM Second Board of Appeal, 13 November 2007) at [22] and *Funke Kunststoffe GmbH v Astral Property Pty Ltd* (Case R 1621/2006-4, OHIM Fourth Board of Appeal, 21 December 2009) at [22].

134. Fourthly, bad faith includes not only dishonesty, but also "some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined": see *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 and *DAAWAT Trade Mark* (Case C000659037/1, OHIM Cancellation Division, 28 June 2004) at [8].

135. Fifthly, section 3(6) of the 1994 Act, Article 3(2)(d) of the Directive and Article 52(1)(b) of the Regulation are intended to prevent abuse of the trade mark system: see *Melly's Trade Mark Application* [2008] RPC 20 at [51] and *CHOOSI Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) at [21]. As the case law makes clear, there are two main classes of abuse. The first concerns abuse vis-à-vis the relevant office, for example where the applicant knowingly supplies untrue or misleading information in support of his application; and the second concerns abuse vis-à-vis third parties: see *Cipriani* at [185].

136. Sixthly, in order to determine whether the applicant acted in bad faith, the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case: see *Lindt v Hauswirth* at [37].

137. Seventhly, the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant's conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant's own standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry: see *AJIT WEEKLY Trade Mark* [2006] RPC 25 at [35]-[41], *GERSON Trade Mark* (Case R 916/2004-1, OHIM First Board of Appeal, 4 June 2009) at [53] and *Campbell v Hughes* [2011] RPC 21 at [36].

138. Eighthly, consideration must be given to the applicant's intention. As the CJEU stated in *Lindt v Hauswirth*:

"41. ... in order to determine whether there was bad faith, consideration must also be given to the applicant's intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant's intention at the relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 48)."

43. As set out in the judgement, an allegation of bad faith is a serious allegation. Its seriousness means that the party making the allegation must prove the allegation in its evidence. That evidence, as a reflection of the seriousness of the allegation, must be cogent. Most of the applicant's evidence comes from its attorney, Mr Myrants, who does not have first hand knowledge of events; although his statements have been swept up by Mr Patel (for the applicant) who states that he agrees with everything stated by Mr Myrants. I place no weight upon Mr Chohan's evidence (for either side) for the reasons already given and because the agreement must be objectively viewed according to the situation of the parties at the time of the contract, not through Mr Chohan's subsequent interpretation. Furthermore, Mr Patel contradicts what his witness, Mr Rahman, states about the transfer of the van. The applicant's evidence is not wholly cogent or wholly reliable and, where it is cogent or reliable, it is inconclusive or points in the opposite direction.

44. Mr Patel says that it was always his intention to sell the business along with goodwill. He speaks of discussions with Mrs Sharma to that effect. This tallies with Miss Sharma's evidence about Mr Patel making several attempts to persuade Mrs Sharma to buy the business since she was already in catering and was called Shobha. The website was changed to substitute (Mrs) Shobha Sharma's birth and career history for the original Shobha/Shobhna (Tailor).

45. If the applicant's evidence is not cogent, then Miss Sharma's evidence is even less so. It is a muddle of facts, exhibits, annexes, appendices and rhetorical questions, and the weight of some of it is questionable. Nevertheless, what comes through is an impression that Mr Patel wanted to sell the business to Mrs Sharma, as he has said himself; Mrs Sharma took on the business because the name was the same as her own and the marketing and packaging were already in place; which included buying the stock and transferring the van to her name (as confirmed by Mr Patel). It seems to me that the dealings between the applicant/Mr Patel and Mrs Sharma were ad hoc and not clearly defined. Whilst Mr Patel may not have thought he had finally sold the business and the goodwill, despite intending that that should eventually happen, Mrs Sharma appears to have thought that a sale is exactly what had happened. Where an on-going business is sold it will normally be implied that the goodwill has been included unless the agreement or the facts indicate otherwise

(see *The Law of Passing Off* by Christopher Wadlow, fourth edition, page 226). The agreement in this case is silent. There is nothing to suggest that Mr Patel retained the goodwill despite passing the on-going business to Mrs Sharma. The sale of stock, staff, and the agreement that Mrs Sharma would have sole responsibility for existing as well as future business liabilities, strongly supports the sale of the business as an on-going concern. The agreement to discount the amounts received prior to the agreement against what was paid for stock implies that Mrs Sharma also took responsibility for existing orders, which also points towards the sale of an on-going business. The agreement is consistent with Mrs Sharma buying the business, but Shobha's Ltd retaining ownership of the premises with a rental agreement in place. Therefore Mrs Sharma owned the goodwill in Shobha's at the date of the application. It follows that if she had been the applicant for the trade mark, I would have found that she had acted in good faith and that the applicant had failed to prove the contrary.

46. However, Mrs Sharma was not the applicant for the trade mark, it was applied for by her daughter, Ritu. Mrs Sharma has not supplied any evidence about how it came to be that her daughter applied for the trade mark instead of her. Miss Sharma states that her mother wanted her to have the trade mark:

“As it was my Mother’s decision to assign me her goodwill in order to help with my business and for the simple reason that she wanted to secure my future and it was always my desire to keep my Mother Shobha’s legacy alive. The name both holds sentimental and Business value to myself and my Mother. We request the opposition to stop making false claims on a brand my Mother and I have worked so hard for.”

Against Miss Sharma is the fact that this is the only time she explicitly refers to herself and her mother in connection with SHOBHA'S. She does not explain her role. However, in her favour, throughout her statement she does refer to “we”, “us” and “our”. I note that Mrs Sharma and Miss Sharma live at the same address. Miss Sharma has provided documents which belong to her mother, such as her passport, the vehicle registration documents, and the 15 May 2009 agreement. It would, presumably, have been difficult for these to have been produced without her mother’s consent, together with historical marketing and press material referencing her mother. She was the person who paid to get the van back after it had been impounded.

47. The judgment cited above observes that it is not enough to prove facts which are also consistent with good faith. It seems to me that Ritu Sharma applied for the trade mark of the business which she and her mother believed that the latter had bought and which they both ran; there was both a maternal/filial and a business relationship. The applicant’s claim is that Miss Sharma acted in bad faith, not towards her mother (and the applicant has not questioned the validity of the 2010 assignment of goodwill from mother to daughter), but towards the applicant. Even if Miss Sharma filed the application whilst her mother was the owner of the goodwill in Shobha's, that does not represent bad faith towards the applicant. The materials produced in evidence by Miss Sharma are consistent with her application having been made at least with her mother’s consent. Approaching the matter as an overall assessment of the evidence from both sides, including its weight, I do not consider

that the application to register the trade mark was unacceptable commercial behaviour, as observed by reasonable and experienced men in the field, considering what the applicant knew about the matters in question. The application for a declaration of invalidity therefore fails.

Outcome

48. The application for a declaration of invalidity fails.

Costs

49. Miss Sharma has been successful and, ordinarily, would be entitled to a contribution towards the cost of the time she has spent on these proceedings. The Registrar usually operates on a published scale of costs⁵. However, since Miss Sharma has not been professionally represented during the proceedings, an award made from the published scale might be larger than her actual expenditure. If Miss Sharma had been professionally represented, an assessment on the scale of costs would run like this:

Considering the other side's statement and preparing a counterstatement:	£200
Preparing evidence and considering and commenting on the other side's evidence:	£750
Total:	£950

50. The state of the evidence filed by Miss Sharma caused many problems during the procedural stages, including the applicant's repeated correspondence querying its content and format. Even once admitted, it was hard to follow. Had this been a case run by a professional representative, I would have cut the award down significantly to reflect the extra trouble and expense to which the other side was put.

51. In BL O/160/08 *South Beck*, Mr Richard Arnold QC, sitting as the appointed person, stated:

"32. Secondly, counsel for the opponent submitted that, if CPR r. 48.6 was applicable, the hearing officer had misapplied it. In support of this submission he pointed out that CPR r. 48.6(4) provides:

The amount of costs to be allowed to the litigant in person for any item of work claimed shall be-

(a) where the litigant can prove financial loss, the amount that he can prove he has lost for time reasonably spent on doing the work; or

⁵ Tribunal Practice Notice 4/2007.

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in the practice direction.

The Part 48 Practice Direction provides at paragraph 52.4 that the amount which may be allowed to a litigant in person under rule 46.8(4) is £9.25 per hour. Counsel submitted that the hearing officer appeared to have awarded the applicant two-thirds of the scale figure which he would have awarded a represented party, and that this could not be justified since the opponent had not proved any financial loss and was very unlikely to have spent over 160 hours on the matter.....

36. In my judgment the approach which should be adopted when the Registrar is asked to make an award of costs in favour of a litigant in person is as follows. The hearing officer should direct the litigant in person pursuant to r. 57 of the 2000 Rules to file a brief schedule or statement setting out (i) any disbursements which the litigant claimed he has incurred, (ii) any other financial losses claimed by the litigant and (iii) a statement of the time spent by the litigant in dealing with the proceedings. The hearing officer should then make an assessment of the costs to be awarded applying by analogy the principles applicable under r. 48.6, but with a fairly broad brush. The objective should be to ensure that litigants in person are neither disadvantaged nor overcompensated by comparison with professionally represented litigants.”

Under the current practice direction, the amount allowed to a litigant in person is £18 per hour.

52. The award would have been significantly reduced if Miss Sharma had been professionally represented, bearing in mind my comments about Miss Sharma’s evidence and conduct. An assessment of how much time/money she had spent on the proceedings must not come to more than she would have received had she been professionally represented. Applying the broad brush approach, I consider that any award I would have made to her following a breakdown of her time/money spent would have been cancelled out by a reduction to take account of behaviour during the procedural stages. Therefore I direct that each side should bear its own costs.

Dated this 17th day of May 2013

**Judi Pike
For the Registrar,
the Comptroller-General**