

O-060-14

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2582768
BY MSIS – MANNIN SECURITY PROTECTION & INVESTIGATION SERVICES
(ISLE OF MAN) TO REGISTER THE SERIES OF TWO TRADE MARKS**

SIU

AND

siu

IN CLASS 45

**AND IN THE MATTER OF OPPOSITION
THERE TO UNDER NO 102543
BY TOLGA KAVAK**

BACKGROUND

1) On 26 May 2011, MSIS – Mannin Security, Protection & Investigation Services (Isle of Man) (hereafter “MSIS”) applied under the Trade Marks Act 1994 for registration of the following series of two marks: **SIU** and **siu**

2) The application was in respect of the following list of services in Class 45:

Security services for the protection of property, premises and individuals; control of access for security purposes; services for the monitoring of security control apparatus; security guard services; door supervision services; wheel clamping; immobilisation of vehicles on private property; key holding services; guarding of valuables for others; private investigation services; consultancy services relating to private investigations; security consultancy services; advisory services relating to security; consultancy services relating to security; advisory services relating to the security of premises; provision of security information; advisory and consultancy services relating to all these services.

3) The application was published on 22 July 2011 and on 20 October 2011, Mr Tolga Kavak filed notice of opposition to the application. The grounds of opposition were originally based upon Section 3(6) and Section 5(4)(a), but proceeded in respect of Section 3(6) only. The relevant pleadings are as follows:

- Mr Kavak’s company, Security Industry Union Limited has been using the contested mark and a logo version since 2009 and it has been providing services to the public since June 2010.
- The applicant acted, together with two other individuals, in an unacceptable trading manner and dishonest way and engaged in dealings which are below the standards of acceptable behaviour. Mr Kavak alleges that a relationship developed between the three individuals and resulted in MSIS making the contested trade mark application as part of a series of activities to disrupt Mr Kavak’s operations. Allegedly, MSIS has “licensed” the use of the mark, the subject of the application, to a direct competitor of Mr Kavak’s SIU (the “third party competitor”).

4) Mr Kavak alleges that this third party competitor changed its infringing name following an action brought by himself. However, Mr Kavak also alleges that following MSIS’s application for the trade mark and the “licence” of the mark to this competitor, it has reverted to infringing actions.

5) Mr Kavak details numerous other activities that Mr England, together with the two other individuals undertook and this includes Mr England making an application to *Facebook* to have Mr Kavak’s “SIU logo” removed.

6) Mr Kavak explains a chain of events where:

- Mr England was a paying member of Mr Kavak's SIU in June 2010;
- his membership was terminated on 8 March 2011, following comments made on several on-line media in support of alleged malicious comments made by one of the third parties, making unfounded allegations via e-mail to Mr Kavak and on public forums leading to a breach of the SIU's terms and conditions;
- On 19 April 2011, Mr Kavak makes a complaint to *Facebook*, *Linkedin*, *Twitter* and other hosting companies regarding alleged trade mark infringement by the third party competitor. These complaints were upheld and infringing material was removed;
- On 24 May 2011, Mr England publishes a logo containing the mark "SIU" on the *Facebook* page of MSIS;
- On 1 June 2011, the third party competitor's new name was registered with the Certification Office under Section 2(5) of the Trade Union and Labour Relations (Consolidation) Act 1992;
- On 23 June 2011, Mr England purchases the domain name www.the-siu.org, being very similar to Mr Kavak's domain name www.the-siu.org.uk. The page published on Mr England's website stated "SIU – The Security Industry Union which aims to be part of the third party competitor and the bottom of the website allegedly includes the text: "SIU® Logo and Trademark is under licence from MSIS";
- On 17 July 2011, Mr England creates a *Facebook* page called "Security Industry Union". This page makes claims that the use of mark has been granted to the third party competitor under paid licence from MSIS. It is further stated that it is claimed on the page that the third party competitor and the Security Industries Union is the same organisation;
- It is alleged that Mr England is one of the representatives of the third party competitor and that he posts messages on behalf of it on its *Facebook* page.

7) Mr England, on behalf of MSIS, subsequently filed a counterstatement. There followed the first of a number of case management conferences (CMCs). The purpose of the first CMC was to identify the main pleadings and counter-pleadings of the parties. Following this, the relevant points from Mr England's counterstatement were clarified as:

- MSIS was formed in 1989 providing security and investigation services;

- On the other hand, Mr Kavak registered his company, Security Industry Union Limited on 21 October 2009 listing its purpose as “activities of professional membership organisations”. Mr Kavak is the Managing Director of both Security Industry Union Limited and Security Industry United Limited;
- Mr England alleges that Mr Kavak has been using, without permission, a mark where the copyright resides with Mr England;
- Mr England claims the mark in question has been in use by MSIS since 1989 and used to identify its “Special Investigations Unit” and it is admitted that MSIS has licensed it to the third party competitor;
- Mr Kavak has failed to provide evidence that the SIU mark or another logo mark incorporating SIU has been used by either of his companies and he has been put to proof of use of the extent of use;
- Mr England denies that he was involved in actively running the third party competitor, but he admits that he is a consultant/advisor to it;
- Mr England admits that he was a member of Mr Kavak’s organisation;
- Mr England admits that Mr Kavak’s company made its services available to the public from June 2010 but only the services of a professional membership organisation;
- Mr England admits that he purchased the domain name www.the-siu.org, claiming that he was entitled to do so by virtue of the copyright he owns in “SIU” dating back to 1989;

8) Both sides filed evidence in these proceedings and both sides ask for an award of costs. Neither side requested to be heard, and after a thorough consideration of all the papers on file, I give the following decision.

EVIDENCE

9) Neither side’s evidence has been well marshalled. It has often been very detailed on peripheral issues, but lacking in substance on the more relevant points and on occasions it has been irrelevant. The parties often engaged in a tit-for-tat drip feed of evidence and allegations. This increased significantly the complexity of the proceedings. Under my direction, Mr England provided a consolidated version of his evidence and my summary of his evidence is based upon this consolidated version only.

10) Some of the evidence contained information of a very personal nature and in respect of individuals not party to the proceedings. In the main, this added little to

the case other than to provide some context. Due to the complex nature in which the evidence of the parties was submitted and the time that would have been necessary to identify every aspect of the evidence that would properly have been subject to a confidentiality order and/or irrelevant, I directed the ALL the evidence be covered by such an order, with only the parties having unrestricted access.

11) I identify the relevant points from both parties evidence below (all subject to redaction) and I will also provide a high level summary that will not be subject to redaction.

Mr Kavak's Evidence

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr England's Evidence

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Security Log Sheet
Mannin Security Services



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Un-redacted overview of evidence

61) The evidence illustrates that there is a very personal feud between Mr Kavak and Mr England, the individual behind the applicant, MSIS. The feud has been aired very publicly on Internet forums (such as *Facebook*) aimed at the security industry.

62) Both sides have engaged in attempts to damage each other's personal and professional reputations. The trigger for the feud was when Mr England stepped to the defence of a third party who had been subject to publicly made allegations made by Mr Kavak. Following this, Mr Kavak cancelled Mr England's membership to the SIU citing Mr England's comments and an alleged failure on the part of Mr England to deliver on a business commitment to the SIU. This business commitment related to the delivery of training courses by Mr England to SIU members.

63) Mr England believes he is fully entitled to register the mark "SIU" because MSIS has used it since 1989 to identify its "Special Investigations Unit" and also because Mr England has lodged the content of MSIS's web pages with a private copyright register or has been "used with permission under a 'creative commons licence'". The evidence put forward by Mr England to support his claim to use of "SIU" since 1989 consists of:

- a copy of a security log sheet, dated 29 June 2002, with the letters "SIU" appearing under a heraldic device in the masthead of the document;

- An unsigned letter, dated 24 July 2009, in the name of Mr England, Special Investigations Unit;
- A copy of an undated witness statement by Mr England in respect of unrelated proceedings brought before the County Court on 21 July 2009. The letter head of each page of this document carries Mr England's company name and address as well as two heraldic devices, one of which carries the letters "SIU" underneath it;
- A copy of document entitled as an affidavit dated 2 November 2009 that contains the same heraldic device and letters "SIU" in the mast-head at the top of the page;
- Further copies of an affidavits, three dated 19 October 2009, and one dated 2 November 2002, all with the identical masthead;
- Two emails dated 15 June 2006 and 23 July 2009 respectively, the first showing the writer's details as "Steve England, Special Investigations Unit, Mannin Security Services", and the second as "Steve England, Lead Investigator, Special Investigations Unit".

64) Mr England submits that he has previously searched the trade marks database of the US Patent and Trade Marks Office (USPTO) and because he found other parties applications or registrations for the mark, he chose not to attempt to register his own mark. An exhibited search dated 17 December 2012 shows that the USPTO has both abandoned and live trade marks consisting of or incorporating "SIU". He explains that, for various reasons, these earlier marks are no longer valid and as such do not present a barrier. Consequently, he has filed the contested application.

65) Mr England confirms that he provided advice to Mr Kavak during his time as a member of the SIU, he states that this advice was not in respect of trade marks or copyright.

66) Mr England attempts to distance himself from the third party individual and the third party competitor embroiled in the broader dispute and admits to "licensing" his applied for mark to the third party competitor of SIU. He also exhibits documents such as a "cease and desist letter" sent to Mr Kavak by the third party individual and a copy, marked "confidential" of a Advertising Standards Authority draft recommendation requiring the SIU to stop referring to itself as a union. Mr England states this is produced with the permission of the third party competitor. This indicates that he has access to confidential information from these two parties.

DECISION

67) Section 3(6) of the Act reads as follows:

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

68) In terms of the date at which the matter falls to be considered, it is well established that the relevant date for consideration of a bad faith claim is the application filing date (*Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 paragraph 35), namely 26 May 2011.

69) The guidance regarding the general principles of bad faith have been conveniently summarised by Arnold J in *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch) Arnold J:

“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).”

70) On the basis of these authorities it is clear that a finding of bad faith may be made in circumstances which do not involve actual dishonesty. Furthermore, it is not necessary for me to reach a view on the applicant's state of mind regarding the transaction if I am satisfied that their action in applying for the mark in the light of all the surrounding circumstances would have been considered contrary to normally accepted standards of honest conduct. Thus, in considering the actions of MSIS, the test is a combination of the subjective and objective. Furthermore, it is clear that bad faith in addition to dishonesty, may include business dealings which fall short of the standards of acceptable commercial behaviour i.e. unacceptable or reckless behaviour in a particular business context and on a particular set of facts.

71) Mr England puts forward a number of defences. Firstly, he submits that because Mr Kavak's organisation is a limited company and not a registered union then he is not entitled to use "Security Industry Union". This is not a relevant consideration in these proceedings. This is because the dispute involved an application to register the letters "SIU" and not the words "Security Industry Union". The issue is whether MSIS' application to register the mark "SIU" is an act of bad faith. It is not whether Mr Kavak is entitled to call his organisation a "union". Whatever the merits of Mr England's criticisms of Mr Kavak's business, they do not provide justification to knowingly "muscle in" and apply for the mark under the premise that Mr Kavak has no rights to use it and then to "licence" it to a competitor of the SIU. I, therefore, dismiss this defence.

72) Secondly, Mr England also submits that Mr Kavak's use of his mark is not consistent in presentation, other than it always contains the abbreviation "SIU". He goes on to argue that, unlike other marks such as those used by *McDonalds*, *Coca Cola* etc etc, Mr Kavak does not use his mark in a way that is "distinctive by design". This argument is both incorrect and irrelevant. It is possible that marks consisting of plain letters or words are distinctive marks in their own right. For example, there is no suggestion that the mark, the subject of MSIS's own application is not distinctive. Further, the issue of whether Mr Kavak uses his

mark in a consistent manner is irrelevant to these proceedings. It is clear from the evidence that Mr Kavak does use the mark “SIU” to identify his organisation. I will return to the significance of this later.

73) Thirdly, Mr England claims that he considered registering the mark “SIU” in the past but because there were other registrations already in place at that time he chose not to. I note that Mr England supports this by providing copies of mark details obtained from the USA’s Patent and Trade Mark Office (“the USPTO”) (see his Exhibit 21 that provides copies of these US marks obtained on 17 December 2012). He states that he believed that these marks would have blocked an application by MSIS but that they have “now been dropped, discontinued, abandoned and so on” (see paragraph 29.1 of Mr England’s witness statement). Consequently, he now felt able to apply for the mark. Trade mark rights are territorial and the situation in the USA is unlikely to have any impact on trade mark rights in the UK. It is, therefore, somewhat odd that Mr England conducted searches in the USA and uses these as justification for making an application in the UK. Nevertheless, this argument avoids addressing the one possible right that may have the greatest impact in these proceedings, namely, any right that Mr Kavak may have claimed based upon the use of “SIU” by his organisation.

74) Mr England cites the fact that the “SIU” mark as it appeared on his membership card (shown at Exhibit 25) does not carry a © or ™ symbol. This is noted, but it does not alter the fact that Mr Kavak was clearly using the sign to identify his organisation and that Mr England was aware of this.

75) Mr England’s approach appears to have been that because Mr Kavak has not sought registration of his mark, or any other official recognition, then it is legitimate for another to apply for it. This is despite Mr England being fully aware of Mr Kavak’s activities and use of the mark himself. Mr England was a member of Mr Kavak’s SIU organisation and provided advice to Mr Kavak as well as a written endorsement, whilst the whole time remaining silent of his own perceived claim to the mark.

76) Of course, there then followed Mr Kavak’s publicly made written attack upon the third party individual and Mr England’s expulsion from the organisation. This led to Mr England’s attitude to Mr Kavak and his organisation changing to one of hostility. He subsequently made the application for the mark “SIU”. It is only at this time that Mr England begins to make claims that he has been using the mark “SIU” since 1989 that he claims copyright protection. Mr England implies that he is well within his rights to apply for the mark and that it is, in fact, Mr Kavak who is infringing his rights. He is not specific about exactly what is subject to copyright protection, however, for the purposes of these proceedings I must consider if this protection is in respect of the letters “SIU”. Once I have considered this, I will need to consider whether it provides sufficient defence for his action of applying for the mark.

77) It is possible that the copyright protection that Mr England refers to relates to the heraldic device and letters “SIU” combined as shown in a number of exhibits (see paragraph 63 above). The heraldic device is a feature of the design that may benefit from protection of artistic copyright. However, this does not feature as part of the mark applied for. It follows that MSIS cannot rely upon artistic copyright as a defence. The mark, as applied for, consists of two versions being the plain letters “SIU” and “siu”. There is no artistic originality or any relevant skill in the creation of the work: see *Copinger and Skone James on Copyright* 16th Ed at 3-130 and *Ladbroke v. William Hill* [1964] 1 WLR 273 at 287. There is no comprehensive definition of an “original literary work”, however, it is well established (see for example *Exxon Corporation v Exxon Incorporated Consultants International Ltd* [1982] RPC 69, CA) that a single word does not qualify. Consequently, MSIS cannot rely upon a claim to copyright protection (either artistic or literary) in the letters “SIU”. Mr England’s actions must be considered with this in mind.

78) Both of MSIS’s marks are presented without any specific presentation and, as a result, Mr England’s submissions regarding his right to use the typeface *Trebuchet MS* are irrelevant for the purposes of these proceedings.

79) Mr England’s evidence does support his submission that he has been using the letters “SIU”. However, the evidence is sparse. There is one example of it being used in conjunction with a heraldic device in 2002 and three documents all from the year 2009 also showing use of this heraldic device and letters “SIU” (see paragraph 64, above). However, this is no other corroboratory evidence that demonstrates its use as a sign or any evidence to demonstrate the scale of this use. What is shown is that Mr England used it to identify an internal division of MSIS known as its “special investigations unit”. Reference to the full name or its initials under the signature of the author of the document will not be seen as trade mark use but rather merely indicating the descriptive indicator of this division of MSIS.

80) This use of “SIU” by MSIS is a relevant factor that I will keep in mind, but of greater relevance is what Mr England knew of Mr Kavak’s use of the mark “SIU” to identify his activities in the security industry. Regardless of what Mr England thought of Mr Kavak’s operation (which is clearly not a lot), it is clear to me that Mr Kavak was using his mark as a trade mark and that Mr England was well aware of this. Further, despite being a member of Mr Kavak’s organisation and providing advice to Mr Kavak, it is clear that Mr England did not draw Mr Kavak’s attention to his own claim to the mark. Rather, it is only after the two publicly fell out, did Mr England start to make such a claim. To subsequently attempt to invoke that perceived claim to the mark must be seen in the context of the facts of the case. It does not reflect well on Mr England. It is quite clear to me that Mr England, through his company MSIS made the application to register the mark with the sole motive of causing disruption and damage to Mr Kavak’s business

activities. Such a view is supported by Mr England “licensing” the mark “SIU” to the third party competitor to Mr Kavak’s organisation. It is only after Mr Kavak’s and Mr England’s relationship broke down did Mr England seek to rely on copyright protection and he then relies on this to justify the making of his application. Mr England erroneously considered that he owned the copyright in the letters “SIU” and assumed that this would “trump” the unregistered trade mark use by Mr Kavak.

81) Having considered all the evidence and circumstances of the case, I am unconvinced by this defence. It is clear to me that MSIS’ application to register the mark “SIU” was made as part of an orchestrated campaign against Mr Kavak and the SIU in retaliation for what Mr England perceived was Mr Kavak’s unfair treatment of the third party individual and to his own expulsion from the SIU. Mr England appears to believe that in the absence of any claim to copyright protection or any trade mark registration by Mr Kavak, then he would be powerless to prevent Mr England from registering the mark himself. The application to register the mark “SIU” was intended to cause disruption and damage to Mr Kavak’s business.

82) Such behaviour is a very clear example of behaviour that is contrary to normally accepted standards of honest conduct and constitutes business dealings which fall short of the standards of acceptable commercial behaviour. Accordingly, I find that the application was made in bad faith.

83) Mr England makes the point that that domain names are not trade marks and “cannot be accepted as defining” one. However, by applying for a domain name virtually identical to that of Mr Kavak's it is a further example of the type of activity that Mr England was engaging in order to disrupt Mr Kavak's business activities. Consequently, it is my view that this is a further indicator that Mr England's attempt to register the trade mark “SIU” was an act that amounts to bad faith.

84) I conclude that the making of the application was a clear act of bad faith. The opposition is therefore successful in its entirety.

COSTS

85) Mr Kavak has been successful and is therefore entitled to a contribution towards his costs. The scale of costs operated by the Registry does not take specific account of unrepresented parties. In circumstances where the successful party is unrepresented it is usual to apply the principles that the costs awarded in proceedings are not intended to compensate parties for the expense to which they have been put, that the award of costs should not exceed those incurred, and that they should not be placed in any more favourable position than an unrepresented party before the High Court as governed by the Civil Procedure Rules (“CPR”) (see the comments of Simon Thorley Q.C. sitting as the Appointed Person on appeal, in *Adrenalin Trade Mark*, BL O/040/02). However, the

Registrar is not bound by the CPR, but it is entitled to have regard for it (see the comments of Richard Arnold QC, acting as the Appointed Person in *South Beck B/L O/160/08*).

86) Under normal circumstances, I would invite Mr Kavak to file a brief schedule of costs setting out any disbursements incurred, any other financial losses claimed and a statement of the time spent in dealing with the proceedings. However, this case has been somewhat unusual in that the parties have a self-evidently acrimonious relationship that goes much wider than the issue before me, which was the consideration of whether Mr England's trade mark application was made in bad faith. Despite a number of case management conferences where the parties were reminded of the need to focus their evidence, neither side successfully managed this. I believe that Mr Kavak contributed to this, in equal measures with Mr England. Consequently, it is my view that each side should bear its own costs in respect of the evidence placed before me.

87) However, Mr Kavak is entitled to a contribution towards his costs in respect of the filing of the opposition and I award costs on the following basis:

Filing fee	£200
Preparing the Notice of Opposition and considering other side's counterstatement	£200
TOTAL	£400

88) I order MSIS – Mannin Security Protection & Investigation Services (Isle of Mann) to pay Tolga Kavak the sum of £400. 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 4th day of February 2014

**Mark Bryant
For the Registrar,
the Comptroller-General**