

O-418-11

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO 2513863 OF THE TRADE MARK:



INTERNATIONAL MINISTERIAL COUNCIL OF GREAT BRITIAN.

AND APPLICATION NO 2539790 FOR THE TRADE MARK:

IMCGB

BOTH IN THE NAME OF RITA MELIFONWU

AND

**THE CONSOLIDATED APPLICATION FOR INVALIDATION AND
OPPOSITION THERETO**

UNDER NOS 83831 AND 100777

BY

INTERNATIONAL MINISTERIAL COUNCIL OF GREAT BRITAIN

1) The application for registration no 2513863 was made on 16 April 2009 and the registration procedure was completed on 4 September 2009. It is registered for the following services:

Christian education; discipleship education relating to leadership of churches and Christian ministries; educational services relating to social welfare; provision of social welfare; recreation and leisure services for providers and users of Christian services; organising and arranging training, seminars, workshops, conferences relating to the Christian faith; cultural activities promoting good Christian citizenship; advice information and guidance services relating to all the aforesaid services.

2) The application for the registration of the trade mark IMCGB was filed on 22 February 2010. The application is for the following services:

Christian education; discipleship education relating to leadership of churches and Christian ministries; educational services relating to social welfare; provision of education relating to social welfare; recreation and leisure services for providers and users of Christian services; organising and arranging training, seminars, workshops, conferences relating to the Christian faith; cultural activities promoting good Christian citizenship; commissioning services; advice, information and guidance services relating to all the aforesaid services;

ordination services.

3) The registration and application are both in the name of Rita Melifonwu.

4) On 28 July 2010 International Ministerial Council of Great Britain (IMC) filed an application for the invalidation of the registration and a notice of opposition to the application.

5) IMC relies upon sections 3(6), 5(4)(a) and 5(4)(b) of the Trade Marks Act 1994 (the Act) in relation to the application for invalidation. In relation to the opposition, it relies upon sections 3(6) and 5(4)(a) of the Act.

6) Section 3(6) of the Act states:

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

7) The basis of the claim of bad faith is that IMC is the owner of the trade marks. Ms Melifonwu was “purportedly” a trustee of IMC from 1 November 2008 to 19 March 2009. Her trustee status was terminated on 18 March 2009 and since that date Ms Melifonwu has not had any connection to IMC or any right to use the trade marks.

8) Ms Melifonwu denies the grounds of invalidation and opposition. No detail of the basis of the denials was given in the counterstatements.

9) The main evidence comes from Bishop Douglas of IMC and Ms Melifonwu.

10) Archbishop Douglas, the deceased husband of Bishop Douglas, founded IMC in 1968. Ms Douglas was IMC delegate to a meeting on 8 February 1975 when she met officials of the British Council of Churches (BCC) and began the process which led to IMC becoming a member of the BCC. IMC has operated under the signs INTERNATIONAL MINISTERIAL COUNCIL OF GREAT BRITAIN and IMCGB since 1968 and has used these signs since that date. IMC operated under the logo below from 1990 to November 1998:



From November 1998 IMC has operated under the logo below:



The upper logo was designed by Archbishop Douglas and Bishop Douglas in 1990 (at the latest). The logo was used in the 1990 and 1994 publications of IMC's handbook. The Douglases were resident in the United Kingdom at the date of creation of the logo. The lower logo was created by Bishop Douglas and Reverend Alexander Edwards. Reverend Edwards was a Ghanaian national,

resident and domiciled in the United Kingdom in November 1998, when the logo was created. Reverend Edwards was the director and employee of Impressive Images Limited. IMC paid Impressive Images Limited £850 for the second logo . All rights in the logo were assigned by Impressive Images Limited and Bishop Douglas to IMC. The logo was first published on IMC's brown brochure and application form in 1999. Examples of use of the logos are exhibited at SD29.

11) IMC has operated under various combinations of the IMCGB sign, the second logo and the INTERNATIONAL MINISTERIAL COUNCIL OF GREAT BRITAIN sign; examples of this use are exhibited at SD2.

12) The Watford Apostolic Pentecostal Church (WAPC) was registered as a charity (no 269440) on 15 July 1975. IMC has operated as a department of WAPC, under the same charity number. In 1974 the building in which WAPC met for worship on Sundays was sold; consequently WAPC had nowhere to meet for Sunday worship. However, IMC continued to operate. A constitution was written for IMC in 1975. Exhibited at SD5 are 2 copies of the constitution of IMC. Exhibited at SD6 is a copy of the constitution for WAPC. Exhibited at SD7 is a copy of a report in relation to WAPC from the Charity Commission. The date of the report is shown as being 28 July 2010. The report shows the trustees of WAPC as being Bishop Douglas and Graniah Muranda Douglas. The report shows that WAPC also has the names of I M C G B, IMCGB and International Ministerial Council of Great Britain. These names are characterised as being working names. WAPC is shown as being registered as a charity on 15 July 1975 and that the constitution was adopted on 27 October 1968. Also exhibited at SD7 is a copy of a report from the Charity Commission of 22 November 2010. The trustees are the same. The activities of WAPC are given as follows:

“IMCGB is a regulator for Pentecostal and independent churches and their ministers to ensure the highest standards of ministerial practice in order to protect members of the public who need the services of registered ministers and to guard the gospel against error. The council also regulates church premises and places of worship.”

13) Financial summaries are given, which show the following:

Financial Year	Income £	Spending £	Accounts received	Annual return/annual update received
31 March 2010	35,200	33,849	8 Oct 2010	8 Oct 2010
31 March 2009	34,511	38,788	1 Dec 2009	1 Dec 2009
31 March 2008	39,262	33,787	16 Dec 2008	16 Dec 2008

31 2007	March	32,462	42,014	12 Dec 2007	12 Dec 2007
31 2006	March	45,718	60,910	10 Nov 2006	10 Nov 2006
31 2005	March	32,632	65,514	3 Nov 2005	3 Nov 2005

14) The charitable objects of WAPC are:

“The spreading of the Christian religion throughout Britain by means of preaching, worship, evangelism, and social and charitable work including education in language and literacy and theological courses.”

15) IMC became an associate member of the British Council of Churches (BCC) in 1979. IMC was represented from 1984 on the Assembly of the BCC. IMC worked with the BCC to form the Council of Churches of Britain and Ireland (CCBI) in 1990. CCBI changed its name to Churches Together in Britain and Ireland (CTBI) in 1999. On 1 September 1990, Churches Together in England (CTE) was established. IMC is a full member of the CTBI and the CTE.

16) IMC is regulated by the Office of the Immigration Services Commissioner. IMC is a sponsoring body of Christian Aid and sends a representative to the AGM of Christian Aid and Christian Aid’s annual consultation with sponsoring bodies.

17) In 2006 IMC decided that it wished to become a company limited by guarantee. At the AGM of IMC on 7 October 2006 the following proposal was accepted:

“that the AGM ask the Secretary General to call a Committee to carry out a Review of the Charity status of IMCGB, its governance and its constitution, with a view to advising the Council as to the advisability of the Council becoming a Company Limited by Guarantee...”

At the AGM on 1 November 2008 IMC passed a resolution:

“That work commence without delay on the Memorandum and Articles, and the Business Plan of the Company for IMCGB Services, with a view to the Company beginning operations by September 2009.”

18) On 10 August 2009, Bishop Douglas and Bishop Onye Obika, the Secretary General of IMC, held discussions with officers of the Charity Commission. The Charity Commission raised a concern that there appeared to be two governing documents in place (one for WAPC and one for IMC). Exhibited at SD17 is a letter dated 3 August 2009 from the Charity Commission to Bishop Douglas. The letter relates to IMC:

“I am writing to you as trustee and charity correspondent of the charity, IMCGB. The reason for my letter is that a further concern about how the charity is governed has been raised as an issue.

According to our records the charity is governed by a constitution adopted 27/10/1968. However issues have been raised that there are two governing documents in place.

I would be grateful for your/the trustees’ response regarding this within 14 days from the date of this letter.”

Amongst those to whom the letter was copied, was Pastor Rita Melifonwu.

19) Exhibited at SD18 is a copy of minutes of a meeting at the Charity Commission in Liverpool on 10 August 2009. The minutes do not appear to have been written by the Charity Commission and there is no indication that the contents have been agreed by the Charity Commission. It would appear from the minutes that the Charity Commission had received complaints about IMC. In particular complaints had been received about Bishop Obika and Bishop Douglas.

20) On 8 March 2010 IMC was incorporated as a company limited by guarantee. IMC was registered as a charity under no 1140559 as of 23 February 2011.

21) Ms Melifonwu describes herself as a fiduciary trustee of IMC. There is dispute as to her position as a trustee of IMC. Bishop Douglas states that Ms Melifonwu “purportedly” acted as a trustee of IMC (charity no 269440). Exhibited at SD30 are minutes of a meeting of the trustees of IMC which took place on 27 February 2009. Ms Melifonwu is identified as taking the minutes. Bishop Douglas was amongst those present. The exhibit also includes copies of minutes of meetings of the trustees on 26 November 2008 and 27 January 2009. Ms Melifonwu was present at the meetings. There was discussion of setting up IMC as a company. Bishop Douglas states that Ms Melifonwu resigned in a telephone conversation with her. Exhibited at SD31 is a copy of a letter to Ms Melifonwu, dated 18 March 2009, from Bishop Douglas. The letter states that Bishop Douglas accepts the resignation of Ms Melifonwu. (It also states that a cheque is enclosed for the reimbursement of ordination and licence fees.) Also exhibited at SD31 is a copy of another letter from Bishop Douglas to Ms Melifonwu. The letter is dated 11 May 2009 and refers to a letter sent by Ms Melifonwu on 11 April 2009. The letter states that the trustees considered that Ms Melifonwu had resigned as a trustee following a telephone conversation with Bishop Douglas on 6 March 2009. Exhibited at SD32 is a copy of the minutes of a meeting of the trustees of IMC that took place on 5 May 2009. Point 8 deals with the position of Ms Melifonwu. It ends with the following:

“The Moderator has written accepting her resignation. Rev. Baptiste concluded that the matter was now closed and that was what she would convey in her reply to Mrs. Melifonwu.”

22) Bishop Douglas states that the appointment of Ms Melifonwu as a trustee was invalid. She states that the legal advisors of IMC and the Charity Commission had concluded that only the pastor of WAPC could appoint trustees. On 9 September 2009 Bishop Douglas wrote to all trustees to advise of this conclusion. Bishop Douglas states that Ms Melifonwu’s appointment was also invalid as she had been nominated by Sister Ngozi Onuwa, who was not a member of IMC and so could not nominate a trustee. Exhibited at SD33 is a copy of a letter from the delegates from Nigeria who attended the IMC AGM in 2008. They write that they cannot understand how Ms Melifonwu was not validly elected as a trustee.

23) Bishop Douglas states that Ms Melifonwu disrupted meetings of IMC on 30 July 2009 and 11 August 2009. Exhibited at SD40 are copies of the minutes of the meetings. The minutes relate to Reverend Sophie Wahab disrupting the meeting of 30 July 2009 by insisting on speaking on a matter and being joined by Ms Melifonwu. Reverend Wahab told the meeting that the Charity Commission had sent a letter to Bishop Douglas in relation to a complaint that it had received about the control Bishops Obika and Douglas had over the trustee body, about conflicts of interest and the use of money by Bishop Obika. The minutes for a meeting of trustees on 11 August 2009 commence with the following paragraph:

“The start of the meeting was delayed by an incident when Mrs. Melifonwu, having been denied access to the building on the grounds that she is not a trustee, forced her way in, knocking Bishop Obika backwards with the door and her forceful entrance, accusing him of attacking her and calling for the police.”

The minutes also record:

“Rev S. Wahab spent a long time haranguing him [Bishop Obika] with verbal abuse and waving papers in his face. As she left she photographed her entry in the attendance book where she had written a comment and videoed Bishop Obika. Bishop Douglas stood between them and said, “What are you doing, Sophie?” but Rev. Wahab continued videoing. Finally she and Mrs Melifonwu left.”

24) Ms Melifonwu describes herself as a fiduciary trustee of “the unincorporated International Ministerial Council of Great Britain purportedly known as the Watford Apostolic Pentecostal Church, Charity number 269440”. Ms Melifonwu states that she has acted “in order to prevent the current autocratic, dictatorial, oppressive and abusive leadership of this membership organisation, taking undue advantage of the assets, unduly profiting from, and, disempowering the

rightful beneficiaries”. She exhibits at RM1 an affidavit to this effect, which lists the trade mark application and registration and a company name registration. She authorises a number of persons to act on her behalf and excludes “the current autocratic leadership in the persons of Chair Bishop Sheila Douglas and Secretary General Bishop Onye Obika”. The affidavit was executed on 2 February 2011.

25) Bad faith includes dishonesty and “some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examined”. Certain behaviour might have become prevalent but this does not mean that it can be deemed to be acceptableⁱⁱ. It is necessary to apply what is referred to as the “combined test”. It is necessary to decide what Ms Melifonwu knew at the time of making the applications and then, in the light of that knowledge, whether her behaviour fell short of acceptable commercial behaviourⁱⁱⁱ. Bad faith impugns the character of an individual or collective character of a business, as such it is a serious allegation^{iv}. The more serious the allegation the more cogent must be the evidence to support it^v. However, the matter still has to be decided upon the balance of probabilities.

26) There is a dispute between Ms Melifonwu and some other persons and Bishop Douglas and Bishop Obika. The merits of this dispute are not pertinent to the case. Equally, whether Ms Melifonwu was a fiduciary trustee of IMC is not determinative of the case.

27) Ms Melifonwu applied for the registration of the trade marks as an individual, whether she is a trustee or not. She is claiming ownership of the trade marks. Her affidavit, from long after the dates of application, shows that she considers the use of the trade marks is within her gift. She can choose who can use them and who cannot, specifically Bishops Douglas and Obika. The goodwill in relation to the trade marks is that of IMC. The copyright in the device element of the registration is owned by IMC. Mr Tritton characterised the trade mark applications of Ms Melifonwu as being part of an internecine war between the parties; as shown by the nature of the affidavit.

28) Ms Melifonwu knew that she did not have rights in the trade marks. She used the applications as a tool in her dispute with Bishops Douglas and Obika. She might have considered this an acceptable tactic but that is the Robin Hood approach that was rejected in 1) *Barlow Clowes International Ltd. (in liquidation)* (2) *Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* [2005] UKPC 37.

29) In *Ball v The Eden Project Ltd and Another* [2001] ETMR 87 Laddie J stated:

“26 I have come to the conclusion that, in registering the mark in his own name and for his own benefit, Mr Ball was in clear breach of his fiduciary duty to EPL. Whatever he may have thought EPL owed him for past endeavours could not justify his actions in taking steps to put at risk his own company's trading future for his own benefit. To adopt the word of Viscount Sankey, his application for and prosecution of the trade mark registration was for his personal interest and conflicted with the interests of the company he was bound to protect. This conclusion is not dependent on any factual issue on which there is a dispute between the parties. I have come to the conclusion that for this reason the defendants are bound to win on this part of their counterclaim and that they are entitled to the relief they seek on this application.”

This finding can equally apply to the actions of Ms Melifonwu. She has attempted to appropriate the property of IMC, whatever the motives. This was behaviour that fell well below acceptable commercial behaviour observed by reasonable and experienced men in the particular field being considered.

30) In *Canaries Seaschool Slu v John Williams and Barbara Williams* Mr Hobbs QC, sitting as the appointed person, stated:

“51. It seems to have been a matter of administrative convenience that the opposed application for registration was filed in the name of Andrew Williams’ partner, Janet Wills, before being assigned to the Applicant. No argument to the contrary has been raised on its behalf. On the basis of the evidence on file, the knowledge, intentions and motives of Andrew Williams can properly be attributed to the Applicant. They are amply sufficient to invalidate the opposed application in accordance with the principle of prohibition of abuse of law as reflected in the objection to registration on the ground of bad faith provided by Section 3(6) of the 1994 Act. The behaviour of Andrew Williams hence the behaviour of the Applicant towards the Opponents in connection with the filing of the opposed application for registration was, on the view I take of the evidence, tainted by a desire to deprive them of their entitlement to the goodwill appertaining to the verbal and non-verbal elements of the signs in issue. That appears to me to be unacceptable on any view of what can constitute applying for registration in bad faith.”

31) Ms Melifonwu’s applications were tainted by the desire to deprive IMC of their entitlement to the signs in question.

32) The application for registration, no 2513863, was made in bad faith and in accordance with section 47(6) of the Act the registration is deemed never to have been made. The application for registration no 2539790 was made in bad faith and is refused.

33) Owing to the findings above, the other grounds of invalidation/opposition will not be considered.

34) Mr Tritton submitted that the issue of costs should be considered following the issuing of a decision on the substantive issues. He submitted that it was necessary to take into account that IMC was a charity and that it had had to use its funds to pay for these proceedings. Consequently, he was seeking an award outwith the scale.

35) Tribunal Practice Notice 4/2007 states:

“5. TPN 2/2000 recognises that it is vital that the Comptroller has the ability to award costs off the scale, approaching full compensation, to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour. Whilst TPN 2/2000 provides some examples of unreasonable behaviour, which could lead to an off scale award of costs, it acknowledges that it would be impossible to indicate all the circumstances in which a Hearing Officer could or should depart from the published scale of costs. The overriding factor was and remains that the Hearing Officer should act judicially in all the facts of a case. It is worth clarifying that just because a party has lost, this in itself is not indicative of unreasonable behaviour.”

36) There has been no wide breaches of rules, delaying tactics or other unreasonable behaviour by Ms Melifonwu.

37) The logic of Mr Tritton’s submission is that the status of a party should be taken into account when awarding costs. Should a small company receive more costs because of its limited resources? Should a not for profit organisation receive more costs because of its status? In its application and notice of opposition, IMC made no indication that it wished to seek costs outwith the scale. It is not considered appropriate to award costs outwith the scale.

38) IMC, having been successful, is entitled to a contribution towards its costs. Costs are awarded on the following basis:

Official fees	£400
Preparing statements and considering the statements of Ms Melifonwu	£600
Preparing evidence and considering the evidence of Ms Melifonwu	£2,000
Preparation for and attendance at a hearing	£1,000
Total:	£4,000

Rita Melifonwu is ordered to pay International Ministerial Council of Great Britain the sum of £4,000. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 25th day of November 2011

**David Landau
For the Registrar
the Comptroller-General**

A hearing was held on 23 November 2011. IMC was represented by Mr Guy Tritton of counsel, instructed by Brabners Chaffe Street LLP. Ms Melifonwu was represented by Mr Michael Brown of Alpha & Omega

ⁱ *Gromax Plastics Limited v Don and Low Nonwovens Ltd* [1999] RPC 367.

ⁱⁱ *Harrison v Teton Valley Trading Co* [2005] FSR 10.

ⁱⁱⁱ (1) *Barlow Clowes International Ltd. (in liquidation)* (2) *Nigel James Hamilton and (3) Michael Anthony Jordon v (1) Eurotrust International Limited (2) Peter Stephen William Henwood and (3) Andrew George Sebastian* [2005] UKPC 37

and *Ajit Weekly Trade Mark* BL O/004/06.

^{iv} See *Royal Enfield Trade Marks* BL O/363/01.

^v *Re H (minors)* [1996] AC 563.