

O-414-16

TRADE MARKS ACT 1994.

IN THE MATTER OF:

OPPOSITION No. 400756

IN THE NAME OF RUSSELL CAMPBELL

TO TRADE MARK APPLICATION No. 2655880

IN THE NAME OF THE RANGERS FOOTBALL CLUB LTD

DECISION

1. On 12 March 2013, The Rangers Football Club Ltd (*'the Applicant'*) applied under number 2655880 to register the designations **RFC** and **R.F.C.** in series under s.41(1)(c) of the Trade Marks Act 1994 as trade marks for use in relation to a wide range of goods in classes 14, 24 and 25.
2. The list of goods for which protection was requested, following amendment of the application for registration in May 2013, was (with the permitted amendments shown in bold and underlined):

Class 14

Jewellery; necklaces, chokers, pendants, chains, bracelets, bangles, earrings, rings, toe-rings, anklets, tiaras, studs and rings for navel piercing; articles of precious metals and their alloys; goods made of precious metals and their alloys or coated therewith not included in other classes; badges, buckles, hair ornaments, keyrings, key fobs, cups, jewellery boxes, trinket boxes, boxes, money clips; badges, buckles, hair ornaments and keyrings made of precious stones; watches; stopwatches; horological and chronometric instruments; cuff-links; tie-pins; silver and gold tankards; pitchers made of precious metals and their alloys; flasks of precious metals and their alloys; precious stones; candelabras, candle sticks; statues and statuettes made of precious metals and their alloys; goblets made of precious metals and their alloys; vases and vessels made of precious metals and their alloys; works of art made of precious metals and their alloys; paper knives made of precious metals and their alloys; napkin rings made of precious metals and their alloys; gems, precious and semi-precious stones; tableware made of precious metals and their alloys; parts and fittings for all the aforesaid goods; **all of the aforesaid goods relating to or for the promotion of football (soccer).**

Class 24

Rugs; travelling rugs; lap rugs; towels; flags and pennants; plastic pennants; bed linen, blankets, bedspreads, brocades; cloth; fabric; table covers and table linen; place mats; napkins, serviettes and table runners; curtains; curtain holders of cloth; banners; handkerchiefs of textile; bath linen; bunting; household linen; mats of linen; coverings of textile and of plastic for furniture; covers for toilet lids of fabric; covers for cushions; loose covers for furniture; textile wall hangings; shower curtains; fabric of imitation animal skins; upholstery fabrics; hemp and jute fabric; textile piece goods; lingerie fabric; **all of the aforesaid goods relating to or for the promotion of football (soccer).**

Class 25

Clothing, headwear and footwear; clothing of leather and of imitation leather; money belts; t-shirts, polo shirts, rugby shirts, jackets, ties, bow ties, pullovers, trousers, socks, shirts, skirts, dresses, sweaters, sweatshirts, pants, jerseys, jumpers, waistcoats, kilts, pyjama suits, night suits, night shirts, night dresses, dressing robes; underwear; boxer shorts, briefs, bras, lingerie, garters, hosiery, corsets, bodices; romper suits, bibs; children's clothing; clothing for babies; outer clothing; blazers, coats, fleeces, padded jackets; sports clothing; track suits, training suits, football tops, football shorts, leotards, bathing suits, bikinis, swimming trunks, beachwear; swimwear; sleepwear; sports bras, jock straps; sports clothing for children and for babies; track suits, training suits, football tops, football shorts; waterproof jackets, wax jackets, oilskins, waterproof trousers, outer trousers, galoshes, waterproof coats, anoraks, wet suits for surface water sports; braces; hats and caps; shoes, sandals, slippers, training shoes, boots, football boots, ski boots; gloves, mittens and scarves; belts (clothing); **all of the aforesaid goods relating to or for the promotion of football (soccer).**

3. The application for registration was opposed by Mr Russell Campbell (*‘the Opponent’*) in a Notice and Grounds of Opposition filed under number 400756 on 28 August 2013. It was contended that registration should be refused under ss.3(1) (b), (c) and (d) of the 1994 Act.
4. The Applicant joined issue with the Opponent on the Grounds of Opposition in a Counterstatement filed on 23 September 2013. Evidence was then filed on behalf of the Opponent in support of the opposition. The Applicant filed written submissions in response. Neither side requested a hearing. No further written submissions were filed.

The opposition was determined by the Registrar's Hearing Officer (Ms Al Skilton) on the basis of the papers on file.

5. The evidence filed on behalf of the Opponent consisted of a Witness Statement of Mr Francis McEntegart presented in the form of a letter dated 24 January 2014. This referred to 29 'exhibits' brought together in the form of a compilation attached as an accompanying schedule.
6. The text of the Witness Statement stated as follows:

This is the witness statement of Francis McEntegart, a barrister at McEntegart Legal Limited, the representative of the Opponent. This witness statement is made on behalf of the Opponent. The exhibits referred to in this witness statement are set out in the schedule to this witness statement. The reasons for the opposition to the Application are submitted on behalf of the Opponent below:

1. There are absolute grounds for refusal of the application in accordance with s.3 (1)(b). It is a trade: mark that is devoid of any distinctive character. The letters 'RFC' are used commonly as abbreviations by many sporting clubs to indicate them as being a rugby/football club. Examples include, without limitation, clubs such as Aberdeen RFC, Dundee RFC, Gala RFC, Melrose RFC, Ellan RFC, Edinburgh University RFC, Currie RFC, St Andrews RFC, Kilcady RFC and Richmond RFC. Please see exhibits 1. 2. 3. 4. 5. 6. 7. 8. & 9 on pages 1 – 7 of the Schedule.

2. There are absolute grounds for refusal of the application in accordance with s.3(1)(c). The application is for a trade mark which consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services, or other characteristics of goods or services. The letters 'RFC' are used as an abbreviation to describe the services of rugby/football clubs. The letters have been used as an abbreviation since the late 19th century including with Langholm RFC which was founded in 1871. The letters are used. as an abbreviation for rugby/football clubs by hundreds of clubs both professional and amateur to indicate that they are a rugby football club including without limitation Aberdeen RFC. High School Former Pupils RFC, Dundee RFC, London Scottish RFC, Gala RFC, Melrose RFC, Ellan RFC, Stirling RFC, Edinburgh University RFC, Currie RFC, St Andrews RFC, Kilcady RFC and Richmond RFC. Please see exhibits 7, 8, 9, 10, 11, 12, 13, 14,

15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 & 27 on pages 7 -13 of the Schedule.

3. There are absolute grounds for refusal of the application in accordance with s. 3(1)(d) The application is for a trade mark which consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade. The letters 'RFC' have been used since the late 19th Century to indicate rugby/football clubs. Langholm RFC was founded in 1871 and continues to play in Dumfries; Clifton RFC was established in 1872. According to a 2011 report by the Centre for the International Business of Sport at Coventry University, there are now over four and a half million people playing rugby in clubs using the abbreviation 'RFC' as part of its name. There are over 1,200 rugby clubs in England using the abbreviations 'RFC'. The letters 'RFC' have therefore long been perceived to indicate a rugby/football club. Please see exhibits 28 and 29 on pages 13 – 17 of the Schedule

On the basis of the above submissions, the Opponent considers that the trade mark should not be registered.

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

7. Immediately after the statement of truth, the letter ended with the words 'Yours sincerely' above a signature. The signature was placed above the words **McEntegart Legal Limited**. The schedule was headed **'Sample Usage of RFC'**. It provided illustrations of the modes of expression described in general terms in the body of the Witness Statement, but did not relate them to any particular points in time.
8. The Applicant's Written Submissions in response criticised Mr McEntegart's Witness Statement for having been '*presented to be signed by McEntegart Legal Limited rather than an individual*' and emphasised that '*neither the Statement nor the Exhibits indicate where the material is from with the exception of Exhibit 28 which is from Wikipedia*'.
9. With regard to the substance of the Opponent's contention that the letters **RFC** are apt to be used and recognised as an abbreviation for 'rugby football club', the Applicant commented as follows: 'What is clear from the material, however, is that the letters RFC are never used alone. They are always preceded by the name or initial of the rugby football club' (para. 5); 'The letters RFC may be used as an abbreviation for "rugby football club" but that is not a description of services it is an abbreviation of part of a name' (para. 7); 'Those letters will always be preceded by the name of the club. They are never used in isolation' (para. 9); 'The fact that the letters RFC may be used as part of the name of a rugby club to indicate that it is a rugby football club does not mean that the mark RFC or R.F.C. when used alone cannot perform the

function of indicating trade origin for goods. ... The applicant submits that without the preceding name or initial the letters RFC will not be seen as “rugby football club” (para. 9).

10. The Applicant then went on in paragraph 10 to raise an unpleaded claim for which no evidential support had been provided: ‘The applicant has used the letters RFC to indicate trade origin of its goods for many years. ... This use has included use on jewellery and clothing and dates from at least as early as 1 January 1995. The applicant has therefore used the marks as unique identifiers of the merchandise of Rangers Football Club which, of course, has the initial letters RFC’.
11. The Hearing Officer rejected the opposition for the reasons she gave in a decision issued under reference BL O-329-14 on 30 July 2014. She ordered the Opponent to pay £800. to the Applicant as a contribution towards its costs of the proceedings in the Registry. The Opponent appealed to an Appointed Person under s.76 of the 1994 Act contending, in substance, that the Hearing Officer had erred by failing to give real and sufficient weight to the significance of the letters **RFC** as an abbreviation for ‘rugby football club’ in her consideration of the objections to registration on the basis of the papers on file. The Applicant filed a Respondent’s Notice dated 18 September 2014 maintaining that the Hearing Officer’s decision should be upheld for the reasons she had given. It pointed out that there was never any assertion in the course of the proceedings at first instance to the effect that the Opponent had used the marks **RFC** and **R.F.C.** and confirmed that it had chosen not to file any evidence of use of those marks because it did not consider that this was necessary.
12. In paragraph [8] of her decision the Hearing Officer decided that Mr McEntegart’s Witness Statement ‘cannot be considered evidence and I will treat it as submissions’ because ‘*The statement of truth is not dated and the signature is made by the legal firm and not by the individual making the statement*’. However, the Witness Statement was dated 24 January 2014 in the heading of the letter which embodied it and the letter was conspicuously marked with the words **WITNESS STATEMENT** at the top of the first page. The identity of the person behind the signature placed above the words **McEntegart Legal Limited** was tolerably clear from the opening and closing words of the statement to which the signature related: ‘*This is the witness statement of Francis McEntegart ... I believe that the facts stated in this witness statement are true*’. I do not agree with the Hearing Officer’s determination that the document was disqualified, either for lack of a relevant signature or for lack of a statement of truth with an applicable date, from being filed and treated as the Witness Statement of Mr Francis McEntegart.
13. The Witness Statement nonetheless fell to be assessed for as much or as little as it might be thought to be worth in terms of the evidential value of the information it contained. With reference to the contents of the schedule to the Witness Statement, the Hearing Officer observed in paragraph [11] of her decision that: ‘*The opponent is not prejudiced by my decision to treat the statement as submissions because the specific source of these ‘exhibits’ is neither identifiable nor discernible nor are they dated. They would not have assisted the opponent’s case.*’ (emphasis added). The

passage I have emphasised suggests that the illustrative material in the schedule was ignored. If so, that was an error.

14. At paragraphs [18] and [19], the Hearing Officer rightly disregarded the Applicant's unpleaded and evidentially unsubstantiated claim for distinctiveness acquired through use of **RFC** and **R.F.C.** as unique identifiers of Rangers Football Club merchandise. It followed as a consequence of the way in which the opposition was presented to her for determination that she was required to proceed on the basis that the signs in question did not possess a distinctive character acquired through use in relation to any goods of the kind listed in the opposed application for registration.
15. As illustrated by the evidential material filed on behalf of the Opponent and further as borne out by entries in mainstream dictionaries and moreover as a matter of common general knowledge, the signs in question are indeed apt to be used and recognised as abbreviations for 'rugby football club'. At paragraph [25] the Hearing Officer accepted the Applicant's submission to the effect that in order for the letters **RFC** to function in that way, it is necessary that they be used as a suffix with another identifier preceding the letters. However, this was not an accurate encapsulation of the position: the true position is that the letters **RFC** are apt to be perceived as an abbreviation for 'rugby football club' if and when the context and manner in which they are used is, for whatever reason, conducive to them being perceived in that way. As Lord Hoffmann observed in Kirin-Amgen Inc v Hoechst Marion Roussel Ltd [2004] UKHL 46 at paragraph [64]: 'No one has ever made an acontextual statement. There is always some context to any utterance, however meagre'. For the purpose of determining whether a sign is registrable as a trade mark, it is commercial activity in the area(s) of trade encompassed by the wording of the list of goods and services in the application for registration which provides the relevant context.
16. Use of **RFC** with a denominating prefix is certainly an example of use in a manner which may, in the context in which it occurs, be conducive to the letters being perceived as an abbreviation for 'rugby football club'. And it is a relevant example for the purposes of the Opponent's objection to registration under s.3(1)(c) because that particular ground of objection 'pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the categories of goods or services in respect of which registration is applied for may be freely used by all, including as collective marks or as part of complex or graphic marks' (emphasis added) and it 'therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks': Joined Cases C-108/97 and C-109/97 Windsurfing Chiemsee EU:C:1999:230 at para [25].
17. A sign is caught by the exclusion from registration contained in s.3(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: Case C-191/01P OHIM v Wm Wrigley Jr Co EU:C:2003:579 at paragraph [32]. It is irrelevant whether the characteristic of the goods or services which may be the subject of the description is commercially essential or merely ancillary: Case C-363/99 Koninklijke KPN Nederland NV EU:C:2004:86 at paragraph [102]. Since the ground for refusal does not depend on there being a real,

current or serious need to leave the sign in question free, it is of no relevance to know the number of competitors who might have an interest in using it and it is irrelevant whether there are other more usual signs for designating the same characteristic: Case C-51/10P Agencja Wydawnicza Technopol sp z.o.o EU:C:2011:139 at paragraphs [38] and [39].

18. It is clear that the decision taker should consider all the circumstances in which a sign might be used if it were to be registered pursuant to the opposed application for registration: Case C-533/06 O2 Holdings Ltd v Hutchison 3G UK Ltd EU:C:2008:339 at para. [66]. That brings into consideration ‘*characteristics*’ that goods of the kind identified in the relevant list of goods or services may optionally possess: NMSI Trading Ltd’s Trade Mark Application (FLYING SCOTSMAN Trade Mark BL O-313-11; [2012] RPC 7; at paragraphs [15] to [18]; Ann Frank-Fonds Trade Mark Applications BL O-287-15; at paragraphs [18] to [20]; Case T-633/13 Reed Exhibitions Ltd v OHIM EU:T:2015:674 at paragraphs [54], [55]. In the present case that would, on the face of the application for registration, include ‘*characteristics*’ relating to or for the promotion of ‘*football (soccer)*’ as envisaged by the wording added to the lists of goods in classes 14, 24 and 25 by way of amendment in May 2013: see paragraph [2] above.
19. That wording was added with a view to: (i) specifying sub-sets of the goods originally listed in classes 14, 24 and 25; and (ii) confining the application for registration to goods which possess characteristics of the kind required to bring them within the specified sub-sets. The limitations which the Applicant sought to introduce by means of the additional wording depended for their validity and effectiveness upon satisfying the applicable legal requirement for clarity and precision to the standard envisaged by the CJEU in Case C-307/10 Chartered Institute of Patent Attorneys EU:C:2012:361 at paragraphs [40] to [49]. Moreover, they were liable to be regarded as deficient for that purpose on the basis of ‘the POSTKANTOOR principle’ if all they did was identify characteristics which may be present or absent without changing the nature, function or purpose of the specified goods: see Omega Engineering Incorporated v Omega S.A. [2012] EWHC 3440 (Ch) at paragraphs [43] to [57].
20. These matters were briefly addressed by the Hearing Officer in paragraphs [20] and [21] of her decision in the following terms:

Limitations to the applicant's specification

20. All of the goods classes in the applicant's specification include the limitation '*all of the aforesaid goods relating to or for the promotion of football (soccer)*'. Following the decision in *PostKantoor* an exclusion of objectionable goods may be acceptable to the Registry at the examination stage or in response to an opposition, providing it excludes a characteristic of those goods. In my view, jewellery which relates to or promotes soccer is not a sub-category of jewellery any more than textile goods relating to or promoting soccer are a sub-category of those goods in class

24. The limitation does not limit a characteristic of the goods in these classes. Furthermore, such a limitation lacks clarity. I am not convinced, for example, that a precious stone in class 14 could 'relate to' or 'promote' soccer without being included in a larger item of jewellery.

21. In respect of the limitation in class 25, football clothing or 'kit' which relates to or promotes soccer could be considered a subcategory of clothing and is an acceptable limitation.

21. I understand from these paragraphs that the Hearing Officer considered the limitations to be unacceptable in relation to all goods of the kind listed in the opposed application for registration, except *'football clothing or "kit" which relates to or promotes soccer'* in class 25. Although that flagged up a failure on the part of the Registrar to enforce the legal requirement for clarity and precision in relation to the relevant lists of goods, she decided that the opposed application could proceed to registration without imposing any requirement on the Applicant to remove or amend the offending limitations. It can nevertheless be seen from paragraphs [27], [28], [35], [42] and [43] of her decision that she treated the limitations as ineffective to the same extent as she considered them to be unacceptable. I infer that she did so by analogy with the approach to vague wording in lists of goods and services which the General Court has adopted in cases such as Case T-162/08 Frag Commercial Internacional SL EU:T:2009:432 at paragraphs [9] and [31]; Case T-571/11 El Corte Ingles SA EU:T:2013:145 at paragraphs [12] and [51] to [55], appeal dismissed in Case C-301/13P EU:C:2014:235; and Case T-229/12 Advance Magazine Publishers Inc EU:T:2014:95 at paragraphs [3], [33] to [38] and [42].
22. In my view, the Hearing Officer's reasoning in this connection is incomplete. The wording of the limitation does not have the effect of confining the list of goods in class 25 of the application for registration to *'football clothing or "kit" which relates to or promotes soccer'*. With regard to all of the various goods listed in class 25 and not least in relation to *'clothing'* in the form of *'polo shirts'* and *'rugby shirts'*, it sets a puzzle (just as it does with regard to all of the various goods listed in classes 14 and 24) as to what qualifying requirements it places upon the nature, function or purpose of goods of the kind specified. Do the words *'relating to'* necessarily require *'the aforesaid goods'* to be physically customised in one way or another with respect to *'football (soccer)'*? Should the limitation be read as referring to *'goods relating to ... football (soccer)'* or as referring to *'goods relating to ... the promotion of football (soccer)'* or both? Is the word *'football'* effectively qualified by the word *'soccer'* so as to define a yardstick by reference to which goods relating to or for the promotion of *'football (soccer)'* can be objectively identified and differentiated from goods relating to or for the promotion of *'rugby football'* or other sporting activities or events?
23. Taken together, these considerations lead me to conclude not only that the Hearing Officer was right to find that the wording of the limitations was unacceptable with regard to the totality of the application for registration in classes 14 and 24, but also

that it was unacceptable with regard to the totality of the application for registration in class 25. It follows that the Applicant did not add any limitations by amendment to its lists of goods which could be taken to have validly and effectively excluded use of the letters **RFC** in a context and manner conducive to them being perceived as an abbreviation for ‘rugby football club’. Therefore, to the extent that the wording of the application (untrammelled by the legally ineffective limitations) encompassed such use of the letters **RFC** in the course of trade in relation to goods of the kind listed in classes 14, 24 and 25, the Opponent’s objections to registration had to be examined with due and proper regard for the propensity of those letters to serve as an abbreviation for the words ‘rugby football club’: see the case law noted in NMSI (above) at paragraphs [12] and [13].

24. The examination had to be stringent and full: Technopol (above) at paragraph [77]. It had to be carried out in relation to each of the goods listed in the application for registration, with collective assessment being appropriate only with respect to goods which are interlinked in a sufficiently direct and specific way to the point where they form a sufficiently homogenous category or group: Case C-597/12P Isdin SA EU:C:2013:672 at paragraphs [22] to [30]. The fact that various kinds of goods can, from a commercial point of view, be classified as ‘merchandising goods’ is not sufficient, without more, to enable them to be treated as constituents of a homogenous category or group: Case T-501/13 Karl-May-Verlag GmbH EU:T:2016:161 at paragraphs [8] and [64] to [75].
25. The exploitation of name, badge and image ‘rights’ is (and there is an abundance of case law relating to registered and unregistered trade marks demonstrating that it is) a widespread and well-established commercial practice. The limitations added by amendment (albeit legally ineffectively) to the application for registration in the present case are premised upon the proposition that all of the various kinds of goods listed in classes 14, 24 and 25 can be endowed with characteristics that will render them marketable under prevailing marketing conditions as ‘*goods relating to or for the promotion of*’ sporting activities and events. I would not expect the Registrar, with his immense experience of applying trade mark law to real world commercial activities, to dismiss that as an entirely undeliverable proposition. And if, as specifically envisaged by the limitations, it can realistically be regarded as a deliverable proposition, within the coverage of the application, in areas of trading activity linked to ‘*football (soccer)*’, it would be counter-intuitive to assume that it could not also be realistically regarded as a deliverable proposition, within the scope of the application, in areas of trading activity linked to ‘*rugby football*’. Thus embracing the likelihood of the letters **FC** functioning commercially as a reference to ‘football club’ in the name or emblem of an entity trading in the area of goods relating to or for the promotion of ‘*football (soccer)*’ and the likelihood of the letters **RFC** functioning commercially as a reference to ‘rugby football club’ in the name or emblem of an entity trading in the area of goods relating to or for the promotion of ‘*rugby football*’.

26. I can see from paragraphs [26] to [28], [35], [42] and [43] of the Hearing Officer's decision that she rejected the Opponent's objections to registration under ss. 3(1)(b), (c) and (d) of the Act essentially for two reasons.
27. First, because: *'The goods at issue are goods in classes 14, 24 and 25 and not the services of a rugby club'* (paragraph [26]); *'... the opponent must show that the applicant's marks are non-distinctive for its goods in classes 14, 24 and 25. ... In the absence of any evidence or submissions regarding the use of RFC for the Opponent's goods and in the light of my findings above, I cannot make such a finding'* (paragraph [35]); *'The application is made in respect of a number of goods and not to the provision of rugby club services or any other services. I have no evidence before me which shows any use of the letter combination RFC in respect to the trade in goods in class 14 or the textile goods in class 24 or clothing in class 25'* (paragraph [42]).
28. Second, on the basis that: *'Even if I were to accept that RFC solus indicated the suffix "rugby football club" (and I do not believe this is the case when used without an identifier such as a geographical location or other club name), it is far more likely that the average consumer of the goods, who is a member of the general public, will simply see the marks as a three letter combination'* (paragraph [27]); *'Even if I were prepared to conclude that the three letters RFC would be understood by the target public as meaning rugby football club (and I am not), in the absence of evidence to the contrary, I am not prepared to accept that RFC is customary in the trade for the applicant's goods in classes 14 and 24, nor to clothing relating to or promoting football in class 25'* (paragraph [43]).
29. These reasons appear to me to perpetuate the errors I have referred to in paragraphs [12], [13] and [15] above. They do not appear to take account of any of the matters mentioned in paragraph [25] above. The determination does not adequately cover the ground required by the legal considerations referred to in paragraphs [16] to [18] and [21] to [23] above. I am not prepared to accept that there was a stringent and full examination of the objections to registration as envisaged by the case law referred to in paragraph [25] above. I am also not satisfied that the Hearing Officer gave real and sufficient weight to the significance of the letters **RFC** as an abbreviation for 'rugby football club' in her consideration of the objections to registration on the basis of the papers on file.
30. The appeal is therefore allowed and the Hearing Officer's decision and order as to costs are set aside. I have considered whether I should now proceed to determine the objections to registration. My conclusion is that it would not be appropriate for me to do so: (i) the Applicant has thus far participated in the appeal to the extent only of providing written submissions in support of the reasoning of the decision that has been set aside; (ii) in order to determine the objections, I would need a more fully reasoned exposition of the Registrar's position on the merits than has thus far been provided; (iii) I can foresee that the Registrar might want the opportunity to deliberate and pronounce officially on the implications of name, badge and image 'rights' commercialisation for the purposes of Registry practice under s.3(1) of the Act; (iv) I would need to proceed as if I were sitting as the Registrar in order to determine the

objections substantively on appeal and by doing so I would effectively be collapsing the two levels of decision taking mandated by the 1994 Act into one.

31. The opposition is therefore remitted to the Registrar for further processing and determination by a different hearing officer in accordance with the provisions of the Trade Marks Act 1994 and the Trade Marks Rules 2008. It will be a matter for the Registrar to consider whether any case management hearing or directions would be appropriate in that connection. The costs of the appeal are to be treated as costs incurred in the opposition and dealt with accordingly at the conclusion of the proceedings in the Registry. For completeness I record that I have not found it necessary to deal with the Opponent's application for permission to adduce further evidence on appeal and I have taken no account of any of the matters that the Opponent sought to raise for the first time in written and oral submissions at the hearing of the appeal.

Geoffrey Hobbs QC

25 August 2016

The Opponent was assisted in the presentation of his appeal by Mr Joseph Gallagher.

Written submissions were filed on behalf of the Applicant by Mr Alasdair Hume of Ancient Hume Ltd.

The Registrar took no part in the appeal.