

# Possible to appeal against correct decisions!



## ***Consolidated Developments Ltd v. Cooper Tin Pan Alley TM [2018] EWHC 1727 (Ch)***

On 6 July 2018, Mr Justice Henry Carr handed down judgment in this pair of appeals from the UKIPO regarding a revocation action in respect of 4 trade marks for non-use. The Hearing Officer, Mr Allan James, had revoked 3 of the 4 registrations and restricted the specification of services for the fourth. Mr Cooper, the registered proprietor, appealed to the Appointed Person, whilst CDL appealed to the High Court saying that all 4 should have been revoked.

Geoffrey Hobbs QC, sitting as the Appointed Person, decided that Mr Cooper's appeal raised questions of general legal importance and that it ought to be heard in the High Court. As the CPR merely provides that such a reference to the High Court, is by a claim form, Chief Master Marsh gave directions for it to be initiated by way of a bespoke claim form and that no issue fee be paid, on an undertaking to pay the proper issue fee, if any, once determined by the Court.

Mr Cooper's appeal accepted that Mr James was correct to reach the conclusions that he did, on the evidence before him, but sought permission to introduce additional evidence and submitted that, if Mr James had been provided with the additional evidence, he would or should, have reached a different conclusion. CDL objected that the appeal did not challenge the decision and therefore was not within the scope of the statutory right of appeal provided by s.76(1) of the TMA 1994. As there was no proper appeal, the Court had no jurisdiction to allow the additional evidence to be admitted.

Henry Carr J held that Mr James' decision was being challenged as the decision is to revoke the marks. The reasons for that decision are not being challenged but that is not the relevant decision. He therefore held that there was a proper appeal and that the Court has the power to admit additional evidence in an appropriate

If you would like to speak to someone about this news flash, please contact:

Ian Bowie, Chambers' Director: [ibowie@hogarthchambers.com](mailto:ibowie@hogarthchambers.com)

or call Hogarth Chambers on +44(0)207 404 0404

[clerks@hogarthchambers.com](mailto:clerks@hogarthchambers.com)

[www.hogarthchambers.com](http://www.hogarthchambers.com)



# Possible to appeal against correct decisions!



case. The Judge then reviewed the principles to be applied when considering the admission of fresh evidence on appeal and held that the evidence in this case did not satisfy the requirements and would not be admitted.

The Judge dismissed both appeals.

This decision shows that it is Orders that are appealed, not the reasons for the Orders, and that the Court is open to allowing further evidence to be adduced, even after judgment, in appropriate cases. The Order of Chief Master Marsh sets a precedent for the form of the unusual procedure for referring an appeal from the Appointed Person to the High Court.

[Roger Wyand QC](#), of Hogarth Chambers, instructed by Kilburn & Strode LLP, represented Mr Cooper at the hearing of the appeals before Henry Carr J.

[Jamie Muir Wood](#), of Hogarth Chambers represented Mr Cooper at the hearing before Geoffrey Hobbs QC, sitting as the Appointed Person.

If you would like to speak to someone about this news flash, please contact:

Ian Bowie, Chambers' Director: [ibowie@hogarthchambers.com](mailto:ibowie@hogarthchambers.com)

or call Hogarth Chambers on +44(0)207 404 0404

[clerks@hogarthchambers.com](mailto:clerks@hogarthchambers.com)

[www.hogarthchambers.com](http://www.hogarthchambers.com)

