

O-236-15

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. 2650081  
FOR THE TRADE MARK:**

**Lipoedema Ladies**

**STANDING IN THE NAME OF  
MICHELLE ELLIS**

**AND**

**AN APPLICATION (NO. 84736) FOR RECTIFICATION OF THE REGISTER  
BY CARA JONES, JOANNE BIRD & ISOBEL MACEWEN**

## **BACKGROUND, CLAIMS & PROCEDURAL ISSUES**

### **Background**

1. Lipoedema Ladies is/was the name of a support group for people suffering from the condition known as lipoedema; the reason for my use of “is/was” will become apparent shortly. Four people have been involved in running the group: Ms Michelle Ellis (currently recorded as the proprietor of the registration), Ms Cara Jones, Ms Joanne Bird and Ms Isobel MacEwan. Following a falling-out between Ms Ellis and the other three individuals, a dispute has arisen over the ownership of the following trade mark registration:

No. 2650081

### **Lipoedema Ladies**

**Class 36:** Charitable fundraising; charitable collections; financial grant-making; provision of funding; managing and allocating charitable funds; funding research and information services; all relating to Lipoedema.

**Class 41:** Training and education services with the purpose of raising awareness of Lipoedema amongst the general public with the aim of enabling accurate early diagnosis of the condition.

2. The trade mark was filed on 26 January 2013. The applicant was given as “Lipoedema Ladies”. The application form was completed by Ms Ellis and her details provided as the point of contact. The mark was then registered on 14 June 2013.

3. Following the falling-out (which I will come on to), the address of “Lipoedema Ladies” was changed from 80 Main Street in Leeds (Ms Ellis’ address) to 19 Ryknild Close in the West Midlands (Ms Bird’s address). The change was requested on 19 December 2013 by Ms Bird, who described herself as “treasurer of Lipoedema Ladies”. The request was fulfilled by the Intellectual Property Office.

4. On 23 December 2013, the ownership of the mark was changed from “Lipoedema Ladies” to Ms Ellis personally. The address was changed to that of Ms Ellis. The Form TM16 filed to request this change was completed by Ms Ellis who stated that it was the result of an assignment. No deed of assignment was provided. The date of transfer of ownership was given as 3 December 2013. Ms Ellis additionally stated:

“Old owner is a support group run by the new owner (changing ownership from group to individual person). The signature of old owner and new owner is the same person.”

### **Claims and counterclaims**

5. An application to rectify the register was made on 19 February 2014. The application was lodged by “Lipoedema Ladies” who requested rectification of the register to put the ownership of the mark back in its name. The relevant form was completed by Ms Bird. The main claims made in the application are as follows:

- Ms Ellis is not, nor has ever been, a trustee of Lipoedema Ladies.
- Ms Ellis has never been delegated or instructed by a trustee to carry out a change of ownership.
- The three trustees of Lipoedema Ladies are Ms Jones, Ms Bird and Ms MacEwen.
- The trustees terminated any previous association between Lipoedema Ladies and Ms Ellis on 2 December 2013.

6. The statement of case accompanying the application included what purported to be a constitution document for Lipoedema Ladies. It is dated 14 February 2013 and is signed by Ms Jones, Ms Bird and Ms MacEwan in their capacities as secretary, treasurer, and chair, respectively. Also provided is a letter on the headed paper of Lipoedema Ladies sent to Ms Ellis by the trustees. The letter begins by stating that “we” have taken steps to dismantle Lipoedema Ladies as of 2 December 2013. The letter gives various reasons for this including what they consider to be inappropriate conduct by Ms Ellis. The letter writers state that they do not want any association with Ms Ellis, that a website should be taken down, that domain names should be transferred to the group, and that Ms Ellis refrains from representing the group.

7. In her counterstatement, Ms Ellis states that she founded the Lipoedema Ladies support group, initially as a Facebook page registered in her own name and personal email address. She states that Ms Jones, Ms Bird and Ms MacEwan were brought in (separately over time) to help run the group. The group had a bank account (because it raised funds) of which Ms Ellis, Ms Jones and Ms Bird [but not Ms MacEwan] were joint account holders. All three could access funds etc, but it was agreed that no monies would be paid out/spent without agreement of them all. A website was set up which was owned and managed by Ms Ellis. Events were run in 2012 which Ms Ellis states she arranged; events were also run in 2013, Ms Ellis states that she arranged all of them except one.

8. In a separate statement Ms Ellis claims that the constitution document provided with the application has been falsified and that it has been used by Ms Jones, Ms Bird and Ms MacEwan for various improper purposes.

### **Legal status of the applicant**

9. On 1 September 2014 Ms Ellis wrote to the tribunal querying the legal status of the applicant for rectification, Lipoedema Ladies. This stems, Ms Ellis states, from Lipoedema Ladies being an unincorporated body and, so, she would not be able to enforce a costs order against that name nor would Lipoedema Ladies have the necessary property holding powers to hold the trade mark.

10. In response, Ms MacEwan stated that the trade mark was filed so as to be used by, and on behalf of, the unincorporated association Lipoedema Ladies. She added that the association has now changed its name to Talk Lipoedema (company number 089965569) and that this company is capable of holding property in its own name. It is stated that all previous proprietors have held it on behalf of the

unincorporated association Lipoedema Ladies and it is, therefore, the former name of the now registered company Talk Lipoedema.

11. I discussed this matter with the parties at a case-management conference (“CMC”). Ms Ellis was represented by her husband, Mr Steve Ellis. Ms Bird attended on behalf of the applicant for rectification. Ms Bird argued that the naming of Lipoedema Ladies as the applicant for rectification was a mistake and that the named applicant should have been the legal entity Talk Lipoedema [company 089965569]. However, I explained that this could not have been a mistake because at the time the application to rectify was made, Talk Lipoedema had not been incorporated<sup>1</sup>, so did not, at that point, exist in any legal form. Mr Ellis argued that as Lipoedema Ladies has/had no legal status then it could not stand as the applicant and that Ms Ellis would have difficulty enforcing any costs award against it if she were to be successful in these proceedings.

12. I agreed that the application to rectify could not stand in the name of Lipoedema Ladies *per se*. It was clear that the protagonists on the part of the applicant for rectification were Ms Bird, Ms Jones and Ms MacEwan. Without touching on the substantive matters yet, it is those three who claim that they were running the group and it is they who claim to be some form of trustees of the unincorporated body. I did not rule out Talk Lipoedema (the company) being substituted as the applicant. However, after the CMC Ms Bird wrote to the tribunal confirming that the three individuals identified above were content to stand as the applicants for rectification. No request for Talk Lipoedema to be substituted as applicant was made. From here on I will refer to Ms Bird, Ms Jones and Ms MacEwan collectively as “the applicants”, but it will be necessary to differentiate between them when it comes to the evidence and my factual findings. I acknowledge that the applicants claim to be acting on behalf of Lipoedema Ladies. This creates a circular problem because Ms Ellis, as will be seen shortly, claims to still be running the Lipoedema Ladies support group. Therefore, at this stage, I simply note the claims.

### **Other procedural matters**

13. I also discussed at the CMC certain evidential issues. Ms Ellis has challenged certain parts of the applicants’ evidence, notably the constitution document for Lipoedema Ladies. By the time of the CMC the applicants had already stated that they did not wish to file any further evidence to respond to the challenges. I clarified with both parties whether all the evidence they wished to file had been filed. Both sides confirmed that it had been. The only exception to this was that Mr Ellis wished to make a submission at the main hearing on the basis of the Charities Act 2011. I stated that extracts from the Charities Act did not need to be filed as formal evidence as it was a matter of public record. However, I explained that it would be helpful if the relevant parts of the legislation were sent to the applicants (and the tribunal) so that the contents could be considered in advance of any hearing. This was duly done. I also mentioned at the CMC the option of mediation; in the event, the parties did not agree to mediation taking place.

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<sup>1</sup> The application to rectify was filed on 19 February 2014 whereas Talk Lipoedema was not incorporated until 14 April 2014.

## **The hearing**

14. A substantive hearing took place before me on 26 March 2015. The applicants did not attend. They did, however, provide a document headed “skeleton argument” which I have treated as a set of written submissions. Ms Ellis attended the hearing; the submissions on her behalf were primarily made by her husband, Mr Ellis.

## **THE EVIDENCE**

15. Both sides have filed evidence. The applicants provided six witness statements, one from Ms Bird and one each from certain people who say that they are/were members of the Lipoedema Ladies group, namely Ms McGhie, Ms Band, Ms Boulton, Ms Bromley and Ms Brown. Ms Ellis provided a statutory declaration, plus a witness statement from a member of the group, Ms Trickle. I will draw from the evidence with regard to the various issues it covers. It should be added that although I do not mention every scrap of evidence that has been filed, it has all been taken into account.

### **A) The first/early use of Lipoedema Ladies**

16. Ms Ellis states that in May 2011 she solely set up a support group for women suffering from lipoedema called “Lipoedema Ladies”. It was set up as a Facebook page registered in her own name. It is common ground that at this point the Facebook page was an open page, meaning that anyone could access it, see the information on it and presumably post comments. Ms Ellis states that because the group was growing, Ms Jones joined her in Q1 2012 and Ms Bird in Q2 2012, to support the running of the group.

17. Ms Bird accepts that Ms Ellis created the Facebook page in May 2011 and that it was called Lipoedema Ladies. However, she states that the page contained news stories about Ms Ellis’ life together with information about two of her business projects (Wingz and Fatphrocks) and a related appearance on Dragons Den. She states that the page had a different logo and image. Ms Bird states that Ms Jones became an “admin” member of the Facebook page on 12 June 2012. She adds that an admin role within Facebook is someone who manages the page and is not a subordinate. She says that at this point the page had around 200 “likes” but it was not giving peer group support to women with lipoedema and that it had a low profile.

18. Ms Ellis makes no mention of the Facebook page being simply about her or her business projects; taken as a whole, her evidence is that the Facebook page has always provided support for women with lipoedema.

### **B) The setting up of the closed Facebook page/group**

19. Ms Bird states that the low profile of the Lipoedema Ladies open Facebook page led Ms Ellis and Ms Jones to jointly set up a second Facebook page. However, this was called Lipoedema UK Support Trust (“LUST”) not Lipoedema Ladies. Ms Bird claims that this Facebook page was set up on 20 June 2012. It was a closed group page with the aim of carrying out peer support for lipoedema sufferers. Being closed means that only members of the group can see posts and that requests to join the

group have to be approved. Exhibit 3 contains an email exchange between Ms Jones and someone called Vicky; Ms Jones is explaining that “we” are setting the wheels in motion for a closed group”. The email is dated 21 June 2012 [the day after it is claimed to have been set up]. Neither Lipoedema Ladies nor LUST is mentioned. Ms Bird provides a list of 104 names of people who joined the group page, together with their respective dates of joining. It shows that Ms Ellis and Ms Jones joined on 20 June 2012, Ms Bird on 29 June 2012 and Ms MacEwan on 2 August 2012. Ms Bird states that she became an admin for the group. This is supported by her Exhibit 4 which contains a Facebook message exchange between Ms Ellis and Ms Bird dated 29 June 2012. In the exchange Ms Bird refers to having had a message the night before from Ms Jones; reference is made to Ms Bird being “in” and willing to help and to Ms Bird being “willing” if Ms Ellis and Ms Jones are. The group is identified as LUST in this message.

20. Ms Bird refers to a meeting that took place on 17 August 2012<sup>2</sup> between LUST and an organisation called Lipoedema UK. The meeting was attended by Ms Jones, Ms Ellis and Ms Bird who are identified as admin members of LUST. A Ms Evans and Sister Jackie represented the other organisation. Why this meeting was needed is not clear. Nevertheless, a number of things were discussed and agreed including that LUST would change its name to Lipoedema Ladies. A new closed group under this name would be set up. A new logo was to be produced based upon a statue owned by Ms Bird, but Ms Ellis would design the outline drawing (the subsequent drawing is provided in Exhibit 7). The three admins (Ms Jones, Ms Ellis & Ms Bird) had dedicated “admin scheduled nights”.

21. Ms Ellis accepts that a closed Facebook group page was set up, but says nothing about it previously being called LUST. At the hearing it was submitted that this was of little or no consequence.

### **C) The ongoing management of the group**

22. The chronology so far demonstrates that by the time the closed Facebook page was re-named Lipoedema Ladies, Ms Ellis, Ms Jones and Ms Bird were running the group together. Ms Bird states that Ms MacEwan became the fourth admin on 8 September 2012 and that she received regular updates on how the Lipoedema Ladies Facebook page was performing. An example is given from 11 October 2012 and contains statistics regarding “likes” etc and is addressed to Ms MacEwan. However, subsequent evidence shows that if Ms MacEwan did become an admin on 8 September 2012, it must have been in some lesser capacity, with less responsibility/involvement than the other three. The subsequent evidence is contained in an email exchange dated 18 February 2013 which shows that although Ms MacEwan was already on the admin team, she was now being offered (an offer she accepted) to become a full admin member and to join the management team alongside Ms Ellis, Ms Bird and Ms Jones, albeit she was not given access to the bank account which by that point had been set up (see below).

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<sup>2</sup> Ms Bird gives the wrong date in her witness statement (17 August 2013), it is clearly wrong given the subsequent documentary evidence she provides.

23. Ms Bird states that all four individuals formed a management team each with their own area of expertise. There was no chairperson. She adds that Ms Jones and Ms Ellis were considered co-founders of the group and that this has never been challenged. Ms Bird identifies the main areas of responsibility as: Ms Jones (membership, PR & media), Ms Bird (finance, administration & fundraising), Ms MacEwan (marketing, design & fund raising) and Ms Ellis (website & social media). Various articles from newspapers and magazines are provided to show the involvement of the applicants. The first is said to date from November 2012 in the *Birmingham Paper*. It is headed "Mum sets up group for rare condition". The subheading reads "Joanne [Bird] affected by painful swollen legs". The rest of the article cannot be read. The next is from the *Daily Record*. No date is given. One of the subheadings reads "Isobel [MacEwan] campaigns to raise awareness of condition". The main text of the article cannot be read. The third is said to date from July 2012 in *Ladies Magazine*. It is headed "I hate my tree trunk legs" and is written from the perspective of Ms Jones. Ms Bird also provides various emails (exhibits 9-11) to show that the applicants were performing the roles stated above. They are said to be representative of the many hundreds generated within the management team and which show the collaborative working relationship. The emails include:

- Email dated 27 February 2013 from Ms Jones to Ms Bird (copied to Ms Ellis and Ms MacEwan) about booking rooms for an event;
- Email dated 29 October 2012 from Ms Bird to Ms Ellis (copied to Ms Jones and Ms MacEwan) about arrangements for an AGM such as chair arrangement and food;
- Email dated 10 August 2013 from Ms Bird to Ms MacEwan (copied to Ms Ellis and Ms Jones) about the AGM and the summary of funds for the group;
- Email exchange from September 2012 between Ms MacEwan and someone called Judith O'Leary – the context is that Ms MacEwan is seeking assistance on the best mechanism to generate press coverage for the group.

24. Ms Ellis states that the group carried out fundraising through corporate sponsorship of the Lipoedema Ladies website which Ms Ellis states is owned and managed by her. Fundraising also takes place at AGM events. She states that the majority of corporate deals were arranged by her. There is a photograph of her in Exhibit MBE 1/1 together with the applicants (and other people) at an AGM in September 2013. Ms Ellis states that in March 2012 she helped convince the NHS to recognise lipoedema as a condition and to add details to the NHS Direct website. She provides a current screen print of this website (Exhibit MBE 1/2) alongside which are links to lipoedema websites including the group that Ms Bird is now the trustee of (Talk Lipoedema) and what Ms Ellis says is her group, identified on the web print as Lipoedema Ladies UK.

25. Ms Bird states that all of the management team undertook fundraising of one form or another. It is accepted that Ms Ellis spoke to corporate sponsors, but this was as a team member not as a team leader or manager. Exhibit 14 contains letters/emails from the other team members regarding sponsorship etc:

- A letter dated 9 April 2013 from Ms MacEwan to Juzo Limited suggesting sponsorship by way of prize donation or goody bags.
- An email from Physio Pod to Ms Bird asking if they are to be invoiced for its £100 donation.
- An email exchange on 5 April 2013 between Ms Bird and Haddenham Healthcare relating to a drop down banner which is to be paid for by the latter.
- An email to Ms Bird dated 30 July 2013 regarding a trade stand and the relevant sponsorship required.
- A series of emails between Ms MacEwan and a firm of boot makers regarding a raffle prize of some custom made boots – the emails are dated between April and November 2013.

26. Ms Bird also comments on the photo in Ms Ellis' evidence (mentioned in paragraph 24) saying that it simply represents the hierarchy of the group and it could even be argued that Ms MacEwan is at the centre of the photo. She adds that all of the management team paid for their own expenses such as travel and accommodation – these were seen as donations. Ms Bird's exhibit 15 contains two invoices from March 2013 for logo re-drawing and for leaflet printing which, it is claimed, were paid for by Ms MacEwan. Exhibit 16 contains a spreadsheet of various expenses incurred by Ms Bird amounting to over £1000. Ms Bird states that Ms Jones would have invested a similar amount.

#### **D) The Lipoedema Ladies bank account**

27. Ms Bird states that she opened a bank account in the name of Lipoedema Ladies. Her evidence contains another dating mistake as she refers to this being on 14 February 2012 which clearly cannot be right. It is common ground that the actual date was 14 February 2013 and that the three signatories on the account were Ms Ellis, Ms Jones and Ms Bird.

#### **E) The subject trade mark, the website and domain names**

28. Ms Bird states that the management team decided to create a website, something which was taken forward by Ms Ellis. An invoice dated 23 September 2013 is provided in relation to this which was for web development and a domain name. The invoice states "sold to Lipoedema Ladies". The invoice is for £192.01. Exhibit 17b contains an extract from the Lipoedema Ladies bank statement showing that the invoice was paid on 30 September 2013. Mr Ellis (Ms Ellis' husband) had some role in this and it was he (or his business) that was subsequently reimbursed.

29. In relation to the trade mark application (filed on 26 January 2013), Ms Bird states that its filing was against the wishes of the management team. Mr Ellis apparently contributed unpaid legal work in this connection but Ms Bird highlights that an invoice was paid to him as shown, again, in Exhibit 17B.



30. Ms Ellis refers to the trade mark application which she says she successfully applied for and that she also purchased some domain names including lipoedemaladies.co.uk and lipoedemaladies.com in July/August 2012. She states that this was paid for out of her funds. The associated legal work was completed by her husband and was not invoiced to the group. Ms Ellis states that she created the website in August 2012 with the extensive web development work not being charged to the group. She states that she was reimbursed for the trade mark and domain names in October 2013 from the group bank account. Exhibit MBE 1/32 contains website history data from lipoedemaladies.com showing that there were 24 updates between 24 February 2013 (which is as far back as the website history allows) and 3 December 2013; Ms Ellis states that she created and managed the website. The print of the website on this page includes references to “join our group” but this is likely the current page not an historical one.

31. In Ms Bird’s evidence there are various emails between the protagonists about these matters, but not all need summarising. In terms of the motives for applying for these assets and the related ownership issues, I note that in one of these emails (from Ms Ellis to the applicants), Ms Ellis states:

“...Lipoedema Ladies is trade marked and owned by Lipoedema ladies – I did this so that one person is an owner of Lipoedema Ladies, the email is owned by no one, it was paid for and registered by me (as obviously someone had to) but I think the cost of this has been paid back now by Jo, the renewal will be next year. If it needs transferring to Lipoedema Ladies, I’m sure I can look at that and find costs, or I can let it run out and then we buy it with the Lipoedema ladies account”.

32. I also note a further email dated 20 November 2013 (by which time the management team had begun falling out) from Ms Ellis stating:

“I trademarked Lipoedema Ladies as a security net for Jo and Cara, they knew Lipoedema Ladies was not owned by me. It also obviously protects the Lipoedema Ladies name. This I had to do and free as it would have cost thousands if I employed someone to do it against Jo and Cara’s wishes even though they did not understand it was for their benefit at the time. It is obviously also for the prosperity and future of Lipoedema Ladies. Who else can own a business or charity if it is trademarked and owned by the members? A: No one, it is kept safe from any one person who might try to cash in. So the accusation that I am wanting something back from Lipoedema Ladies monetary wise or whatever wise is frankly crazy. Everything I have done is for the future success of Lipoedema Ladies and make a practical difference in women’s lives. I protect Lipoedema Ladies as best I can, I forward things as best I can and if you look at what we have achieved as a group and individually I would say we have been successful so far.”

## **F) The falling-out**

33. Ms Bird recounts the falling-out that took place between Ms Ellis and the applicants. I do not need to go into the full details, but the applicants were unhappy with some of Ms Ellis’ actions which they say had caused friction within the group. To

resolve these issues meetings were to take place between them but there were difficulties in getting a convenient date. A meeting was eventually agreed for 8 December 2013, but instead of sticking to this the applicants sent a letter to Ms Ellis on 2 December 2013 outlining a number of things including that they (the applicants, who were now identifying themselves as trustees of Lipoedema Ladies) had taken certain steps to “dismantle” Lipoedema Ladies as of the date of the letter. After setting out the issues they had with Ms Ellis, they stated that Ms Ellis should not represent the group in any way.

34. The letter appears to have been sent following a meeting the applicants had with a Ms Marion Wooley, an independent charity consultant. The full extent of what exactly they were advised to do by Ms Wooley, and what they themselves decided to do, is not clear. Regardless of this, towards the end of November/early December 2013, the applicants, without the knowledge of Ms Ellis:

- Met and appointed themselves as trustees of Lipoedema Ladies.
- Decided to take steps to disassociate the group from Ms Ellis and secure certain assets (such as monies in the bank account) from her.
- Changed the name of Lipoedema Ladies to Talk Lipoedema.
- Created a constitution document for Talk Lipoedema (the constitution is provided in evidence and is dated 1 December 2013) and appointed themselves as trustees.
- Created a constitution document for Lipoedema Ladies, back-dating it to 14 February 2013. The constitution document identifies the applicants as trustees so as to represent the “current status” [i.e. without Ms Ellis] of the management team. The date of 14 February 2013 was chosen as this was the date of opening of the bank account<sup>3</sup>.
- Sent Ms Ellis the letter mentioned above.

35. Ms Ellis gives her take on matters. She explains that on 3 December 2013 she logged on to the Facebook closed group page to find that she was the only member (the day before there had been 500). She states that the applicants had downloaded the files of the other 500 people and moved them to a new group called Talk Lipoedema. Ms Ellis was excluded from the new group and the other members had not been consulted on the move. The Lipoedema Ladies open Facebook page with almost 1000 members had changed its name to Talk Lipoedema and her access rights removed. Talk Lipoedema were not claiming to be a new group, their strap line was “Talk Lipoedema – formerly Lipoedema Ladies”. Ms Ellis believes that the reference to the former name was simply a means of justifying the applicants taking the files and other assets of Lipoedema Ladies in order to set up a new group. She provides a screen print of one of the Facebook pages as of 3 December 2013 (Exhibit MBE 1/3). It is headed “Lipoedema Ladies is now Talk Lipoedema”. She

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<sup>3</sup> In the backdated document Ms MacEwan is listed as chairperson but in fact she was not even a member of the full admin team on 14 February 2013.

adds that the applicants have attempted to legitimise their actions by falsifying a legal document (the constitution) appointing themselves as trustees. Ms Ellis states that funds in the bank account were moved to the account of Ms Bird. She states that all files created and owned by the group were removed from the closed group and her access rights to the cloud back-up revoked. A letter (as above) was then sent to her by special delivery to coincide with what she encountered on 3 December 2013.

36. Ms Ellis states that the motive for this was a personal conflict between herself and Ms MacEwan. She provides various emails, many of which were in Ms Bird's evidence. It is clear that the parties had begun falling out by mid November 2013 and that attempts to meet were being made. At this point the group appeared to be moving towards becoming a charity. I note that in one exchange Ms MacEwan (emailing Ms Ellis) accepts that Ms Ellis started the group and refers to Ms Bird and Ms Jones as having roles in its growth. It is added by Ms MacEwan that:

“as much as it was your baby it is no longer yours, its every women on that site baby now no longer just yours and Steve's”.

37. In Exhibit ME1/7 Ms Ellis provides a screen print from the Lipoedema Ladies Facebook page as of 3 December 2013 which contained an “important update of group status” as follows:

“LIPOEDEMA LADIES will now be known as TALK LIPOEDEMA.

This morning you have woken up to a new name for our Facebook support and awareness pages. It is still the same friendly, informative place it has always been. You can be assured that we didn't take the changes lightly but we took them in the best interest of the group and its future. It has become clear recently that to safeguard the future reputation and funds of the group a brand change and a restructuring of the organisation was necessary. This was due to a number of reasons:

The headline name “Lipoedema Ladies” did not qualify with the open and equal opportunity needs of the Charity commission. A small percentage of men can suffer from the condition and they could feel excluded with singular gender references. The name would have inhibited us not only from registering as a charity but could prevent us from tapping into sources of funding and grants to get the help we all so need.

**The Lipoedema Ladies name has also been trademarked which meant that any future changes to the structure was going to be made more complicated and would mean that valuable funds raised could end up being spent on unnecessary professional fees and administration and not on serving the real needs of group. Additionally, ownership of the website, domain names and email accounts were not held by constitution for the group.**

We have now appointed a board of Trustees and are currently working on registered charity status with the help of professionals. We hope you still find this group the safe supportive family it has always been and we are looking forward to an active and successful 2014. If you want to contact us as an individual to discuss any concerns please don't hesitate to contact us at [contact@talklipoedema.org](mailto:contact@talklipoedema.org)

Joanne, Cara and Isobel xx”

38. The text I have emboldened was highlighted by Ms Ellis who considers this to show the real issue Ms Bird had with the trade mark. She adds that the statement is also contradictory as Talk Lipoedema has now been filed as a trade mark. In relation to the statement regarding domain names, Ms Ellis highlights that it is misleading because no constitution existed for the group at the relevant time.

### **G) Events since the falling-out**

39. Ms Bird provides evidence of some of the conflicts that have taken place after the events described above including a report Ms Ellis made to Google regarding copyright infringement and similar complaints made to Facebook. Ms Ellis also refers to some of this, stating that Facebook found in her favour and that references to Talk Lipoedema formerly being Lipoedema Ladies had to be removed.

40. Ms Ellis also states that WIX, the web hosting company, also found in her favour and deleted the Talk Lipoedema website for masquerading as Lipoedema Ladies. A print of the Talk Lipoedema website in its alleged masquerading form is provided which makes reference to it being “formerly known as Lipoedema Ladies”. Exhibit 1/11 is a Facebook message sent by Ms Bird to Ms Ellis via a contact on Lipoedema Ladies UK asking:

“On behalf of Celia Sparks and Cara Ashley Jones can I ask that their stories are removed from “your” website immediately as they no longer are members. Any questions please contact me at [contact@talklipoedema.org](mailto:contact@talklipoedema.org)”.

41. Ms Ellis states that this shows that Talk Lipoedema and Lipoedema Ladies are entirely different groups. Ms Ellis explains that since Talk Lipoedema was created she has run Lipoedema Ladies alone. There is now a new bank account, the previous one having been frozen. Ms Ellis states that she is rightfully recognised as the face of Lipoedema Ladies, in support of which she provides:

- MBE1/25: A list of attendees at a conference in Germany on 16 March 2014 which lists Ms Ellis as an advocate for Lipoedema Ladies.
- MBE 1/26: An invitation to Ms Ellis to attend a charity exhibition. There is no mention of Lipoedema Ladies.
- MBE 1/27: An agenda for a lipoedema meeting in February 2014 which lists Ms Ellis as representing Lipoedema Ladies. I note that the original text lists her as representing Lipoedema UK, but UK has been crossed through and replaced in hand by LADIES.
- MBE 1/28: A leaflet produced in June 2014 headed Lipoedema Ladies. It includes text written and compiled by Michelle Ellis of Lipoedema Ladies and verified by Karen L Herbst, MD. The fact that this is sponsored (by Juzo) and approved (by Karen Herbst) is said to represent recognition in the medical and commercial fields.

42. Ms Ellis states that she is the current chair of Lipoedema Ladies and that she was rightfully authorised to change the ownership of the trade mark to her own name in order to protect the group. Various exhibits are referred to including:

- MBE1/21: A letter sent to the IPO complaining that Ms Bird changed the address.
- MBE1/22: A “recent” undated article from the website of the *Yorkshire Evening Post* in which Ms Ellis is referred to as “set[ing] up Lipoedema Ladies group on Facebook and it soon led to the development of a support group.” Reference is made to there being 1000 members and that an AGM will be held in September.
- MBE 1/23 – An undated article from a publication called *Pear Shaped* in which Ms Ellis explains how the group began, including how “when [she] joined the popular social networking website Facebook [she] started a page called Lipoedema Ladies, as a kind of beacon call to try and find women like [her]”.
- MBE1/6: The email I highlighted earlier in which Ms MacEwan gives credit for Ms Ellis starting the group. Ms Ellis believes this to show responsibility for the creation and ownership of the intellectual property rights.
- MBE 1/29: An email to a Ms Rebecca Whittington at Johnson Press dated 5 August 2011 in which Ms Ellis is trying to get a story on lipoedema run. She explains that if the person “likes” Lipoedema Ladies on Facebook then she will be able to see her page and details etc.
- MBE 1/30 – An email dated 2 September 2011 from Ms Ellis to Dr Childs about lipoedema. She explains that she runs a page on Facebook called Lipoedema Ladies and that two of the members have mentioned that the doctor is running treatment trials.
- MBE 1/31 – An email to Professor Mortimer dated 26 October 2011 about lipoedema in which she again refers to her ownership of a Facebook page called Lipoedema Ladies.
- MB2 1/33 – An invoice relating to the website which she states she has continued to pay for.
- MBE 1/34 – A post Ms Ellis made on Facebook on the page of an Australian support group called LASS. (she was invited to this group by Ms Jones). In the post Ms Ellis states that she has a Facebook page called Lipoedema Ladies which is open to all and that there are always questions to answer so she encourages people to join and help.

## **H) The third party witnesses**

### *Witness statement of Ms Christina McGhie*

43. Ms McGhie states that she is a member of Talk Lipoedema which she says was previously known a Lipoedema Ladies and originally LUST. She states that she has known Ms Jones, Ms Ellis and Ms Bird as the founders of Lipoedema Ladies and that they were equal in ownership and brought different skills to the group. She was asked to become an admin member herself but declined, the main reason being what she describes as the impulsiveness of Ms Ellis. She recounts Ms MacEwan

joining the group and that Ms Ellis was not keen on her. She recounts what she knows about the involvement of the charity consultant. She states that the change of name was to deal with the fact that it is not just ladies who get lipoedema and, at the same time, it was decided that Ms Ellis was not suitable to be part of the group. She states that Ms Ellis was aggrieved by this and resurrected Lipoedema Ladies stating that it was stolen from her.

*Witness statement of Ms Claire Band*

44. Ms Band was encouraged to join Lipoedema Ladies by Ms Jones who appeared to her to be instrumental in setting up the group. She recounts that Ms Ellis, Ms MacEwan and Ms Jones were running the group as a team. Ms MacEwan joined later and was an influential member of the team. Ms Band recounts what she perceived as the rudeness by Ms Ellis and was not surprised to learn that the name had changed to Talk Lipoedema and that Ms Ellis was no longer involved. She was advised that the name change was required to remove the single sex indication. She states that Ms Ellis sent her a link to join her new Facebook page which she declined.

*Witness statement of Ms Christine Boulton*

45. Ms Boulton also recounts her understanding that the Lipoedema Ladies group was run by Ms Jones, Ms Ellis and Ms Bird who each had defined roles. When the name changed to Talk Lipoedema this was to encompass both sexes. She became aware that Ms Ellis was running a group called Lipoedema Ladies. Ms Bird telephoned to explain about the falling-out and that Ms Ellis had been "let go". She believes that the group own the trade mark not Ms Ellis and that Ms Ellis' Lipoedema Ladies Facebook group should not be in existence.

*Witness statement of Ms Helen Bromley*

46. Ms Bromley was initially welcomed to the group by Ms Jones and was introduced to Ms Ellis and Ms Bird subsequently. She recounts that Ms MacEwan joined later and explains the various roles they all played. She was informed that things had gone "pear shaped" in late 2013 when Talk Lipoedema was set up. She has been re-admitted to Ms Ellis' reformed group but is not an active member due to the way in which Ms Ellis runs it. It is unnecessary to recount why this is so. She was aware that the logo for Lipoedema Ladies came from a sculpture owned by Ms Bird which was then tweaked (from a photo) by Ms Ellis who is still using the logo.

*Witness statement of Ms Rebecca Brown*

47. Ms Brown was aware of the admin team and that Ms MacEwan joined it later. She recounts an event in Leeds 2013 which was run primarily by Ms Bird, Ms Jones and Ms MacEwan and that Ms Ellis had little involvement. She recounts the name change which was to avoid the single sex reference. She refers to the reasons for the falling-out and that Ms Ellis had set up a website called Lipiweaks which attempted to discredit the three remaining trustees. She considers Talk Lipoedema to be Lipoedema Ladies and that the name has just been changed. She considers Ms Ellis to be using the name illegally as she was sacked from the group. She notes

that Ms Ellis claims to be the founder but states that the members fully know that the co-founders were Ms Bird, Ms Jones and Ms Ellis.

*Witness statement of Claire Tickle*

48. Ms Tickle states that she joined the Lipoedema Ladies Facebook group in mid 2011, when there were only a few members. At that time it was solely run by Ms Ellis. She refers to Ms Jones and Ms Bird subsequently joining the group. She refers to the private group for Lipoedema Ladies being set up which she states was solely run by Ms Ellis. Ms Tickle was horrified to learn that the applicants had made her a member of their new group called Talk Lipoedema. She was later informed that Lipoedema Ladies no longer existed which she subsequently discovered was not true. She states that it did exist but the applicants had poached its members. Ms Tickle disagreed with this action and was promptly deleted from the Talk Lipoedema group. She is still a member of the Lipoedema Ladies group run by Ms Ellis which she states is a massive support to those who suffer from lipoedema.

**Primary findings of fact**

49. At the hearing, Mr Ellis submitted that Ms Bird's evidence was unreliable because of the falsification of documents (the constitution) that had taken place and other inaccuracies it contained. I do not consider her evidence to be wholly unreliable because much of it is supported by documentary evidence such as emails and other documents. I agree, though, that the backdating of the constitution and providing it to the tribunal in the first instance without any explanation that this was a back-dated document was extremely misleading. That the applicants kept the full story back until it had to be told is something which counts against them in terms of assessing the weight of the evidence. Ms Bird's evidence also contains some hearsay evidence which she has gained from the other applicants so the weight of this is also less. The third party evidence is not overly compelling as it seems simply to represent the views of the respective side's supporters. It is also difficult to know if the witnesses have any real first-hand knowledge of matters or if they are simply repeating what they have been told by the protagonists to the dispute. The third party evidence does, though, have some commonality on the basis that even if Ms Ellis started the group, the others were involved in its running (albeit Ms MacEwan came later). Ms Ellis' evidence is direct and first hand and there is no reason to treat her evidence as unreliable. However, I bear in mind that in cases such as this it is inevitable that both sides' have different perspectives on what is ostensibly the same factual matrix. The primary findings of fact to inform my decision are that:

- i) Ms Ellis was the originator and founder of the Lipoedema Ladies open Facebook page (in May 2011).
- ii) When first set up, it may not have been a support group as such, but it was likely to have been something more than simply a promotional page for Ms Ellis' businesses.
- iii) Over time, Lipoedema Ladies developed into a support group, particularly when the closed group page was established in June 2012.
- iv) Although the closed group page was initially operated under the name LUST, this was short-lived and not significant in terms of the perceived origins

of Lipoedema Ladies (only one of the six third party witnesses mention LUST and Ms Ellis did not refer to it herself).

v) The closed group became Lipoedema Ladies (in August 2012) and would have been perceived as an extension of the open page founded by Ms Ellis.

vi) Ms Jones was involved in the setting up of the closed group pages.

vii) By the end of June 2012 Ms Ellis, Ms Jones and Ms Bird were the established management team of the support group, effectively running it together.

viii) Ms MacEwan became an admin on 8 September 2012, but with a lesser role than Ms Ellis, Ms Jones & Ms Bird.

ix) The Lipoedema Ladies bank account was set up on 14 February 2013 with Ms Ellis, Ms Jones & Ms Bird as account holders.

x) Ms MacEwan became a full admin member on 18 February 2013, but was not given access to the bank account which had just been set up.

xi) Ms Ellis, Ms Jones, Ms Bird & Ms MacEwan worked collectively to run the support the group, making roughly equal contributions to the venture.

xii) The falling-out led to Ms Jones, Ms Bird & Ms MacEwan deciding, without Ms Ellis's knowledge, to terminate Ms Ellis' involvement.

xiii) Ms Jones, Ms Bird & Ms MacEwan decided, without Ms Ellis's knowledge, to change the name of the group to Talk Lipoedema and to operate a support group under that new name.

xiv) Ms Ellis continued operating a support group under the name Lipoedema Ladies.

## **DECISION**

50. This is an application to rectify the register, the provisions relating to which are contained in section 64 of the Act:

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

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

(2) An application for rectification may be made either to the registrar or to the court, except that-

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.



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

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

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

### **Sufficient interest?**

51. The applicants must have a sufficient interest to apply for rectification. A claim to being the legal owners of the registration (or being the legal persons behind an unincorporated body) represents a clear form of interest. The applicants have an interest in this matter sufficient for the purposes of section 64(1) of the Act.

### **Is the claimed error capable of correction?**

52. Section 64(1) relates to errors or omissions on the register. No omission is claimed, the claim being that the name of the current recorded proprietor (Ms Ellis) is erroneous. I have no doubt that the provisions of section 64(1) cover more than the correction of simple clerical errors and can cover, for example, issues of disputed ownership including rescinding erroneous assignments. The registrar has issued a number of decisions to this effect<sup>4</sup>. Therefore, if I am satisfied that the assignment to Ms Ellis was erroneous then that error may be rectified in some way.

### **Was the assignment erroneous?**

53. In order to decide whether the assignment to Ms Ellis was erroneous requires an assessment of the nature of the entity identified as Lipoedema Ladies at the time the subject trade mark was filed. This is because that sets the parameters of the legal ownership of the trade mark when it was filed, and consequently, the legality of any assignment of that trade mark to Ms Ellis.

54. Ms Ellis completed the form of application. However, despite Ms Ellis’ being the founder of Lipoedema Ladies, she made an election to place the ownership of the trade mark in the name “Lipoedema Ladies” as opposed to her personal name. This appears to have been in contrast to the domain name and website. From the evidence summarised above, I note two email comments made by Ms Ellis to the applicants which give some sense of why this was done:

“...Lipoedema Ladies is trade marked and owned by Lipoedema ladies..”

and

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<sup>4</sup> See the cases under the references: BL O/283/02, BL O/284/02, BL O/040/05 and BL O/336/01

“I trademarked Lipoedema Ladies as a security net for Jo and Cara, they knew Lipoedema Ladies was not owned by me. It also obviously protects the Lipoedema Ladies Name...”

55. These statements, together with the bare fact that the applicant was given as Lipoedema Ladies and not Ms Ellis, means that Ms Ellis cannot claim that the application was simply some form of trading name for her personally. So, at the very least, something broader than that was intended. In coming to this view I have not ignored Mr Ellis’ submission at the hearing when he referred to an email that was apparently sent on 19 August 2012 to Ms Ellis by Ms Bird in which Ms Bird asks that she and Ms Jones wished to have 1/3 of the legal rights to the brand. Unfortunately, this email does not appear to be in evidence. However, whilst this may have been further evidence (if it had been provided) of an acceptance that Ms Ellis was the founder of the group, it does not change the factual position as at the date of filing the application and what was intended at that time.

56. What that broader entity consisted of at the date of filing is a more difficult matter to determine. Whilst the evidence of both parties refers to their being “members” of Lipoedema Ladies (beyond the four protagonists here), I do not consider that it was a true membership association. A closed Facebook group, whilst it has to be joined, is merely something to facilitate a shared (and closed) exchange of information/conversation etc. There is no evidence of anyone having to join an association as such. There is no method of applying for membership. There is no membership fee (although I accept that this would not be a prerequisite). There was no constitution. There were no informal (or unwritten) rules at the relevant time. Therefore, all the traditional indicators of a membership association are absent. Reference is made in the evidence to there being AGMs. There is clear evidence that one took place in September 2013. I also accept that one took place in September 2012. However, what is not clear is the form of such a meeting and whether it was a true AGM. There is no clear evidence to show how “members” were invited. Indeed, there is a suggestion in the evidence that it is a ticketed event. There is nothing to show what the agenda was. There is nothing to show what votes were taken and no minutes as to the outcomes. Having heard Ms Ellis’ submissions on this, it seems to be that the AGM was more akin to an event which members of the Facebook page could attend if they so wished.

57. Having considered the totality of the evidence, I come to the view that at the date of filing, Lipoedema Ladies, as opposed to being an organisation/association, was instead a venture being run jointly by a broader group than Ms Ellis alone, with the aim of providing support to sufferers of lipoedema via the Facebook group (both open and closed) and associated events. I have little difficulty in accepting that at the date of filing the broader group operating that joint venture included Ms Ellis, Ms Jones and Ms Bird. Regardless of who the founder was, and regardless of who was perceived as the figurehead of the group, those three, at the very least, were playing active roles in the running of the group and it was those three who went on to be the joint signatories on the bank account.

58. The position of Ms MacEwan is not so clear. Whilst she also took on an admin role and has clearly helped run the group, she was not initially a full member of the management team. She only became a full member on 18 February 2013, after the

trade mark application had been filed. Even then she did not become a signatory to the bank account. In view of this, I do not consider that Ms MacEwan can be considered as part of that wider group at the date of filing.

59. Based on my findings so far, the logical conclusion is that the legal personality behind Lipoedema Ladies, and thus the legal owners of the mark when it was filed, were Ms Ellis, Ms Jones and Ms Bird, working together as a partnership at will under the name Lipoedema Ladies. Ms Ellis assigned the mark to herself some 20 days after she received the letter from the applicants informing her that she should no longer represent the group. She stated on that form that the change of ownership took effect on 3 December 2013, the day she received the letter. Whilst I share the concerns raised by Mr Ellis at the hearing as to the propriety of the meetings that the applicants held without Ms Ellis' knowledge/presence, it does not follow that at the date on which the change of ownership was claimed to have been effective Ms Jones and Ms Bird had given up their legal ownership of the mark.

60. Whilst it is possible that in certain situations the legal ownership of the goodwill in a jointly run business venture may fall to the last man (or in this case women) standing when persons previously acting in some form of alliance leave that alliance, the position as of 3 December 2013 was not that stark. In my view, the assignment would need to have been made on the authority and agreement of all three persons. As such, I consider that Ms Ellis was not entitled to assign the mark to herself, irrespective of the applicants' conduct. Mr Ellis' submissions relating to the Charities Act do not impinge upon this - as I have said, I share his concerns, but those concerns do not legitimise Ms Ellis assigning the mark to herself.

### **No written deed of assignment**

61. According to section 24(3) of the Act, to be effective, an assignment must be in writing:

“An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative”

62. Beyond the Form TM16 that Ms Ellis completed, there is nothing in writing. There is no deed of assignment in evidence and it was confirmed at the hearing that no deed of assignment exists. The Form TM16 carries a warning to the person completing it to the effect that the form itself is not a substitute for a deed of assignment. The form is simply headed as an “application to record a change of ownership” and, thus, is simply a method of asking the registrar to update its records. As there is no written assignment, the claimed assignment is not effective for this reason. This, in and of itself, is a further reason to uphold the application for rectification.

## What relief to provide?

63. The relief originally sought was to place the name back to that of Lipoedema Ladies. This, though, creates problems of its own as the name itself, as highlighted earlier, has no legal personality. Correction back to this name would simply perpetuate the error that already exists. Thus, I consider that the name must be rectified to read:

**Ms Michelle Ellis, Ms Cara Jones and Ms Joanne Bird, trading as Lipoedema Ladies.**

64. The above reflects, in my view, the legal status of the applicant at the date on which the trade mark was filed.

## Going forward

65. Rectification on the above basis leaves the parties in a somewhat difficult position given that the three individuals identified above no longer operate together as Lipoedema Ladies. However, section 64(5) provides that:

“The registrar may remove from the register matter appearing to him to have ceased to have effect”

66. This has been used on occasion to reflect a change in trading relations whereby one party is no longer actively involved in the business (see, to that effect, *Viper* BL O-130-09). The difficulty in this case, though, is that Ms MacEwen, Ms Jones and Ms Bird consider that the group they run (Talk Lipoedema) is Lipoedema Ladies, albeit now renamed, whereas Ms Ellis considers that Talk Lipoedema is a separate group and that she has continued to run Lipoedema Ladies on her own. Nevertheless, the factual position since the falling-out appears to be that:

- i) Ms Ellis has continued to operate under the name Lipoedema Ladies and thus is the only party to have used the trade mark since the falling-out.
- ii) The applicants have operated since the falling-out under the name Talk Lipoedema.
- iii) There is clearly no prospect that the parties will reconvene their working relationship.

67. Whilst I have rectified the proprietor's name to that stated in paragraph 63 above, it is nevertheless open for Ms Ellis to make a request in writing to the registrar for Ms Jones' and Ms Bird's names to be removed from the register under section 64(5) of the Act. If such a request is made, the registrar will then issue further directions as to the handling of that request. Ms Bird and Ms Jones will, of course, be given an opportunity to object to that request, although, for their benefit, I should point out that the legal position appears to be that the newly composed partnership of Ms Jones, Ms Bird and Ms McEwan constitutes a separate legal entity to the old partnership at will, even though two of the old partners form part of that new composition. In other words, the old partnership (and any assets it owned) would not survive the re-composition.

## **Costs**

68. The applicants have been successful in rectifying the register by the rescinding of the assignment to Ms Ellis personally. This would normally mean the applicants being entitled to a contribution towards their costs. However, given that they have not fully succeeded in obtaining the relief they sought, and given that I found the back-dating of the constitution to be misleading, I decline to make an award in their favour. Neither side shall be awarded costs.

**Dated this 22<sup>ND</sup> day of May 2015**

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