

**O/065/19**

**TRADE MARKS ACT 1994**

**TRADE MARK APPLICATIONS 3212358 & 3216370**

**IN THE NAME OF MR COLIN BELTON**

**AND**

**OPPOSITIONS 409495/6 BY MR MARC CLOWES**

**AND**

**TRADE MARK REGISTRATION 3109670**

**IN THE NAME OF MR MARC CLOWES**

**AND**

**APPLICATION 501907 BY MR COLIN BELTON**

**FOR TRADE MARK 3109670**

**TO BE DECLARED INVALID AND CANCELLED**

## Background and pleadings

1. Mr Marc Clowes is the proprietor of registered trade mark 3109670. The mark consists of the numeral and letter combination **9m**. The application to register the trade mark was filed on 20<sup>th</sup> May 2015 and the mark was registered on 21<sup>st</sup> August 2015.

2. The mark is registered in class 37 in relation to “*Maintenance or repair of automotive vehicles.*”

3. Mr Clowes opposes two trade mark applications 3212358 and 3216370 filed by Mr Colin Belton on 13<sup>th</sup> February 2017 and 3<sup>rd</sup> March 2017. These applications are to register the trade marks **9M** (“the 358 mark”) and **NINEM** (“the 370 mark”), respectively. The applications cover the following goods/services in classes 12 and 37:

“Class 12: Apparatus for locomotion by land; land vehicles; land vehicle motors; land vehicle engines; parts and fittings for the aforesaid goods.  
Class 37: Vehicle repair; vehicle servicing; vehicle maintenance; custom building and manufacture of vehicles and assembly of component parts; construction, repair, dismantlement, maintenance of vehicles; repair of vehicles in the course of vehicle breakdown service; cleaning and varnishing of vehicles; painting and restoration of vehicles; information, advisory and consultancy services in relation to the aforesaid services.”

4. Mr Clowes claims that (1) these marks are identical or similar to his earlier trade mark, (2) the goods/services are identical or similar, and (3) there is a likelihood of confusion on the part of the public. Therefore, the registration of Mr Belton’s marks would be contrary to s.5(1) or s.5(2) of the Trade Marks Act 1994 (“the Act”).

5. Mr Belton filed a counterstatement in which he denied that (1) the earlier mark is identical to his 358 mark, or similar to his 370 mark, (2) the respective goods/services are identical or similar, and (3) that there is a likelihood of confusion.

6. On 15<sup>th</sup> December 2017, Mr Belton filed an application under s.47 of the Act to invalidate Mr Clowes trade mark. His grounds for invalidation are:

(1) He is the proprietor of an earlier unregistered right to the marks **9M** and **NINEM** because of the use of those marks in trade since 2001 in relation to:

*“Apparatus for locomotion by land; land vehicles; land vehicle motors; land vehicle engines; parts and fittings for the aforesaid goods. Vehicle repair; vehicle servicing; vehicle maintenance; custom building and manufacture of vehicles and assembly of component parts; construction, repair, dismantlement, maintenance of vehicles; repair of vehicles in the course of vehicle breakdown service; cleaning and varnishing of vehicles; painting and restoration of vehicles; information, advisory and consultancy services in relation to the aforesaid services.”*

- (2) Mr Clowes and he had a business relationship which has broken down;
- (3) Mr Clowes was aware when filing his trade mark applications that his trade under the marks at issue pre-dated their business relationship and that he was the proprietor of the marks;
- (4) The applications are part of a concerted strategy on the part of Mr Clowes to take capitalise on his goodwill and reputation.

Mr Belton therefore claims that the registration of Mr Clowes’ mark 3109670 was contrary to ss.3(6) and 5(4)(a) of the Act.

7. Mr Clowes filed a counterstatement in which he:

- (1) Admitted that he had been in a partnership with Mr Belton under the name Ninemeister, but is now in dispute with him;
- (2) Denied that Mr Belton owned any goodwill under the marks 9M or NINEM;
- (3) Denied that these marks are distinctive signs uniquely associated with Mr Belton;
- (4) Asserted that the application for invalidation was an attempt to unsettle Mr Clowes and waste his financial resources.

8. The opposition and invalidation proceedings are consolidated.

### **Representation**

9. Mr Clowes is represented by ORJ Solicitors LLP. Mr Belton is represented by Murgitroyd & Company. Neither party requested a substantive hearing. However, I have had the benefit of written submissions from both parties.

### **The evidence**

10. Both sides filed evidence. Mr Clowes' evidence consists of two witness statements by him with exhibits MRC1 and documents 1-10, and MRC2 with documents 1-42, respectively. Mr Belton's evidence consists of two witness statements by him with exhibits CB1-CB5. One of these is a witness statement from Mr Neil Moss, who is a Director of the company which Mr Belton claims designed the 9M branding. The following summary sets out the evidence I consider to be most relevant to the matters at hand.

11. Mr Belton says that from at least 1996 he traded as 930 Motorsport in a business involving the renovation, repair and customisation of high-end Porsche cars. According to Mr Belton, he designed the 9M racing brand in 1996. He says that it was derived from the numeral '9' in 930 and the letter 'M' in Motorsport. There were different divisions of his business, including 9M Technic and 9M Panelcraft.

12. Mr Belton claims that in 2001 he wrote a business plan as a guide to the 9M brand. A copy of the plan is exhibited as CB1. It is not dated. The introduction to the plan explains that at the end of 2001 it became necessary for the 930 Motorsport business to "evolve" under a new name. It says that the "*catalyst for change*" was the move of some previously related businesses to new premises in February 2002. According to the business plan, the 9M Racing brand was developed in 2001 for use in relation to engine tuning products. However, the decision was then taken to re-name the whole business Ninemeister, which was always intended to be shortened to 9M.

13. I pause at this point to note that although Mr Belton says the business plan was written in 2001, the reference in the 'introduction' section to an event that happened in February 2002 shows that parts of the version of the plan in evidence were written later. Indeed, the plan appears incomplete. It may therefore have been added to over time. I also note that there is a reference on page 3 of the plan to the "current" business premises being shared with, inter alia, "MC/Panelcraft." Mr Clowes claims that 'MC' refers to him and this therefore recognises his role in the business at the time the plan was written.

14. Mr Belton claims that Orange Peel Design Limited designed the 9M brand in November 2001. Mr Moss is a director of Orange Peel Design Limited. He has held this position since the company was incorporated in April 2002. According to Mr Moss, the "*Ninemeister/9M brand design work was produced exclusively for Colin Belton trading as 930 Motorsport in 2001.*" The associated IP rights passed to Mr Belton in 2001 following the payment of the design fee. Mr Moss says that Mr Clowes was not involved in the brand design or production process.

15. I pause again at this point to note that Mr Belton and Mr Moss describe work done in 2001 by a company which Mr Moss says was incorporated in 2002.

16. Exhibit CB3 to Mr Belton's statement is said to consist of copies of the original 9M brand brief, original artwork proposals and sample adverts. I note that the artwork proposals feature the word Ninemeister and a stylised 9M. The latter is clearly intended to reference the former. I also note that one of the pages is on 'orangepeel' business paper. It describes the 'identity' of the 9M brand. This page is dated November 2001. This is consistent with Orangepeel having operated prior to its incorporation as a company in 2002, which may explain the apparent contradiction noted in the previous paragraph.

17. One of the adverts in exhibit CB3 is from a publication called Porsche Post. It is dated December 2002. The advert appears to be for Ninemeister's customisation services in relation to Porsche cars. It prominently features a stylised version of the 9M brand. Exhibit CB4 to Mr Belton's statement consists of magazine articles and advertisements from 1998 to 2015, which he says show continuous use of the 9M

brand. In fact, the advertisements up to and including July 2002 show use only of '930 Motorsport'. The earliest advertisement featuring the Ninemeister/9M branding is dated August 2002. It shows a range of goods and services being offered, ranging from wheel alignment, design, development and manufacturing, repair, restoration and conversions, as well as parts, all relating to Porsche cars. Similar advertisements followed in subsequent years. An article in the South Warrington News dated December 2014 records that the journalist visited Ninemeister's then new premises in Wollaston and saw 4 replica Porsche 993 Speedsters bearing the 9M brand. The article mentions Mr Belton as the founder of Ninemeister.

18. According to Mr Belton, Mr Clowes became a 20% partner in the business in May 2003 when he paid £30k to buy a share in the business. Mr Belton owned the rest. He says that there was no partnership agreement and Mr Clowes left in 2014 following a dispute. However, in his second statement Mr Belton takes a slightly different position, claiming that the partnership ceased trading in March 2015 *"following Mr Clowes instruction."*

19. Mr Clowes' evidence is that during the 1990s Mr Belton and he sub-contracted work to each other. According to Mr Clowes, Mr Belton approached him in *"early 2000"* and suggested that they merge their businesses to create a successful Porsche specialist company. These discussions continued through 2000. In his first statement, Mr Clowes says that the parties formed the Ninemeister partnership *"in early 2000s."* Exhibit MRC2 to his second statement comprises a copy of the terms and conditions ("Ts & Cs") of trade used by *"the partnership of Colin Belton and Marc Clowes trading as Ninemeister."* This document is marked *"Effective from 1<sup>st</sup> January 2000."* However, Mr Clowes' accepts that although the parties were working together during 2000 *"nothing was agreed as at January 2000."* It is not entirely clear from these statements exactly when Mr Clowes claims that the Ninemeister partnership was formed.

20. In his second statement, Mr Belton claims that the January 2000 date in the Ts & Cs document provided by Mr Clowes is a printing error. He re-iterates that the partnership was formed on 5<sup>th</sup> May 2003, which is when he says that the new trading name was registered with the Inland Revenue.

21. According to Mr Clowes, an employee of his called Miles Carter created the initial designs for the 9M brand in 2001. Mr Clowes says that Orange Peel then used these designs to produce the final 9M branding. Unfortunately, Mr Carter has since died. However, Mr Clowes provides a letter from his widow, Amanda, which confirms that her understanding is that the 9M logo was produced by her late husband for Mr Clowes for use by the Ninemeister business.

22. Mr Clowes claims that he was forced out of the partnership in “May 2015” after finding out that Mr Belton had transferred the business to his company, Ninemeister Limited, in which he held all the shares. According to Mr Clowes, that company had previously been dormant.

23. According to Mr Clowes, he is recognised in the industry as the 9M brand. In support of this claim he exhibits copies of posts on online forum dated between January 2004 and 2011.<sup>1</sup> He draws attention to two of these posts. The first was made by Mr Belton in January 2004. It describes Mr Clowes as his business partner and “*head of 9M Panelcraft*” (this appears to be a division of 9M/Ninemeister). The second post was made on a Porsche forum in January 2008. It is not clear who posted it. The post says “*I have a lot of time for Marc Clowes who owns/runs 9M Panelcraft as his work is truly first class.*” Mr Clowes also exhibits some magazine articles in which he is identified as a partner in Ninemeister or, in one case, the owner of 9M Panelcraft.<sup>2</sup>

24. Mr Clowes also relies on a statement by Mr Sidney Kaufman who lives in California, USA.<sup>3</sup> Mr Kaufman says that he wanted a [Porsche] 993 built by Ninemeister. He initially approached Mr Belton and subsequently received his bespoke vehicle. He [later] learned that until Mr Clowes left the business he did all the fabrication work, but that he had not done all the work on his vehicle. Mr Kaufman says that he was not satisfied with the build quality of his vehicle and felt cheated.

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<sup>1</sup> See MRC1 pages 1-10.

<sup>2</sup> See pages 12- 27 of MRC2

<sup>3</sup> See pages 30-39 of MRC2

## Mr Belton's application to invalidate Mr Clowes' trade mark 3109670

25. The relevant parts of s.47 of the Act are shown below.

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

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trade mark may be declared invalid on the ground-

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
- (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2A) to (4) -

(5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed."



26. I will start with the claim that the registration of Mr Clowes' mark was contrary to s.5(4)(a) of the Act because Mr Belton had an earlier right to 9M and Ninem. Section 5(4)(a) is as follows.

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

### The facts

27. Mr Belton claims that he was operating a business under 9M branding before Mr Clowes became a partner in May 2003. However, despite his claims to have designed the mark in 1996 and written a business plan in 2001, Mr Belton's evidence indicates that Ninemeister/9M did not start trading under those signs until August 2002. The question, therefore, is whether Mr Clowes was a partner in the business prior to that date. Mr Belton's evidence is clear on that point. He says that although they worked together from an earlier date, Mr Clowes became a partner on 5<sup>th</sup> May 2003 following the payment of £30k for a 20% share in the Ninemeister business.

28. It is submitted on behalf of Mr Clowes that although not “*formalised*” until later, the partnership was formed in the latter part of 2000. However, Mr Clowes's evidence on this point is that the parties formed the Ninemeister partnership “*in early 2000s*.” I find this ambiguous and vague. It does not directly contradict Mr Belton's claim that the partnership was formed in May 2003 (which would be “*early 2000s*”). Simply showing that the parties were working together prior to May 2003 does not

establish that they were a partnership. If the partnership was formed in consequence of Mr Clowes buying a stake in the business, as claimed by Mr Belton (and not directly challenged by Mr Clowes), then it should have been easy enough to show that this took place prior to May 2003, if it did. It is true that Mr Clowes attached to his second statement a copy of the terms and conditions under which the partnership traded, and that this is marked "*Effective 1<sup>st</sup> January 2000.*" However, Mr Belton says that the date of January 2000 on this document is a typing error. Further, even Mr Clowes accepts that "*nothing was agreed in January 2000.*" In these circumstances, I accept Mr Belton's evidence that the partnership was formed in May 2003. This means that I also accept that Mr Belton was trading under Ninemeister/9M for a short period before Mr Clowes became a partner in the business.

29. The parties disagree about which of them was responsible for the creation of the 9M trade mark. The marks at issue are 9M/9m in plain letters/numerals. There is no question before me as to the ownership of any copyright or design rights in the 9M logo designs. There does not appear to be any dispute that the 9M mark was created for, and used to identify, the Ninemeister business. The ownership of the goodwill in that business does not depend on who was responsible for creating the 9M mark. It is therefore unnecessary to resolve the dispute as to who came up with the mark 9M.

30. The parties also appear to disagree as to the date when Mr Clowes left the partnership. Mr Belton's evidence is that the partnership ceased trading in March 2015. In his second statement, Mr Clowes says that he "*was forced out of the partnership in May 2015.*" There is no documentary evidence which assists me to decide who is right about this. In the absence of cross examination of the witnesses, I find that there is insufficient evidence to determine which of these dates is correct. The difference in dates is, in any event, of little or no importance to the outcome of the case.

31. Neither party has filed evidence going to the turnover of the Ninemeister business. However, there does not appear to be any dispute that the business acquired a significant goodwill amongst its customers and potential customers. The dispute is really about who owns the goodwill. Further, there does not appear to be

any dispute that 9M/9m was distinctive of the business carried on under the name Ninemeister. I therefore find that a protectable goodwill existed in a business at the date of filing of Mr Clowes trade mark application on 20<sup>th</sup> May 2015, and that 9M was distinctive of that business.

32. There is limited evidence as to the scope of the goods/services provided by Ninemeister. However, it is tolerably clear that the business provided, at least, design, development and custom manufacturing services, repair, restoration and conversion services, as well as parts and wheel alignment services, all for cars originally marketed by Porsche.

### Ownership of goodwill

33. It appears to be common ground that the Ninemeister business conducted between 2003 and March or May 2015 was a partnership between Mr Belton and Mr Clowes. Mr Clowes does not claim that there was, or provide, a partnership agreement. Mr Belton says there was no such agreement. It seems clear from the evidence that the parties operated a single business during this period (albeit with different 'divisions') operating as a partnership at will.

33. In *Saxon Trade Mark*<sup>4</sup> Laddie J. considered a case where two ex-members of a music band called Saxon applied to register the name of the band as a trade mark. The application was opposed by those who continued to perform as Saxon, which included one of the founder members, a Mr Byford. The judge found that, absent a partnership agreement, each band performing under the name Saxon constituted a partnership at will and the property (including the goodwill) was partnership property, rather than that of the individual members.

34. In *Canaries Seaschool SLU v John and Barbara Williams*,<sup>5</sup> Mr Geoffrey Hobbs QC, as the Appointed Person, considered the law about the ownership of goodwill in common. He said:

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<sup>4</sup> [2003] FSR 39, [2003] EWHC 295 (Ch)

<sup>5</sup> BL O/074/10

“I consider that the starting point for the purposes of analysis in the present case is the general proposition that the goodwill accrued and accruing to the members of an alliance such as I have described is collectively owned by the members for the time being, subject to the terms of any contractual arrangements between them: Artistic Upholstery Ltd v. Art Forma (Furniture) Ltd [2000] FSR 311 at paragraphs 31 to 40 (Mr. Lawrence Collins Q.C. sitting as a Deputy High Court Judge). When members cease to be members of an ongoing alliance they cease to have any interest in the collectively owned goodwill, again subject to the terms of any contractual arrangements between them; see, for example, Byford v. Oliver (SAXON Trade Mark) [2003] EWHC 295 (Ch); [2003] FSR 39 (Laddie J.); Mary Wilson Enterprises Inc’s Trade Mark Application (THE SUPREMES Trade Mark) BL O-478-02 (20 November 2002); [2003] EMLR 14 (Appointed Person); Dawnay Day & Co Ltd v. Cantor Fitzgerald International [2000] RPC 669 (CA); and note also the observations of Lord Nicholls of Birkenhead in Scandecor Development AB v. Scandecor Marketing AB [2001] UKHL 21; [2002] FSR 7 (HL) at paragraphs [42] to [44]. This allows the collectively owned goodwill to devolve by succession upon continuing members of the alliance down to the point at which the membership falls below two, when ‘the last man standing’ becomes solely entitled to it in default of any other entitlement in remainder: see, for example, VIPER Trade Mark (BL O-130-09; 13 May 2009) (Appointed Person, Professor Ruth Annand).”

35. Based on his analysis of the law, Mr Hobbs upheld a decision of the registrar to refuse an application to register a trade mark made on behalf of a person who had previously had an interest in the business conducted under the trade mark, but who had left the business. This was based on an opposition brought by persons with an on-going interest in the business.

36. I find that similar considerations to those in *Saxon* and *Canaries Seaschool* apply in this case. Up until the date that the Ninemeister partnership ended, the goodwill generated under the marks Ninemeister/9M belonged to the partnership. This means that at the date of Mr Clowes’ trade mark application he was not the owner of the goodwill established under those mark(s). Mr Belton was entitled to, at least, a share

in that goodwill. Mr Clowes' rights at the time of his trade mark application would therefore have been limited to (i) identifying himself as a former member of the partnership, and (ii) realising any share in the assets (including the goodwill) of the dissolved partnership to which he may have been entitled as a departing partner.<sup>6</sup>

### Misrepresentation

36. In my judgement, if after leaving the partnership Mr Clowes continued to trade under 9m in relation to “*maintenance or repair of automotive vehicles*” services, he would have exposed himself to a claim for passing off. And assuming that he left the partnership prior to 20<sup>th</sup> May 2015, this would have been the position at the relevant date in the invalidation proceedings.<sup>7</sup> This is because Mr Clowes continued use of 9m (being to all intents and purposes indistinguishable from 9M) would have constituted a misrepresentation that he was continuing the business of the Ninemeister partnership, which he had in fact left.

37. Such a misrepresentation was inherently liable to damage the goodwill in the business previously operated by the partnership, which appears to have been continued by Mr Belton's company. The damage would most obviously have come about through diversion of custom from the business until recently conducted by the partnership, to Mr Clowes.

38. Mr Clowes seeks to avoid the accusation of redirecting the partnership's customers to himself by asserting that he was personally responsible for generating much of the goodwill. Mr Kaufman's statement is clearly intended to support that claim. However, it is not clear from Mr Kaufman's statement that he associated the Ninemeister business with Mr Clowes personally when he approached the business for a customised Porsche car. Indeed, according to his statement, he initially approached Mr Belton. It appears that it was only later (possibly after he took delivery of the vehicle) that he discovered that Mr Clowes had previously handled the fabrication side of the Ninemeister business. Therefore, to the extent that Mr Kaufman is put forward as being representative of the likely perception of UK

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<sup>6</sup> See paragraphs 19 to 25 of the judgment in *Saxon*.

<sup>7</sup> Being 20<sup>th</sup> May 2015.

customers about the person(s) responsible for the Ninemeister business, his statement offers little support to Mr Clowes' claim that customers associated the business with him personally. Indeed, the counterstatement filed on behalf of Mr Clowes does not go that far. It merely disputes that the 9M mark was *uniquely* associated with Mr Belton at the relevant date. This is consistent with my finding that the goodwill in the Ninemeister business carried on between 2003 and March or May 2015 belonged to the partnership.

39. The above findings would also apply in the (unlikely) event that Mr Clowes was still a partner in Ninemeister on 20<sup>th</sup> May 2015. In that case, his use of the mark on his own account, rather than on behalf of the partnership, would have been a clear misrepresentation to the public (and equally damaging to the goodwill in the partnership).

40. I have asked myself whether it makes any difference that Mr Belton brought the application for invalidation in his own name rather than on behalf of the dissolved partnership. I have concluded that it does not. This is because, on any view, Mr Belton had a proprietary interest in the goodwill in the Ninemeister business at the relevant date of 20<sup>th</sup> May 2015. He was a partner in the business which generated most of the goodwill. I therefore find that Mr Belton was entitled to bring invalidation proceedings in his own name because he had the right to prevent use of the 9m mark by Mr Clowes on his own account.

41. The established requirements for passing off: goodwill, misrepresentation and damage (or likelihood of damage) have therefore been made out. The application for invalidation of trade mark 1309670 under s.47(2) of the Act therefore succeeds. This is because registration of the mark was contrary to s.5(4)(a).

42. This means that the registration of trade mark 1309670 shall *"be deemed never to have been made."*

43. In the light of my finding under s.5(4)(a), there is no need to address the second ground for invalidation under s.3(6) on grounds of bad faith. I will therefore limit my consideration of this ground to the following observation. In the unlikely event that Mr

Clowes filed his application in his own name whilst still a member of the Ninemeister partnership, he would have been acting in breach of his fiduciary duty to the partnership. He should have known this. In that event, he would clearly have been acting in bad faith.

### **Mr Clowes oppositions to trade mark applications 3212358 and 3216370 filed by Mr Belton**

44. Trade mark 1309670 is the sole basis for Mr Clowes' oppositions. As I have declared this mark invalid it follows that the oppositions no longer have any basis. They are therefore rejected.

### **Irrelevant matters**

45. Mr Clowes' representative ask me to take account of the behaviour of Mr Belton vis-a-vis Mr Clowes. Specifically, that (i) Mr Belton at one time claimed that Mr Clowes had been an employee, (ii) an earlier application by Mr Belton to invalidate Mr Clowes' trade mark was deemed withdrawn after Mr Belton failed to file evidence in support of his claims, and (iii) Mr Belton is using the disputed 9M trade mark with an indication that it is registered, when it is not (in his name).

46. It is true that Mr Belton at one time claimed that Mr Clowes had been an employee, but he did not persist with this claim and it is irrelevant to the reasons for my findings. Mr Belton's premature use of the 'registered' symbol is also manifestly irrelevant to the matters covered by this decision. It is not clear why the failure of Mr Belton's previous application for invalidation is claimed to be relevant to the outcome of the current application. I note that Rule 42(4) of the Trade Mark Rules 2008 states that the consequence of failing to file evidence in these circumstances is that "*the applicant shall be deemed to have withdrawn the application..*". In that event, as Mr Clowes' representatives acknowledge, there was no final determination of the first application for invalidation. Consequently, there can be no estoppel. No specific case of abuse of process has been advanced. The mere fact, and/or the fate, of the first application for invalidation is therefore also irrelevant.

## **Costs**

47. Mr Belton has been successful and is entitled to a contribution towards his costs. I assess these as follows:

£200 official filing fee for form TM26(I);  
£500 for filing two counterstatements in the opposition proceedings and an application for invalidation;  
£1200 for filing evidence and considering Mr Clowes' evidence;  
£200 for taking part in a case management conference to consider Mr Clowes' objection to the registrar's preliminary decision to allow Mr Belton to file a second statement as additional evidence;  
£100 for filing written submissions in lieu of a hearing.

48. I therefore order Mr Marc Clowes to pay Mr Colin Belton the sum of £2200. This sum to be paid within 21 days of the date of this decision or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

**Dated 29<sup>th</sup> January 2019**

**Allan James**  
**For the Registrar**