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TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK REGISTRATION No. 2524911
IN THE NAME OF CHAINGREEN LIMITED**

**AND IN THE MATTER OF INVALIDITY APPLICATION No. 83958
BY SEA NYMPH GALWAY BAY MARINE LIMITED**

**AND IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON
BY THE REGISTERED PROPRIETOR
AGAINST A DECISION OF MR OLIVER MORRIS DATED 19 MAY 2014**

DECISION

Introduction

1. This is an appeal by Chaingreen Limited against a decision of Mr. Oliver Morris acting for the Registrar, dated 19 May 2014, BL O/217/14, in which he granted an application for a declaration of invalidity of UK Registered Trade Mark number 2524911 made by Sea Nymph Galway Bay Marine Limited. The Hearing Officer referred to the registered proprietor as “Chaingreen” and the applicant as “SN Galway”, and I shall do the same.
2. Registration number 2524911 is for the trade mark SEA NYMPH (words) in respect of the following goods:

Class 1

Seaweed and organic based fertilisers and manures with added supplements of iron, potassium, nitrogen, phosphates, manganese, magnesium; all for use in agriculture, horticulture, sports grounds and forestry

Class 31

Seaweed for animal and human consumption

3. It was filed by Chaingreen on 28 August 2009 and entered in the register on 16 April 2010.
4. On 10 January 2011, SN Galway applied on Form TM26(1) Application to declare invalid Registration number 2524911¹ under Sections 47(1) and 3(6) and Sections 47(2)(a) and 5(1) and 5(3) of the Trade Marks Act 1994.
5. Chaingreen took issue with the grounds of invalidity in a Notice of defence and counterstatement filed on 16 May 2011.

¹ An amended or further Form TM26(1) was filed by SN Galway on 15 February 2011.

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6. Both sides filed evidence and the application proceeded to a hearing before, and a decision by Hearing Officer Mr. G W Salthouse issued on 25 January 2013, BL O/041/13. That decision was subsequently overturned by Ms. Emma Himsworth QC sitting as the Appointed Person in decision BL O/491/13, dated 25 November 2013, for reasons of procedural irregularities.
7. Once those procedural irregularities had been overcome, the application for invalidation was heard by a different Hearing Officer, Mr. Oliver Morris, on 10 February 2014.
8. As a preliminary, Mr. Morris admitted both parties' further evidence into the proceedings but made clear (on the assurances of both sides that none was required) that no more evidence would be allowed in.
9. In a decision issued on 19 May 2014, Mr. Morris allowed the invalidity application under Sections 47(1) and 3(6) of the Act on the basis that at the relevant date on 28 August 2009, Chaingreen had made the application for registration of SEA NYMPH for use as a trade mark in the UK in respect of the goods in suit in bad faith. He dismissed the grounds of invalidation under Sections 47(2)(a) and 5(1) and 5(3) of the Act and ordered Chaingreen to pay SN Galway (who had succeeded in invalidating the registration) the sum of £1,600 as a contribution to SN Galway's costs.
10. On 1 July 2014, Chaingreen filed Notice of appeal to the Appointed Person under Section 76 of the Act against Mr. Morris' decision under Section 3(6).
11. As I made clear to the parties at the hearing before me on 30 March 2015, I was concerned in this appeal *only* with Mr. Morris' decision, and not any previous decisions taken in these proceedings. Moreover, no new evidence could be demanded or relied upon at this stage².
12. At the appeal hearing, Chaingreen was represented by Mr. Harish Sharma. Mr. Stephen Casburn represented SN Galway. Mr. Sharma and Mr. Casburn were also the representatives before Mr. Morris.

Standard of review

13. The appeal is by way of review and not rehearing. I should be reluctant to interfere in the absence of a distinct and material error on the part of the Hearing Officer (*REEF Trade Mark* [2003] RPC 5, Robert Walker LJ, para. 28). In this case, I should bear in mind that the Hearing Officer heard live evidence and was therefore in a privileged position to assess the credibility of the witnesses (*McGraddie v. McGraddie* [2013] UKSC 58, Lord Reed, paras. 1 – 4).
14. The appellate function was explained by Lewison LJ in *Fage UK Limited v. Chobani UK Limited* [2014] EWCA 5, at paragraphs 114 – 115 in the following terms:

² I received no application to adduce further evidence on appeal but the grounds of appeal called upon SN Galway to prove certain facts decided by the Hearing Officer and referred to other evidence allegedly being available.

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“114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23 [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include

- i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
- ii) The trial is not a dress rehearsal. It is the first and last night of the show.
- iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
- iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
- v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
- vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the [appellate tribunal] the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2002] EWCA Civ 1039 [2003] Fam 55; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135.”

Hearing Officer's decision

15. Having heard the parties' evidence and arguments (which included cross examination of Mr. Philip Casburn and Mr. Stephen Casburn, SN Galway's witnesses, and Mr. Harish Sharma and Mr. Vinod Pankhania, Chaingreen's witnesses), the Hearing Officer stated his conclusions on the overall factual position of the erstwhile trading relationships between the players in this case:

“39) Taking into account the findings I have already made, the following can be taken as my view of the overall factual position:

- i) The SEA NYMPH name was coined by Mr Philip Casburn (and/or his wife) at least by 1988; neither Mr Sharma nor Mr Pankhania coined the name independently.
- ii) Prior to the joint venture, Mr Philip Casburn/Galway 1 made sales of SEA NYMPH products in Eire.
- iii) Prior to the joint venture, any sales made by SAMAA Int of SEA NYMPH products in the UK would have been as a re-seller or de-facto distributor for Mr Philip Casburn/Galway 1.
- iv) Prior to the joint venture, neither Mr Sharma nor Mr Pankhania made any SEA NYMPH product sales as individuals, be it as sole traders or in partnership with each other.
- v) Mr Philip Casburn set up SN Galway to work as part of a joint venture with SAMAA Int. Mr Casburn gave permission for the SEA NYMPH name to be used by either company. Both companies were responsible for the goods sold and both would have been entitled to a share in any goodwill from the sales of each other.
- vi) SAMAA Galway focused more on Eire (and Northern Ireland) whereas SAMAA Int focused more on the rest of the UK (but mainly England).
- vii) The joint venture ended in 2003. SAMAA Galway carried on trading in Eire (and Northern Ireland) as SN Galway. SAMAA Int was dissolved.
- viii) Chaingreen was set up in 2005 by Messrs Sharma/Pankhania and began using the SEA NYMPH name. Prior to it being dissolved, SAMAA Int did not assign its share of any goodwill to Chaingreen (or anyone else).”

16. In the light of his findings, the Hearing Officer then went on to decide the ground of invalidity under Section 3(6) of the Act in favour of SN Galway in the following terms:

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“40) My decision must be based upon the knowledge that Chaingreen had at the relevant date of 28 August 2009 and to then consider whether, in the face of such knowledge, the filing of a trade mark application for the SEA NYMPH name would be viewed as an act of bad faith (which includes not only dishonesty, but also dealings which fall short of the standards of acceptable commercial behaviour) by reasonable and experienced men in the area being examined. Chaingreen’s knowledge falls to be assessed on the basis of what Messrs Sharma/Pankhania knew at the relevant date as they are the controlling minds behind Chaingreen. It is not relevant whether Messrs Sharma/Pankhania felt their conduct was acceptable – the judgment must be based from the perspective of reasonable and experienced others.

41) As I have already observed, Mr Sharma’s testimony signalled to me a common misconception about the role of incorporated companies. He referred on a number of occasions to “his” (Mr Sharma) or “our” (Messrs Sharma/Pankhania) trading and goodwill when, in fact, the trade at all material times was conducted either by SAMAA Int (initially as a re-seller or de facto distributor, later as part of a joint venture with SAMAA Galway) and, later, by Chaingreen. Messrs Sharma/Pankhania knew this, even if they did not understand it.

42) It will also have been known that SAMAA Int’s goodwill, generated as part of the joint venture, was not assigned to Chaingreen. Therefore, when Chaingreen decided to adopt SEA NYMPH in 2005 it had no pre-existing rights. If the matter were to be assessed at that point in time then it would have been clear to me that adopting the SEA NYMPH mark in such circumstances was an act of bad faith. I say this because SEA NYMPH had been a brand of Mr Philip Casburn/Galway 1, a brand which SAMAA Int had resold in the UK. Later, Mr Philip Casburn set up SAMAA Galway to work in partnership with SAMAA Int, and gave permission for the SEA NYMPH brand to be used by both SAMAA companies. When that relationship broke down SAMAA Int ceased trading but SAMAA Galway continued. Messrs Sharma/Pankhania knew all this but they decided to set up a new company and, through that company, began using SEA NYMPH, the mark of SAMAA Int’s previous Irish suppliers and partners in a joint venture. It seems to me that the whole purpose of the joint venture was for Mr Philip Casburn’s business to have a mechanism to gain sales in the UK through a company based here. But it was still his brand, albeit that any personal rights were transferred to SAMAA Galway. In such circumstances SAMAA Galway may have sought a different partner in the UK or pursued the business itself. This should have been easily foreseeable by Messrs Sharma/Pankhania. They should not, in my view, have adopted the SEA NYMPH name as the trade mark of their new company.

43) Regardless of the above, time has moved on since 2005 and the matter must be determined at the relevant date of August 2009, some four years later. By such a time Chaingreen had been trading under the SEA NYMPH name in its own right and would have created its own goodwill. Nevertheless, the filing of a trade mark registration providing rights throughout the whole of the UK (including Northern Ireland) would still in my view represent an act of

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bad faith. Chaingreen's subsequent trade does not immunize itself from the consequences of the decision to adopt a mark in the UK in which SN Galway still held a share of the associated goodwill when Chaingreen held none. There is nothing in the evidence to suggest that SN Galway knew what Chaingreen were doing. That Chaingreen have been able to trade for four years using the SEA NYMPH name is one thing, but to apply for the mark which would give it an exclusive right to prevent SN Galway from using the mark in Northern Ireland and other parts of the UK is another. I consider that Chaingreen's conduct falls below the standards of acceptable commercial behaviour. Much of Chaingreen's argument is based upon the fact that Messrs Sharma/Pankhania have previously used the mark. This is not, however, the factual position. Messrs Sharma/Pankhania have no personal rights of any sort. No goodwill has been assigned to them prior to SAMAA Int being dissolved. Neither does it matter that SAMAA Int was the majority shareholder of SAMAA Galway. At this time they were working as part of a joint venture, a joint venture that ended with the shares in SAMAA Galway being passed to the Casburn family. *The claim under section 3(6) of the Act succeeds.*"

Grounds of appeal

17. The first ground of appeal was that one of SN Galway's witnesses had lied under oath. Chaingreen withdrew this allegation at the start of the hearing before me, and apologised for any offence caused to the witness in question.
18. The other grounds of appeal, which were numerous, were said to concern factual errors and, or factual misunderstandings in the Hearing Officer's decision.
19. I have considered each of these grounds carefully against the materials on file and the transcript of the hearing. In my judgment, they disclosed no justification (either severally or jointly) for me interfering with the Hearing Officer's decision.
20. Nevertheless, in deference to the parties' arguments, I will deal with each ground of appeal in turn.
21. First, it was argued that Samaa Galway Bay Marine Limited (later renamed SN Galway) was owned by Harish Sharma and Vinod Pankhania, and not Samaa International Limited, as stated in the Witness Statement of Declan Murray of Kelly Murray, Chartered Accountants, dated 22 September 2011. However, as noted by the Hearing Officer at paragraph 30, it was clear from a copy extract from the records of the Irish Companies Registration Office, attached to the Notice of defence and counterstatement, that the majority shareholder in Samaa Galway Bay Marine Limited was Samaa International Limited.
22. Second, Chaingreen criticised the lack of evidence before the Hearing Officer that Philip Casburn coined the SEA NYMPH name in 1988. It was contended that when Harish Sharma and Vinod Pankhania first visited Philip Casburn in Galway in 1994, he was not selling seaweed products but was running a bed and breakfast business. Chaingreen challenged Philip Casburn in the grounds of appeal to prove he had a seaweed business under the SEA NYMPH name before 1994.

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23. The Hearing Officer accepted that there was evidence that Galway 1³/Philip Casburn had traded between 1989 and 1999 in seaweed products under name SEA NYMPH in Ireland but that the SEA NYMPH name would have had no reputation at that time in the UK market as a result of the direct activities of those entities (paragraph 19). The Hearing Officer set out the evidence (including live evidence of Philip Casburn) that led him to those conclusions at paragraphs 16 – 19 of his decision. I myself have reviewed that evidence and I am satisfied that the Hearing Officer was entitled to arrive at those conclusions. As I have explained, it was too late on appeal for Chaingreen to demand further evidence.
24. Third, Chaingreen challenged Philip Casburn’s statement at the hearing that he first met Harish Sharma and Vinod Pankhania in 1999. It was pointed out that Philip Casburn also stated that he and his son David visited the latter’s exhibition stand in Harrogate in 1998/1999. The Hearing Officer noted at paragraph 20 of his decision that there were discrepancies in the evidence over when the parties first met. It is clear to me that the Hearing Officer took this on board and did not fall into error in this respect.
25. Fourth, the grounds of appeal identified in the evidence a letter from GreenBest Ltd to Chaingreen dated 20 December 2011. The letter stated that Harish Sharma and Vinod Pankhania had been known to the writer since 1998 and that GreenBest had been manufacturing fertilizers “under your own brand for yourself for over ten years”. The grounds of appeal added: “We have never traded under any other brand name other than SEA NYMPH”.
26. The GreenBest letter and its contents were taken into account by the Hearing Officer at paragraph 21i) of the decision. Chaingreen’s fourth point comments on the Hearing Officer’s decision, but does not identify any error or misunderstanding on his part. Further it appears to confirm what the Hearing Officer noted as a tendency of Mr. Sharma to conflate himself (and Mr. Pankhania) with the companies through which he (they) operated.
27. Fifth, with reference to paragraph 23 of the Hearing Officer’s decision, Chaingreen appeared to criticise the second Witness Statement of Paul Mullins (a supplier to SN Galway and its predecessors) dated 15 February 2013. The criticism was that Mr. Mullins said that to the best of his knowledge the SEA NYMPH name and product range were the property of the Casburn family since 1988, but also that he met Philip Casburn in 1998 [sic 1997]. I have re-read Witness Statements 1 and 2 of Mr. Mullins and there were not inconsistent. Further the Hearing Officer’s description of the evidence given by Mr. Mullins in his first Witness Statement was accurate.
28. Sixth, Chaingreen disagreed with the Hearing Officer’s finding at paragraph 28 of the decision that Samaa International Limited⁴ was a reseller or de facto distributor of SEA NYMPH products in the UK. That finding in context was as follows. The Hearing was considering use of SEA NYMPH before 1999:

³ A company established by Philip Casburn in 1988 but later dissolved.

⁴ A company formed by Harish Sharma and Vinod Pankhania in 1994 and dissolved in 2005.

“28) On the face of it, Philip Casburn’s claim not to have met Messrs Sharma/Pankhania much before the SAMAA business relationship started and Messrs Sharma/Pankhania’s claim that SAMAA Int were procuring goods from Philip Casburn since 1994, is a difficult one to rationalise. However, the truth of the matter is probably somewhere between the two. The most plausible explanation, when all the evidence is considered, is that SAMAA Int began procuring goods from Philip Casburn/Galway 1 earlier than Philip Casburn recalled. Whether this was as early as 1994 is, however, doubtful. It is probable that Philip Casburn saw this as a good opportunity to gain a foothold in the UK market (which had hitherto been limited) and over time their business relationship became closer leading, ultimately, to the more formal business relationship between the two SAMAA companies. *There is strong evidence that SAMAA Int was selling SEA NYMPH products in England from at least 1998. The evidence relating to earlier sales is less strong, but on the balance of probabilities, I am prepared to accept that sales took place earlier than this, from around 1996. The products were purchased from Philip Casburn; earlier sales may have been through Galway 1. SAMAA Int was a re-seller or, eventually, a de facto distributor of the products. There is insufficient evidence to show that either SAMAA Int or Galway 1/Philip Casburn was identified as being responsible for the products (and thus owner of any goodwill in England).*”

29. This part of the grounds of appeal also stated in follow on to the abovementioned sixth criticism:

“However any goodwill for the sales marketing and promotion of the name Sea Nymph in UK and later Germany belonged to Harish Sharma and Vinod Pankhania as we were the ones who went around knocking doors for the sales. Not many in the Horticultural and amenity turf management market know of Samaa International or Chaingreen Ltd but most people in the industry know Harish Sharma and Vinod Pankhania as suppliers of Sea Nymph products in the UK.”

Chaingreen referred here in support to witness statements/letters from golf course managers, which the Hearing Officer took into account at paragraph 21 of the decision.

30. Chaingreen did not argue against the Hearing Officer’s finding that the SEA NYMPH products sold by Samaa International Limited before 1999 were sourced from Philip Casburn (or Galway 1)⁵.
31. The Hearing Officer had noted that a sample SEA NYMPH product bag alleged by Chaingreen to derive from 1995 had written on it the legend: “Distributed By: Samaa International Ltd”, and he remarked that this would be a strange form of labelling from a company that claimed to be the brand owner in the UK.
32. He had additionally observed that:

⁵ This was confirmed by witness statements from the manufacturers of the products who stated that they always dealt with Philip Casburn.

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“26) Another aspect of the evidence which sheds a degree of light on the capacity in which SAMAA Int were operating stems from the coining of the name itself. Mr Philip Casburn stated in his evidence that he was the originator of the SEA NYMPH name and brand in 1988. The evidence showing the SEA NYMPH name on the printed stationery of Galway 1 (the earliest from 1989) provides corroboration of this. Neither Mr Sharma nor Mr Pankhania have ever really explained (or even clearly claimed) when or how they coined the name SEA NYMPH. During Mr Sharma’s cross-examination at the first hearing, he was very vague as to how SAMAA Int came up with and used the name SEA NYMPH prior to 1999. In my view, it is highly unlikely that Messrs Sharma/Pankhania (or anyone else connected with SAMAA Int) independently coined SEA NYMPH as a brand. Any use SAMAA Int made must, therefore, have been because it knew that was the brand used by Philip Casburn/Galway 1 in Eire or because that was the brand of the goods they procured from that source ...”

33. It seems to me, therefore, that the Hearing Officer was entitled on the evidence before him to find that Samaa International Limited was, in the period he was considering, a reseller or de facto distributor of SEA NYMPH products in the UK, a finding with which I would agree. As for Chaingreen’s follow on comments (see para 29 above) these were again symptomatic of Mr. Sharma’s inclination to conflate himself (and Mr. Pankhania) with the companies through which he (they) operated.
34. Chaingreen’s seventh point related to paragraph 29 of the decision where the Hearing Officer started to consider the use made by Samaa Galway Bay Marine Limited (the previous name of SN Galway) and Samaa International Limited of SEA NYMPH in the period between October 1999 and 2004, when those parties were in what the Hearing Officer had so far described as a “business relationship”.
35. At paragraph 29 of the decision, the Hearing Officer was referring to evidence given by Declan Murray of Kelly Murray, the Casburns’ accountants, who the Hearing Officer said had described that:

“Mr [Philip] Casburn set up a new company called [Samaa Galway Bay Marine Limited] and transferred his existing business to it. The purpose of the new company was to act in partnership with a UK company called [Samaa International Limited]; his new company traded in the SEA NYMPH brand of seaweed products.”
36. In the grounds of appeal, Chaingreen commented first, that Samaa Galway Bay Marine Limited was established to expand the activities of Samaa International Limited into Ireland; second, that Philip Casburn did not bring any of his business into Samaa Galway Bay Marine Limited, but bought and sold goods to both companies.
37. It is unclear to me, how the Hearing Officer is said to have fallen into error here. Paragraph 29 is a fair reflection of what Declan Murray said in Exhibit A to his Witness Statement dated 22 September 2011, albeit expressed in the Hearing Officer’s own words.

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38. Chaingreen put their version of events to the Hearing Officer in the evidence they submitted and in cross-examination of Mr. Sharma (see pp. 46 – 47 transcript of hearing).
39. The Hearing Officer recorded at paragraph 31 of the decision that both parties accepted that Philip Casburn had in his personal capacity supplied products he procured in Ireland to both Samaa Galway Bay Marine Limited (which the Hearing Officer described as the “joint venture company”) and Samaa International Limited. Moreover, at paragraphs 30 – 31 of the decision, the Hearing Officer acknowledged that the exact nature of the business relationship/joint venture between the parties during this period was not clear from the evidence.
40. Whilst I took on board Chaingreen’s seventh point, it did not give cause to interfere with the Hearing Officer’s decision.
41. Eighth, with regard to paragraph 30 of the Hearing Officer’s decision, Chaingreen challenged the truth of Philip Casburn’s evidence that he gave permission for the SEA NYMPH mark to be used by Samaa International Limited. In view of the retraction mentioned at paragraph 17 of my decision, I have ignored this attack on the witnesses’ veracity. I note that the Hearing Officer found (para. 14):

“Mr Philip Casburn, a witness who was calm and to the point. He came across as an honest person who appeared to answer the questions put to him as clearly as possible, to the best of his recollections”.

42. Chaingreen’s ninth point was that Mr. Pankhania’s daughter designed the sea horse logo used on SEA NYMPH labelling well before the “formal relation” in 1999. Again I am unclear on the relevance of this comment to the appeal. The Hearing Officer accepted that the sea horse logo had been designed by Mr. Pankhania’s daughter in 1994, and that SN Galway did not dispute that the logo was her creation. The significance of those facts to the Hearing Officer was that they supported the view that the new business relationship was some kind of joint venture, in which Philip Casburn’s word mark was combined with Vinod Pankhania’s daughter’s creation. No exception was taken by Chaingreen to that latter finding.
43. Tenth, Chaingreen criticised the Hearing Officer’s finding that SN Galway (then known as Samaa Galway Bay Marine Limited) was entitled to some share in the goodwill created in the period 1999 – 2004 in the SEA NYMPH mark due to its sales in Northern Ireland and Samaa International Limited’s sales in England. The alleged basis of that criticism was said to be:

“The majority shareholders of Samaa Galway Bay Marine were Harish Sharma and Vinod Pankhania. When we passed our shares to Mr. Casburn, we were neither paid goodwill nor the value of the shares.”

44. I dealt with Mr. Sharma’s misconception over the majority shareholding in Samaa Galway Bay Marine Limited earlier in this decision: the majority shareholder was Samaa International Limited. As noted by the Hearing Officer, the finances of the joint venture were clearly a matter of contention between the parties. However, the share transfer had nothing to do with the location of the acquired goodwill in SEA

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NYMPH, which remained in so far as relevant with Samaa Galway Bay Marine Limited; SN Galway following its change of name after the transfer and the break-up.

45. Chaingreen's eleventh point concerned the setting up of Chaingreen in 2004 and the liquidation of Samaa International Limited in 2005. The grounds of appeal briefly explain the background to those events, which was of tangential relevance to the present dispute. The important findings (undisputed on appeal) made by the Hearing Officer were:
 - 1) There was no evidence of any assignment of goodwill by Samaa International Limited to Chaingreen.
 - 2) Chaingreen was not therefore entitled to any goodwill in the SEA NYMPH name created before its formation (although thereafter Chaingreen had likely established its own goodwill in the SEA NYMPH mark in the UK by the relevant date, 28 August 2009).
46. Chaingreen's case was essentially that any goodwill in the UK in the SEA NYMPH name was owned at all relevant times by Harish Sharma and Vinod Pankhania personally. The Hearing Officer rejected that case on the evidence. In my judgment he was entitled to do so.
47. Twelfth, Chaingreen challenged the Hearing Officer's summary of the overall factual position at paragraph 39 of the decision (reproduced above para. 15). The criticisms under this head were largely repetitive, although I do agree that there was an error at sub-paragraph viii) of the summary. Chaingreen was set up in 2004 not 2005, but I am satisfied that this was just a typographical error.
48. The remaining grounds of appeal concerned the Hearing Officer's findings on bad faith in the application in suit, which were set out at paragraphs 40 – 43 of the decision (reproduced at para. 16 above).
49. I have already dealt with Chaingreen's thirteenth and fourteenth points (corresponding to the eleventh and seventh points respectively above) on paragraph 43 of the decision.
50. Chaingreen's final arguments questioned why SN Galway did not make an earlier challenge to the registration in suit. Chaingreen also called upon SN Galway to compensate Chaingreen for the goodwill it had established since 2004.
51. The Hearing Officer held that there was nothing in the evidence to suggest that SN Galway knew what Chaingreen was doing in applying for registration of SEA NYMPH in the UK as a trade mark, and I am unpersuaded that there is ground to disturb that finding.

Conclusion

52. In the result, the appeal was unsuccessful. Accordingly, the Hearing Officer's decision that SEA NYMPH was applied for by Chaingreen contrary to Section 3(6) of the Act stands.
53. The Hearing Officer ordered Chaingreen to pay SN Galway the sum of £1,600 as a contribution towards SN Galway's costs of the Application for invalidity.
54. I will order Chaingreen to pay SN Galway the additional sum of £750 towards SN Galway's costs of this appeal, such sums to be paid within 21 days of the date of this decision.

Professor Ruth Annand, 11 May 2015

Mr. Harish Sharma appeared on behalf of the Registered Proprietor/Appellant, Chaingreen Limited

Mr. Stephen Casburn appeared on behalf of the Applicant for Invalidity/Respondent, Sea Nymph Galway Bay Marine Limited