

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**TRADE MARK APPLICATION NOS 3885463, 3885529 & 3885520 IN THE NAME  
OF THE COMMITTEE OF THE OTTERHOUND CLUB**

**AND**

**OPPOSITION THERETO BY ADRIAN WILKINSON, VERA LYONS & HELEN  
HACKING**

**AND**

**TRADE MARK REGISTRATION NO. 3787980 IN THE NAME OF ADRIAN  
WILKINSON, VERA LYONS & HELEN HACKING**

**AND**

**TRADE MARK REGISTRATION NO. 3837248 IN THE NAME OF ADRIAN  
WILKINSON, VERA LYONS, HELEN HACKING & RICHARD GRIFFITHS**

**AND**

**APPLICATIONS FOR DECLARATIONS OF INVALIDITY BY THE COMMITTEE OF  
THE OTTERHOUND CLUB**

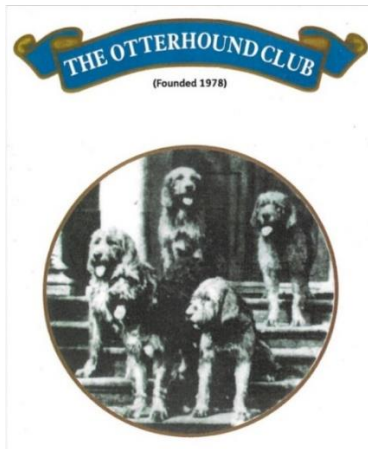
## **BACKGROUND AND PLEADINGS**

1. This is an unfortunate dispute between current and former members of the Otterhound Club (“the Club”). There are five consolidated actions, comprising three oppositions by the former members against trade mark applications filed by the current Committee and two applications for declarations of invalidity filed by the Committee against trade marks registered by the former members.

### **The oppositions**

2. On 17 March 2023, applications were filed for the three trade marks shown below:

- (i) Trade mark application number 3885463, for the word trade mark “THE OTTERHOUND CLUB” (“UK463”);
- (ii) Trade mark application number 3885529 (“UK529”), for the device shown below:



- (iii) Trade mark application number 3885520 (“UK520”) for this device mark:





3. The applications are all made in respect of the same services in classes 41 and 44, namely:

Class 41: Education services; provision of training; entertainment services; organisation and administration of dog shows and competitions and related services, namely registration of dogs as entrants in dog shows and competitions; organisation, presentation and carrying out of dog shows and competitions; the organisation of dog shows and competitions for cultural or education purposes; the provision of facilities for dog shows and competitions.

Class 44: Providing information relating to animal breeding; Providing health information relating to animals; Advisory services relating to the care of animals.

4. The applications stand in the name of the Committee of the Otterhound Club (“the Committee”).

5. The applications are opposed by Adrian Wilkinson, Vera Lyons and Helen Hacking (collectively, “WLH”). The notices of opposition were filed on 6 July 2023 (UK463 and UK529) and 7 July 2023 (UK520). All three oppositions are based upon the following two registered trade marks:

Trade mark number and dates	Representation	Specification
No. 3837248 (“UK248”) Filed 9.10.2022 Registered 30.12.2022		Class 41: Organisation of dog club and shows.
No. 3787980 (“UK980”) Filed 15.05.2022 Registered 26.08.2022		Class 41: Organisation of dog shows.

6. The opposition against UK463 is based upon s. 5(2)(b) of the Trade Marks Act 1994 (“the Act”) only. The oppositions against UK529 and UK520 are also based upon s. 5(2)(b) but in these oppositions there are additional grounds under s. 5(1) and s. 5(2)(a), to the extent that the oppositions are based on UK248 and UK980, respectively. WLH say that the marks are identical or similar and that the services are identical or similar and that there is a likelihood of confusion. Accordingly, they request that the applications be refused under ss. 5(1), 5(2)(a) and/or 5(2)(b).

7. The Committee provided counterstatements. The grounds under ss. 5(1) and 5(2) are not denied but reliance is placed on the applications for invalidity which it is said will render the oppositions moot.

### **The applications for declarations of invalidity**

8. The applications for invalidation were filed by the Committee on 3 April 2023 and are directed against UK248 and UK980, shown above. These marks stand in the names of WLH, in the case of UK248 along with a fourth individual, RG.

9. The bases of the applications for invalidation are ss. 5(4)(a), 5(4)(b) and 3(6) of the Act and these grounds are directed against all of the services in the specifications.

10. In respect of UK248, the Committee asserts that the registered proprietors are or were members of the Club. It is said that there was a disagreement with the Committee, after which the mark was applied for. The Committee asserts that the logo corresponding to UK248 has been used by the Club for over 20 years and that, after registration was obtained, the registered proprietors sent a cease and desist letter to the Club, demanding that it stop using the logo. The Committee therefore asserts that the application for registration was filed maliciously, with the sole intent of causing harm to the Club and that the trade mark should be invalidated under s. 3(6) on the grounds that it was applied for in bad faith.

11. The Committee says that the Club owns a valuable goodwill in a sign identical to UK529, shown above. The Committee asserts that the Club has used this sign throughout the UK since 1978 in connection with services identical to those listed at paragraph 3 of this decision. The Committee further asserts that by virtue of the Club’s constitution, the goodwill vests in the Committee, which has standing to bring the

applications. It is said that the Club is the only officially recognised members' club for otterhound owners in the UK and that it enjoys significant goodwill and reputation among those owners. The Committee says that the registered proprietors "have taken it upon themselves to misappropriate the branding of The Otterhound Club to set up their own competing dog club for otterhounds". It asserts that the use of UK248 will give rise to a misrepresentation and that the Club's goodwill will be damaged through confusion on the part of dog owners and damage to the Club's reputation. Consequently, the Committee asks that the registration be invalidated under s. 5(4)(a).

12. The claim under s. 5(4)(b) is that the logo of which UK248 is comprised is subject to copyright protection that is owned by the Otterhound Club through the Committee. The Committee asserts that the logo was created by David Lindley in the late 1970s or early 1980s in his capacity as a committee member of the Club and that the current owner of the logo is the Club, pursuant to its constitution.

13. In respect of UK980, the Committee says that the Club has used a logo identical to UK520 in the UK since 2003 for the services listed at paragraph 3 of this decision. For the same reasons as with the passing off ground set out above, the Committee says that there will be a misrepresentation and damage to the Club's goodwill and requests that the registration be invalidated under s. 5(4)(a).

14. The Committee further asserts that the logo identical to UK980 is owned by the Club through the Committee. It says that this logo was also created in the 1970s or 1980s by David Lindley in his capacity as a committee member of the Club. The Committee says that it believes that the logo was created under a paid-for commission and that the logo is owned by the Committee pursuant to the Club's constitution. Alternatively, it says that it has an irrevocable licence to use the logo, having paid for Mr Lindley's services in connection with the creation of the logo.

15. The Committee also says that UK980 was applied for in bad faith and relies on the same arguments as for UK248, namely that the application was filed after a disagreement and that WLH filed the application with the sole intention of causing harm to the Club, demonstrated by a cease and desist letter in which it was demanded that the Club stop using the logos it has used for many years.

16. WLH filed counterstatements denying the grounds and putting Committee to proof. In respect of the copyright grounds, WLH agree that the disputed logos were created by David Lindley. However, WLH assert that there was no transfer of ownership to the Club and that Mr Lindley assigned the copyright so that he and WLH are joint owners.

### **Evidence, hearing and representation**

17. Both parties filed evidence but only the Committee filed any evidence on the substance; the evidence filed by WLH was concerned with procedural issues in advance of a case management conference. The Committee also filed submissions with its evidence and in lieu of a hearing. Neither party requested to be heard orally. This decision is therefore taken following a careful reading of all of the papers.

18. The Committee is represented by Panoramix Limited and WLH is represented by Stobbs.

### **Case management**

19. A case management conference (“CMC”) was held before me on 21 June 2024 to deal with several issues in these proceedings. The decisions I gave and the reasons for those decisions are set out in my letter of 24 June 2024, which I adopt here. One of the issues was the standing of/the correct nomenclature for the Committee. For the sake of completeness, I should add that, had I been persuaded that it was incorrect to allow the name of the applicant (either as owner of the Club’s trade marks or the applicant for invalidation) to be the name of the Committee because this does not identify the legal owner, I would have invited the Committee to renew their alternative request of 16 April 2024 that the applicant across all of the cases be replaced with David Porter in his capacity as a representative of the Committee and the Club. As Mr Porter was named on the original application forms, both for the trade marks and for the declarations of invalidity, I would have been minded to allow any such request and allow time for the necessary formalities, including any assignments, to be carried out; I would not have considered it appropriate to deem the applications for the trade marks or for invalidity void.

20. WLH’s oppositions were originally also reliant on grounds under ss. 5(4)(b) and 3(6) of the Act. However, no evidence was filed in support of these grounds (neither

WLH's statements of grounds nor their counterstatements are signed by an individual). The requirement to file evidence under rule 20(3) of the Trade Marks Rules 2008 was discussed at the CMC and as no evidence was filed in the period permitted after the CMC, these grounds were deemed withdrawn in the tribunal's letter dated 14 August 2024.

### **Witnesses**

21. As I have mentioned, WLH filed evidence in advance of the CMC going to certain procedural issues and matters of form. Its witnesses were Julie Farrington and Caroline Harris; Ms Harris later withdrew her statement. Ms Farrington's statement was filed with a letter from the Kennel Club, not properly exhibited to the statement, giving an indication of the dispute between the parties.

22. The Committee's witness is David Porter, who is the Secretary and a Committee Member of the Otterhound Club. Mr Porter has held this position since 15 June 2021. Mr Porter's witness statement is brief but he encloses thirteen exhibits which detail the relations between the parties, as well as some evidence regarding the creation of the logos and their use by the Club.

23. I have read all of the evidence carefully. I will refer to it, as I consider appropriate, in the course of this decision.

### **THE COMMITTEE'S APPLICATIONS FOR INVALIDATION**

24. As the validity of WLH's trade marks is crucial for the s. 5 grounds upon which their oppositions are based, I will consider the applications for invalidity first. It is convenient to start with the bad faith grounds.

#### **Bad faith: s. 3(6)**

25. Bad faith is provided for at s. 3(6) of the Act, which states:

"A trade mark shall not be registered if or to the extent that the application is made in bad faith."

26. As the present claim relates to registered trade marks, s. 47 is also relevant:

“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.

[...]

(5) Where the grounds of invalidity exist 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.”<sup>1</sup>

27. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin SCJ considered the question of what amounts to bad faith. He underlined that the categories of bad faith and the circumstances which may constitute bad faith are not closed, and continued:

“152. In seeking to identify the relevant principles, it is necessary to have in mind two fundamental aspects of trade mark law to which I have already referred: first, it is concerned with the use of marks in trade to denote the origin of goods and services. Secondly, the aim of the trade mark regime is to contribute to a system of undistorted competition in which businesses are able

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<sup>1</sup> The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

to attract and retain customers by the quality of their goods and services, and for that purpose are able to have registered signs which enable consumers to distinguish the goods and services of one undertaking from those of another. Such a system must also provide an incentive and protection for the investment by a brand owner in the quality and other beneficial aspects of its goods and services, and so allow it to develop a goodwill in its business relating to their sale and supply.

153. Against this background, the essence of the objection that an application to register a mark was made in bad faith may be understood: it is that the motive or intention of the applicant was to engage in conduct that departed from accepted principles of ethical behaviour or honest commercial practices having regard to the purposes of the trade mark system which I have described. Whether the conduct was undertaken with that motive or intention and did indeed depart from such ethical behaviour or honest commercial practices must be assessed having regard to all the objective circumstances of the case: see, for example, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*"), paras 46 and 47 [...]."

28. Lord Kitchin summarised the general principles applicable to bad faith, at [240] of his judgment, as follows:

“(i) [...]

(ii) The date for assessing whether an application to register [a] trade mark was made in bad faith is the date the application for registration was made (*Lindt*, para 35).

(iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation [...], and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 ([*Malaysia Dairy Industries Pte Ltd v Ankenaeonet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 ("*Malaysia Dairy*"), para 29; [*Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 ("*Sky CJEU*")], para 73).

(iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the [...] law of trade marks, namely the establishment and functioning of [...] a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; [*Koton Mağazacılık Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 (“*Koton*”)], para 45).

(v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky CJEU*, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case ([*Hasbro Inc v EUIPO, Kreativni Dogaaji d.o.o. (intervening)* (Case T-663/19) EU:T:2021:211 (“*Hasbro*”)], paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky CJEU*, para 76; [*AS v Deutsches Patent-und Markenamt* (C-541/18) EU:C:2019:725], para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (*Sky CJEU*, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (*Sky CJEU*, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a *bona fide* intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky CJEU*, paras 86 and 87).”

29. The mere fact that the applicant knew that another party used the trade mark in the UK does not establish bad faith: *Lindt, Koton* (paragraph 55). The applicant may have reasonably believed that it was entitled to apply to register the mark, e.g. where there had been honest concurrent use of the marks: *Hotel Cipriani SRL & Ors v Cipriani (Grosvenor Street) Limited & Ors* [2008] EWHC 3032 (Ch). However, an application to register a mark is likely to have been filed in bad faith where the applicant knew that a third party used the mark in the UK, or had reason to believe that it may wish to do so in future, and intended to use the trade mark registration to extract payment/consideration from the third party, e.g. to lever a UK licence from an overseas trader: *Daawat Trade Mark* [2003] RPC 11, or to gain an unfair advantage by exploiting the reputation of a well-known name: *Trump International Limited v DDTM Operations LLC* [2019] EWHC 769 (Ch).

30. The relevant date for assessing bad faith is the date of application for the trade mark. The relevant dates are therefore 15 May 2022 for UK980 and 9 October 2022 for UK248.

31. There are a number of characters in the evidence. To respect the privacy of those who are neither a party to proceedings nor a witness in the instant proceedings, I will refer to them by their initials only. No disrespect is intended.

32. The Otterhound Club was established in 1978.<sup>2</sup> A copy of its constitution and rules from 2023 are provided, along with revised rules from 1985.<sup>3</sup> The aim of the Club has since 1985 been to promote and ensure the survival of the otterhound breed. The 2023 constitution provides for the election of a committee including Chairman, Vice Chairman, Treasurer, Secretary and not more than 8 other members, who will serve a three-year term and retire in a specified order in consecutive years. The 1985 rules are less precise but say that a third of the committee shall retire each year. Both documents provide that Club property shall vest in the committee. The Constitution stipulates that a Special General Meeting (“SGM”) may be called at any time by the committee and within 28 days of the written request by not less than 25 members or 25% of fully paid-up members of record at the last AGM, whichever is greater (the 1985 rules require 25 members only). The Kennel Club (“KC”) is named the final authority for interpreting the Constitution and Rules in both documents.

33. The evidence includes images of the Club newsletter with the image below on the front page from 1982 to 1984:<sup>4</sup>

**the Otterhound Club**  
(affiliated to The Kennel Club)



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<sup>2</sup> Unfortunately, the exhibits are not paginated throughout. Much of the evidence is contained in exhibit OC3, which is a long exhibit. I will use the page numbering from the submission to the KC (the beginning of OC3) and the appendices attached to it to identify the relevant part of the exhibit. Details of the founding of the Club are at OC3, p. 1.

<sup>3</sup> Mr Porter’s witness statement; OC1 and OC2.

<sup>4</sup> OC6 and OC13.

34. There are also extracts from the Club's magazine from 1997 which have this image:



35. Prints taken from the Wayback Machine internet archive dated 2 September 2006 of the Club website, otterhoundclub.co.uk, show UK248.<sup>5</sup> Schedules, entry forms and show notices visible on the website in 2013 and 2014 appear to show the photograph image as in UK529/UK248 with a banner but the representations are too small to be clear. From January 2016 to June 2021, an image of an otterhound in silhouette, surrounded by a blue circle with the words "THE OTTERHOUND CLUB", which appears to be identical to both UK520 and UK980, appears on the Club's home page and all other pages from the site in evidence. I note that on 24 May 2022 the website is shown as in maintenance mode and "no longer available".

36. The evidence establishes the following chronology of events:

March/April 2020: The Club's principal officers are RG as Chair, Mrs Lyons as Secretary and JW (Mr Wilkinson's wife) as Treasurer. The AGM is postponed indefinitely. RG purports to suspend the Constitution.<sup>6</sup>

2020 to early 2022: Mrs Lyons resigns in August 2020. Mr Porter is co-opted on to the Committee and acts as temporary Secretary, minuting his first meeting on 15 June 2021. A majority of the Committee decides to re-elect existing Officers and Committee members whilst the Constitution is suspended; three Committee members (IB, DB and XR) dissent, believing the vacancies should be put to the membership for election.

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<sup>5</sup> OC12.

<sup>6</sup> OC3, p. 2.

3 April 2022: Annual General Meeting of the Otterhound Club, the first since 2019.<sup>7</sup> Mrs Hacking's position as Vice Chair is questioned, as her term expired in 2019 and she was not re-elected. RG confirms that the post will remain vacant and will be offered for election in 2023, subject to his investigation of the previous minutes. Mr Porter is elected unopposed as Secretary.<sup>8</sup> There appears to be no discussion about the validity of any other Committee members' posts. Mrs Hacking provides a rescue report and it is recorded that one of the dogs "was collected by Adrian who was going that way on business with a delivery". Problems with the membership records are highlighted.

18 April 2022: Mr Porter emails the membership at 13:26, enclosing RG's decision about Mrs Hacking and her tenure of the Vice Chair position. RG says that she stood for re-election a year early, in 2018, and that this was for a three-year term.<sup>9</sup> Mr Porter adds that the Committee will discuss the decision at its meeting later the same day and that "the committee is split on [RG's] decision and people have quite strong views either way".

A committee meeting is held at 18:30. RG does not attend. Mr Wilkinson, JW and Mrs Hacking's husband, TH, do not wish to continue the meeting without RG. Mr Porter advises that there is a quorum and that "the controversy regarding the post of Vice Chair would not be discussed without [RG] present, it would be held until the next meeting". It is recorded that Mr Wilkinson, JW and TH became verbally aggressive to another individual, RGA. It is also recorded that Mr Wilkinson "threatened to close the meeting as he held the google account we were using".<sup>10</sup> JW leaves the meeting, rendering it inquorate.

26 April 2022: Committee meeting. RG declares the 2022 AGM vote null and void. He also says Mr Porter was not validly elected, because the first notice of the AGM was not sent to all members. Mr Porter and his wife, SP, vigorously deny this. Mrs Lyons, Mr Wilkinson and JW are among those who say that they

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<sup>7</sup> OC3, appendix I.

<sup>8</sup> See OC3, appendix B; OC3, appendix BB: Mr Porter's Defence to the County Court claim, paragraph 7, dated 23 February 2023. The Defence is verified by a statement of truth.

<sup>9</sup> OC3, appendix K.

<sup>10</sup> OC3, appendices K and L.

did not receive the first notice of the AGM. It is later recorded that the Wilkinsons have been telephoning members on behalf of RG to ask them if they received both AGM notices and the ballot papers. Mr Wilkinson, RG and JW cast doubt on whether Mr Porter can prove that he posted the notifications. JW asserts that he should have asked the post office to issue a receipt with the postcode recorded for every letter. SP says that JW asked Mr Porter for his postage receipts earlier that week. RGA suggests that advice be sought from the KC. Mr Wilkinson says he has already spoken to them.<sup>11</sup>

28 April 2022 to 4 May 2022: A member of the Club, JA, seeks advice from the KC. It is said that the Treasurer has improperly attempted to access information regarding the voting for officers and the committee. The KC advises that the Chair has no power to suspend the constitution and that it is not possible for a club chairman unilaterally to declare an AGM invalid. It is suggested that a committee meeting should be held as soon as possible under an independent chair.<sup>12</sup>

10 May 2022: Committee meeting under independent chair. TH and Mrs Hacking raise questions about the status of both the independent chair and Mr Porter. Mr Porter explains that RG, JW, Mr Wilkinson and DB's tenure has lapsed and they are no longer committee members. The KC advice is to hold an SGM to fill the posts. The minutes record: "David explains there is a possibility of co-opting those members whose tenure has elapsed back on to the committee until the SGM in September. Adrian says he's going against that because David isn't elected". DB is co-opted; RG, JW (in her absence), Mrs Hacking and Mr Wilkinson are proposed for co-option but do not secure enough votes.<sup>13</sup>

11 May 2022: Mr Porter emails JW asking for his name to be added to the bank account and hers removed, requesting the Treasurer's books and other

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<sup>11</sup> OC3, appendix M.

<sup>12</sup> OC3, appendix N.

<sup>13</sup> OC3, appendix O.

documentation and asking that she forward any members' personal data for her successor, ensuring that any local copies are deleted.<sup>14</sup>

15 May 2022: UK980 is filed by WLH.

Mr Wilkinson emails Mrs Hacking with an invoice for the recovery/rescue of a dog, which Mrs Hacking forwards to Mr Porter. Mr Wilkinson says: "As previously stated all costs have been met by FourFriends Pet Foods Ltd & was intended as a direct monetary contribution to Rescue as we have done for many foster/repatriations in the past. All documents related to the rescue remain the property of FourFriends Pet Foods Ltd. Once a cleared payment has been made by The Otterhound Club, all documents will pass to the Club. If the Club want to own the documents, we can only accept a payment from that account and not through a third party. [...] Once the liability has been acknowledged by the Club, FourFriends Pet Foods Ltd reserves the right to enforce the debt via any means it deems necessary". The invoice is from FourFriends Pet Foods Ltd to the Otterhound Club dated May 2022 in the sum of £938.85 for ferry fare, mileage and a microchip.<sup>15</sup>

Mr Porter emails members to advise them that TC has been co-opted as the new Treasurer. He also advises that (i) Mrs Lyons has removed him as administrator on Club's Facebook page and that she has denied the Club access, so a new official Facebook page has been created and (ii) that Mr Wilkinson controls the website and has informed the club that, "The Otterhound Club website is not the property of the club. It was developed [sic] and paid for by FourFriends Pet Foods Ltd. It is therefore the property of the said company. The registrant of the domain name is not the Otterhound Club. The website has never been gifted to the club.". Mr Porter follows this with a statement that the website was purchased by RGA in 2006 and later donated to the Club. He adds that the Club is still waiting for JW to hand over the Club's bank account and account books and will investigate fully once they have been received. He concludes with a warning that information posted on platforms other than the

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<sup>14</sup> The email is not provided but Mr Porter's solicitors include a quotation of it in their letter dated 23 September 2022, shown at OC3, appendix S.

<sup>15</sup> OC3, appendix P.

new official Facebook page are the personal views of Mrs Lyons and Mr Wilkinson.

16 May 2022: Mr Porter replies to Mrs Hacking, saying the invoice from Mr Wilkinson was not attached to her email and that Mr Wilkinson knows the Club cannot pay because “his wife, the former Treasurer [JW] is holding the club account unlawfully”.<sup>16</sup>

Mr Porter emails Committee members regarding the club bank account, saying he has heard nothing from JW and that the advice from the NatWest team is to contact the police. JW appears to have responded the same day, inviting Mr Porter to collect the Club documents in question.<sup>17</sup>

17 May 2022: Mr Porter writes to Mrs Lyons suggesting that she has used the Club’s original Facebook page to air her personal views and disclose confidential committee business. He complains that she has removed his administrator access. Mrs Lyons is requested to close the page and is asked to step down, otherwise the Committee will propose that she be removed at an SGM. This letter bears a sign identical to UK248.<sup>18</sup>

26 May 2022 to 27 May 2022: JW and Mr Porter correspond by email. JW demands payment of the FourFriends invoice. Mr Porter says that the Committee understood that Mr Wilkinson would be collecting the hound at no expense to the Club and quotes Mrs Hacking saying so in the 2020 yearbook rescue report. JW’s second email is addressed to “Mr Pretend Secretary” and says “No pay- no documents. It is a straightforward transaction. If you want the paperwork that relates to our business dealings you can pay the cost first. The service was free to the Otterhound Club until you and [RGA] started yet another fiasco”.<sup>19</sup>

22 June 2022: Solicitors for Mr Wilkinson and JW write to Mr Porter accusing him of libel, injury to reputation and damage to their business and goodwill,

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<sup>16</sup> OC3, appendix Q.

<sup>17</sup> Again, the emails are not in evidence. Mr Porter’s comments are quoted directly his solicitors’ letter dated 23 September 2022; JW’s response is referenced.

<sup>18</sup> OC3, appendix R.

<sup>19</sup> OC3, appendix P.

along with harassment and intimidation.<sup>20</sup> Further exchanges until January 2023 are in evidence. One of the matters in issue is whether JW attempted improperly to access MiVoice information relating to the Club elections. It is JW's position that she attempted to access the data under Freedom of Information legislation. It appears that there was an email on 30 May 2022 from someone called Chris Ramos to members (other than the Committee) regarding election data, which was followed on 31 May 2022 by an email to members from Mr Porter informing them of the data protection breach and a declined request for information from MiVoice. The solicitor's letter which reports this asserts that MiVoice has confirmed that JW did not apply for this information under the Freedom of Information Act and that she was attempting to access original ballot papers.<sup>21</sup>

10 August 2022: A letter signed "The Otterhound Club Membership" and requiring an SGM is "delivered by hand" to Mr Porter.<sup>22</sup> Membership status appears to have been checked and insufficient signatories were found to have paid their subscriptions for the SGM request to be valid.<sup>23</sup>

19 August 2022: Letters are sent to 25 individuals who appear to be lapsed members asking if they can provide evidence of their original payments. Reminders follow dated 29 August 2022. UK529 appears on the letterhead.<sup>24</sup>

21 August 2022: An email is sent from Chris Ramos at the email address "chris.ramos.fraud.investigation@gmail.com". The addressees are not shown but the email is clearly directed to the members of the Club. Mr Ramos says that Mr Porter's legal fees have been paid by the Club and he provides a screenshot dated 7 August 2022 of the Club's NatWest bank account. He asks members who "think this is a violation of trust and an abuse of power" to email the KC because they "cannot act until the members raise an official objection

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<sup>20</sup> OC3, appendices S and T.

<sup>21</sup> OC3, appendix S, letter dated 23 September 2022.

<sup>22</sup> OC3, appendix U.

<sup>23</sup> OC3, p. 9.

<sup>24</sup> OC3, appendix V.

regarding committee members taking your clubs money illicitly". Serious allegations of financial impropriety are levelled against Mr Porter.<sup>25</sup>

Late 2022: A report was issued from the Financial Ombudsman investigator regarding the Otterhound Club's complaint about NatWest's failure to change signatories on an account over many weeks. It records that a universal mandate to remove JW and Mrs Lyons' access was filed on 19 May 2022 but only Mrs Lyons' access was removed. The mandate to add Mr Porter and TC as signatories is said to have been filed on 20 June 2022. NatWest told Mr Porter on 21 August 2022 that JW still had access to online banking. Her access was not fully removed until 9 September 2022.<sup>26</sup>

25 September 2022: The Otterhound Club Championship Show at Baginton village hall. On arrival, the show field was found to be covered in dog food, which caused concern and disrupted the event.<sup>27</sup> Witnesses reported seeing a man spreading something on the grass earlier that morning.

9 October 2022: UK248 is filed by WLH.

12 October 2022: A complaint is lodged with the KC by Mr Porter, in his capacity as Club Secretary, against Mr Wilkinson, Mrs Hacking and TH regarding their conduct at the SGM on 25 September 2022. Mr Porter's covering letter describes their behaviour as "aggressive, abusive and threatening". He says that 18 members of the Club wrote statements to him, unsolicited, about their experiences. These are provided. The accounts are all dated shortly after the event and broadly agree that Mrs Hacking, Mr Wilkinson, TH and JW argued with people at the event and that their behaviour during the meeting was disruptive. Mr Porter provides one of these statements. He says that when Mrs Hacking and TH were told their memberships had lapsed, they were "verbally aggressive and confrontational". He also says that Mr Wilkinson said to him "You haven't got enough [expletive] money, when I've finished with you I'll bring you and the club down" and that when Mr Porter said it didn't show much support for the otterhounds, Mr Wilkinson said "I don't give a [expletive] about

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<sup>25</sup> OC3, appendix W.

<sup>26</sup> OC3, appendix X.

<sup>27</sup> OC3, appendices Y, Z.

Otterhounds, I only care about me”. Mr Porter also gives evidence about the man seen scattering something on the grass and says that the description of the van matched the vehicle he saw the Wilkinsons standing next to as they left.<sup>28</sup> The Club’s response to the KC’s verdict is dated 9 November 2022 and shows UK529.

14 November 2022: Mrs Hacking writes to Mr Porter demanding £981.07 as a refund of subscriptions and a donation to the Club. She threatens to issue proceedings against him personally if he fails to pay and a court claim was subsequently lodged. The claim was struck out as totally without merit on 22 September 2023 with an order for Mrs Hacking to pay Mr Porter’s costs. I note that the particulars of claim had earlier been struck out as disclosing no reasonable grounds and an abuse of process.<sup>29</sup>

January 2023 onwards: The Club’s submission to the KC includes the following statement: “To the utter amazement of the Committee, Adrian Wilkinson sent a letter to David Porter demanding the Club immediately stop using the Club’s logos. The letter stated that continued use of the Club’s logos would be enforced against David Porter personally and not against the Club”.

37. Some of the above evidence is hearsay. The Civil Evidence Act 1995 permits hearsay evidence in civil proceedings but provides the following guidance as to the weight to be accorded to such evidence at s. 4:

“(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following -

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<sup>28</sup> OC3, appendix AA.

<sup>29</sup> OC3, appendix BB.

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”

38. The most obvious examples of hearsay are the statements made by Club members regarding the events at the Club show and SGM in September 2022. It would have been possible for the writers of those statements to have been produced. The statements were made close to the date of the events. There had clearly been a rift for some months by then but, whilst some of the individuals had obviously had difficult encounters with those whom they accuse of poor behaviour and whose impartiality may legitimately be questioned, others make it clear that they had no previous issues with them. I note that it is Mr Porter who encloses the statements to the KC and that he says in this letter that the statements were unsolicited; that can be treated as his evidence. I am doubtful that the statements were all produced spontaneously and completely independently but I have no reason to doubt Mr Porter’s evidence that he did not solicit them. I also bear in mind that the behaviour of Mrs Hacking and Mr Wilkinson in particular is depicted consistently in the statements. There is no indication that the statements were produced from a template of any description and they give the impression of being the account of each individual in their own words. I will give

the statements some weight. I do not, however, consider them critical for my findings below, which I would have reached without them.

39. The more important hearsay evidence is, in my view, contained in the solicitors' letters and the Financial Ombudsman investigator's report. There is no reason to doubt the independence of the Financial Ombudsman investigator, who appears to have had access to all of the relevant documentation, including the email from NatWest dated 9 September 2022 confirming that JW's access to the account had been fully removed that day. It would clearly have been preferable if the email itself had been produced but I will give this report reasonable weight.

40. As regards the solicitors' letters, there is plainly a difficulty in accepting all of the assertions made in those letters, because two competing viewpoints are presented and solicitors are dependent on what their client tells them. However, where there are direct quotations from letters/emails, it is reasonable to infer that those emails were before the writer of the letter, particularly where there follows no denial. Where facts are asserted and appear to be agreed (such as the fact that JW attempted to obtain data from MiVoice, or that Mr Porter emailed the members on 31 May 2022), I can see no reason why I should disregard that evidence. I will give this evidence reasonable weight.

41. Lastly, the submission from the Club to the KC dated April 2024 sets out many of the matters I have referred to in the evidence summary above. Much of it is supported by the evidence such as minutes, which is the material upon which I have, for the most part, relied. Where I have relied on the submission itself, it is as background information, such as the dates of the Club's formation, which does not appear to be in dispute and is not crucial for my findings under this ground. The exception to this is the Club's position that the request for an SGM was not supported by sufficient paid-up members of the Club. Whilst it is evident that that determination was not accepted, there does not appear to be any dispute that that is what the Club determined and that this is so is supported by the documentary evidence asking members to provide details of their payments for checking. In relation to the allegation that WLH have demanded that the Club stop using the trade marks, I bear in mind that this is in a submission document and is not otherwise evidenced. However, the submission is provided under cover of Mr Porter's witness statement and the letter is said to have been addressed

to him. Mr Porter is in a position to know what the letter said and I am entitled to assume that he has read all of the evidence he exhibits. There has been no denial of this in any form and no request for cross-examination: I have no reason to doubt that the summary of the letter's contents is accurate.

42. I now turn to substance of the dispute. There appears to have been some dissent before April 2022 caused by the decision to postpone the AGM indefinitely and to suspend the Constitution but it is unclear whether this was significant or whether Committee members simply disagreed about the rules of the Club and the actions necessary for its proper functioning. The real problems appear to have begun in April 2022 when Mrs Hacking's position as Vice Chair was called into question and she was removed from the 2019 minutes. RG initially agreed that Mrs Hacking's tenure of the post had expired. However, between sending Mr Porter his findings and the committee meeting on 18 April 2022, he appears to have had a change of heart. It is unclear why he would have done so. The rules appear consistently to have required that committee members hold their post for no more than three years without submitting to re-election. It stands to reason that if there had been no AGM since 2019, by the 2022 AGM all of the committee posts should have been put to election by the membership. As the KC found, the constitution does not give the Chair the power to suspend it. Given the comments in Mr Porter's email about the split in the committee about the Vice Chair position, the committee appears to have had advance notice of RG's decision and the disagreements between them appear to have been aired, with various degrees of courtesy, at the committee meeting of 18 April 2022.

43. The split in the committee appears to have worsened within a week, with Mr Porter becoming the focus of attempts to undermine his position as the only validly elected member of the committee. The reported concerns from members about the AGM notices appear, given their timing and the manner in which they were solicited, contrived to undermine the AGM and Mr Porter's election. It is evident that relations between the two factions of the former committee, with RG, JW and Mr Wilkinson on one side and Mr Porter on the other, continued to deteriorate. The announcement that Mr Wilkinson, JW and RG's tenure had expired and the failure of the Committee to co-opt Mr Wilkinson, RG and Mrs Hacking on 10 May 2022 are followed by concrete steps by the Committee to remove JW's control of the Club's accounts and bank details on

11 May 2022. It appears that by 15 May 2022 Mrs Lyons and Mr Wilkinson had expressed their personal views about Club affairs (the content is not provided) online. Mrs Lyons had excluded Mr Porter from the Club's Facebook page and denied the Committee access. Mr Wilkinson had (i) claimed that his business owned the Club's website, which appears to be untrue, and (ii) reneged on an agreement to collect and transport a hound for rescue for free, instead presenting the Club with a large invoice. This is in the context of Mr Wilkinson also having threatened to impede the former committee's ability to function by closing the meeting because he was the Google account holder on 3 April, his rejection of the proposal to co-opt those members whose tenure had lapsed "because David isn't elected" and, it appears, his taking down of the Club's website, which was under his control, by 24 May 2022.

44. Further context is provided by the refusal of JW to relinquish the Club's accounts and banking details and what appears to be an attempt to hold the Club to ransom over the paperwork for the hound rescued. It is inconceivable that Mr Wilkinson was unaware of this, given his relationship with JW, that they appear to have acted in tandem throughout (such as jointly instructing solicitors in the defamation claim) and that JW was attempting to obtain payment in relation to the invoice submitted by Mr Wilkinson in the name of his company. Not all of this took place before 15 May 2022 but, in my view, it paints a picture of an orchestrated campaign to make life difficult for the Committee in running the Club, of which the application for UK980 was one part.

45. WLH knew that the Club used a sign corresponding to UK980 on its website and that it had done so for several years. They knew that the purpose of the Club was to promote the otterhound and that part of this involved dog shows. UK980 is identical to a sign used by the club, covering services central to the Club. WLH had all been committee members. They would have known that Club property vested the committee and that they had no personal claim to the property, including intellectual property, of the Club. I have no doubt that honest traders would not think it acceptable behaviour to register the insignia used by the Club, establishing legal controls on the use of those signs by their existing users. That is enough for bad faith to be made out. However, there is more. Not only did WLH have no reasonable basis for thinking that they personally owned the trade mark or had personal rights attached to the sign, but they had also by 15 May 2022 demonstrated their willingness to engage in behaviour

calculated at best to undermine the proper functioning of the Club, through its Committee, and at worst to damage it, by laying claim to the website and Facebook page and by presenting the Club with a large and unexpected invoice. I have no doubt that WLH applied for UK980 as disgruntled former committee members who were attempting to lay claim to rights to which they had no entitlement in order to prevent the Club from properly functioning and/or to wrest control of the Club from the legitimately appointed Committee and/or Mr Porter, who appears to have been the lightning rod for WLH's resentment of the Committee and the direction that the Club had taken. The only response to the Committee's claim has been a bare denial. There has been no attempt to justify the applications. That is an inadequate answer to the evidence. UK980 was applied for in bad faith.

46. Relations had only soured further by the time UK248 was filed on 9 October 2022. The Wilkinsons had sent pre-action letters to Mr Porter. JW had attempted to obtain data regarding the elections from MiVoice. "Chris Ramos" had circulated an email to the membership about the elections, which appears to have been related to JW's MiVoice enquiries, followed by an email to members showing the Club's bank account. The only people with access to the account at this time were Mr Porter, TC and JW. NatWest appear to have confirmed that the screenshot was obtained with JW's credentials; neither Mr Porter nor TC had any motivation for circulating the comments or information contained in the second Ramos email. If "Chris Ramos" was not Mr Wilkinson or JW, the information contained in the email was provided by JW. The attack on Mr Porter is wholly consistent with the focus of Mr Wilkinson on Mr Porter which is amply demonstrated in the evidence. On the balance of probabilities, Mr Wilkinson was at least aware that JW had obtained and passed on confidential banking details for the purpose of circulation to the membership and criticism of Mr Porter and the Committee's use of club funds. The evidence relating to the attempt to disrupt the Club show with dog food spread across the show field accuses Mr Wilkinson of liability but is largely hearsay and in some instances multiple hearsay. There is no need to me to make any finding on this matter. I accept, however, the evidence that there was a dispute about Mrs Hacking's subscription status and that there was an altercation at the SGM on 25 September 2022 in consequence of this. I accept Mr Porter's evidence that Mrs Hacking was verbally aggressive and confrontational. I accept Mr Porter's evidence that Mr Wilkinson threatened to bring

both Mr Porter and the Club down. I also accept that Mr Wilkinson, Mrs Hacking and Mrs Lyons took part in the disruption of the SGM.

47. The evidence relating to the use by the Club of a sign corresponding to UK248 is more limited than for UK980. However, it was used in the 1980s in relation to club business and appears to be present on posters and forms in the 1990s. It was on the website in 2006 and is visible on the letter to Mrs Lyons dated 17 May 2022. I also note that a highly similar sign, with a blue rather than purple banner, is on the letters querying subscriptions in August 2022, which is prior to the relevant date for UK248. Mrs Hacking was one of the recipients.

48. It is clear that feelings were running very high by the SGM. In view of their behaviour at the SGM, I have no difficulty in accepting that Mr Wilkinson, Mrs Hacking and, it appears to a lesser extent, Mrs Lyons, were ranged against the Committee and that the trade mark application for UK248, filed just a fortnight later, was a further attempt to frustrate the Committee, and therefore the Club, from carrying out its activities, as foreshadowed by Mr Wilkinson's threat to bring down the Club. Events subsequent to the filing date, specifically the legal action brought by Mrs Hacking against Mr Porter and the threat of trade mark enforcement action, only add further support to my conclusion that the trade mark was filed in order to frustrate the Club from carrying out its legitimate activities. As with UK980, there has been no attempt to rebut any of the Committee's evidence or to offer an alternative explanation for the filing. UK248 was filed in bad faith. It is invalid under s. 3(6) of the Act.

49. In view of what I consider to be clear findings on bad faith grounds, I decline to consider the passing off and copyright grounds of invalidity.

### **THE OPPOSITIONS**

50. The grounds of opposition are dependent on UK980 and UK248. As those trade marks are invalid, there is no longer any basis for the oppositions and they are dismissed accordingly.

## **OVERALL CONCLUSION**

51. The applications for invalidation of UK trade mark numbers 3787980 and 3837248 succeed in full. Subject to appeal, the registrations are declared invalid as of their dates of filing and are deemed never to have been made.

52. The oppositions against UK trade marks number 3885463, 3885529 and 3885520 are rejected. Subject to appeal, the applications will proceed to registration.

## **COSTS**

53. The Committee has been successful and is entitled to a contribution towards its costs. It requests costs off the scale. A finding of bad faith does not automatically result in off-scale costs. In the absence of specific submissions, I do not consider costs off the scale to be appropriate in this case. Neither party “won” at the CMC and the parties should bear their own costs for that hearing. I also keep in mind that there was some duplication in the pleadings. I award £2,700 to the Committee, calculated as follows:

Preparing and considering the notices and counterstatements:	£800
Preparing evidence:	£1,000
Preparing written submissions in lieu of a hearing:	£500
Official fees:	£400
Total:	£2,700

54. I therefore order Adrian Wilkinson, Vera Lyons and Helen Hacking, jointly and severally, to pay the Committee of the Otterhound Club the sum of £2,700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 14<sup>th</sup> day of November 2025**

**Heather Harrison**

**For the Registrar**