

18

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTELLECTUAL PROPERTY

Claim No HC10C03151

BETWEEN:

GROUP LOTUS PLC

and

- (1) IMALAYSIA RACING TEAM SDN BHD**
- (2) TEAM LOTUS VENTURES LIMITED**
- (3) TUNE GROUP SDN BHD**
- (4) ANTHONY FRANCIS FERNANDES**
- (5) IMALAYSIA RACING TEAM (UK) LIMITED**

Royal Courts of Claimant

Transaction: 525843
 Fee Code : CHANCE 1.5 07
 Fee : £400.00
 Operator : HODGES, FAYE
 Dated : 05/11/2010 10:28:28
 Payment Mtd: Defendants

CHANCERY CHAMBERS

04 NOV 2010

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DEFENCE AND COUNTERCLAIM

Royal Courts of Justice

DEFENCE

Transaction: 525844
 Fee Code : CHANCE 1.1(n)
 Fee : £1530.00
 Operator : HODGES, FAYE
 Dated : 05/11/2010 10:28:34
 Payment Mtd:

1. Save as expressly admitted below, the Defendants join issue with each and every allegation in the Amended Particulars of Claim.
2. Save that it is admitted that the Claimant is a company incorporated under the laws of England and Wales, no admissions are made as to paragraph 1 of the Amended Particulars of Claim and the Claimant is put to strict proof of the matters alleged therein.
3. Paragraph 2 is admitted.
4. It is admitted that the Second Defendant is a company incorporated under the laws of England and Wales. The Third Defendant owns two shares in the Second Defendant. The remaining 98 shares in the Second Defendant are owned by Ryalls Lane Limited, which is a wholly-owned subsidiary of the Third Defendant. It is admitted that the Third Defendant controls the Second Defendant. Otherwise, paragraph 3 is denied.
5. Paragraph 4 is admitted, save that it is denied that the Third Defendant is controlled in whole or in part by the Fourth Defendant.
6. As to paragraph 5, it is admitted that the Fourth Defendant is an individual and is a shareholder of both the First and Third Defendants, but it is denied that he controls the First, Second or Third Defendants.

7. It is admitted that the Fifth Defendant is a company incorporated under the laws of England and Wales. It is a wholly-owned subsidiary of, and service provider for, the First Defendant. Otherwise, paragraph 6 is denied.

Background

8. Paragraph 7 is admitted subject to the paragraphs that follow, and save that:
- (1) the Lotus Engineering Company Ltd was formed on 1 January 1952 but not incorporated until sometime later;
 - (2) the Lotus 7, Lotus 11 and Lotus Elite were not produced before 1956 or 1957.
9. In or around 1953 or 1954, Colin Chapman decided to separate out the two sides of the business and formed Team Lotus. The business of Colin Chapman trading as Team Lotus ("TL") was at all material times concerned with the making of racing cars and entering them into motor racing events, advertising in relation thereto, engineering consultancy in connection with racing cars, and related promotional activities ("the Racing Business").
10. Since the time of this separation out of TL, the Racing Business has always been operated as an independent and separate business, and presented to and perceived by the public as such. Since at least early 1957, TL has operated out of its own, separate premises.
11. Team Lotus enjoyed considerable motor racing success, including:
- (1) On 17 July 1954, Team Lotus was awarded the Team Award at the British Grand Prix Meeting at Silverstone.
 - (2) Team Lotus first competed in the Formula 1 World Championships at the Monaco Grand Prix on 18 May 1958.
 - (3) Its first win in the Formula 1 World Championships was at the Monaco Grand Prix on 29 May 1960.
 - (4) In 1963 it first won both the Drivers' Championships and the Constructors' Championships.
 - (5) Between 1958 and 1994, it competed in nearly 500 Formula 1 World Championships of which it won more than 70. It remains one of the most successful racing teams of all time, its victories including seven Formula 1 Constructors' titles and six Drivers' Championships.
12. It is admitted that the Claimant was formed on 12 June 1958 as Lotus Cars Ltd. The business of Lotus Cars Ltd and/or the Claimant (no admissions are made as to the correct legal entity and the Claimant is put to proof of the same) was at all material times concerned with the manufacturing and marketing of road-going motor vehicles, other than single seater racing vehicles, engineering consultancy, and related promotional activities ("the Manufacturing Business"). Otherwise, the first sentence of paragraph 8 is denied.

13. Save that:

- (1) it is admitted that, at some point subsequent to 1953, TL began trading as Team Lotus Limited;
- (2) in or about 1960, a company called Team Lotus Limited was incorporated. At some time subsequent to its incorporation, the entire business of TL (including the goodwill) was transferred to that company (the abbreviation "TL" used herein should be understood as defined above or to refer to the company Team Lotus Limited as appropriate);

the second sentence of paragraph 8 is denied.

14. As to paragraph 9:

- (1) No admissions are made as to the first sentence which is vague and inadequately particularised.
- (2) As to the second sentence, paragraph 13 above is repeated.
- (3) The third sentence is denied. Paragraph 10 above is repeated.
- (4) No admissions are made as to the fourth or fifth sentences which are vague and inadequately particularised.
- (5) The final sentence is denied. Paragraph 10 above is repeated.

15. As to paragraph 10:

- (1) No admissions are made as to the first or second sentence and the Claimant is put to strict proof of the facts and matters alleged therein, save that it is admitted that a new company called Lotus Cars Ltd was incorporated on 1 January 1967.
- (2) The third sentence is admitted. It is averred that, since at the very latest the floatation of the Claimant, the beneficial ownership of the Claimant and TL were distinct.
- (3) As to the fourth sentence, Team Lotus International Ltd ("TLI") was incorporated on 10 September 1975. It is admitted that the business of TL, including its goodwill, was transferred to TLI in or about 1975.

16. Save that:

- (1) it is admitted that, both before and after 1967, Team Lotus was extremely successful in Formula 1;
- (2) the second sentence is vague and inadequately particularised;
- (3) the third sentence is vague and inadequately particularised;

(4) it is admitted that Colin Chapman died suddenly on 16 December 1982;

paragraph 11 is denied.

17. At all material times, the Racing Business has been carried on under and by reference to the TEAM LOTUS word mark and a livery consisting of a combination of the colours British racing green and yellow ("the Livery") (both since in or around 1953 or 1954) and the ACBC monogram device mark ("the Roundel") with the words 'Team Lotus' (since around or before 1985). As a result, by 1994 the word mark TEAM LOTUS, the Roundel with the words 'Team Lotus' and the Livery were highly distinctive of TL and/or its successors and the Racing Business and remain distinctive of the Racing Business to date.
18. By reason of the aforesaid, TL and its successors have at all material times owned a very valuable goodwill in the word mark TEAM LOTUS, the Roundel with the words 'Team Lotus' and the Livery when used in relation to the Racing Business. Accordingly, at all material times the relevant public recognised that the name TEAM LOTUS and/or the Roundel with the words 'Team Lotus' and/or the Livery, or anything colourably similar thereto, when applied and/or used in relation to *inter alia* a Formula 1 motor racing team was distinctive of TL or its successors.
19. Prior to 2010, the Claimant had not conducted any trade in the field of the Racing Business. The Claimant has not used the TEAM LOTUS word mark, the Roundel and/or the Livery in the Racing Business at any time.
20. Further and in any event, the Claimant has acquiesced in, and/or consented to, the Second Defendant and its predecessors in title generating reputation and goodwill in the TEAM LOTUS mark, the Roundel used with the word 'Team Lotus' and the Livery. Alternatively, this resulted in the generation of a concurrent goodwill which accrued to the Second Defendant. Further or alternatively, as a result the mark LOTUS and/or the Roundel used with the word 'Lotus' are not distinctive of the Claimant when applied to the Racing Business.
21. Save that:
 - (1) it is admitted that, prior to 1985, the Claimant applied for trade mark registrations in its own name and TLI did not, and it is denied that the Claimant had any responsibility to do so as alleged;
 - (2) it is averred that insofar as the Claimant applied for any trade marks in relation to goods and services falling within the field of the Racing Business, it did so for and on behalf of TLI (as evidenced by the terms of the 1985 Agreement);
 - (3) the reference to "*the Lotus organisation*" is not explained or understood;
 - (4) the registrations set out in Annex A are admitted;

paragraph 12 is denied.

22. Save that:

- (1) it is denied that the Claimant is entitled to any goodwill in relation to the use of the TEAM LOTUS mark, the Roundel or the Livery in relation to the Racing Business, jointly or otherwise;
- (2) no admissions are made as to the remainder of the Claimant's alleged trading activities or the extent of the same, or the extent of any goodwill attaching to the trade marks, the same being inadequately particularised;
- (3) the Claimant is put to strict proof of the allegation that any goodwill accrued to its benefit;
- (4) it is denied that the Claimant licensed the use of the names LOTUS and TEAM LOTUS to TLI;

paragraph 13 is denied.

The 1985 Agreement

23. Save that it is admitted that:

- (1) the 1985 Agreement was made;
- (2) Recital D of the 1985 Agreement stated "*There has always been close co-operation between the businesses of GLCC and Team Lotus*";

paragraph 14 is denied.

24. It is specifically denied that the 1985 Agreement recognised that the goodwill generated up to that date was single and indivisible. The Defendants will rely on the entirety of the agreement at trial but, without prejudice to the generality of the foregoing, will rely upon the facts and matters set out in Recitals (A) and (B) and the following:

(1) Recital C provides:

"The businesses of GLCC and Team Lotus both originated from the work of the late Mr. Colin Chapman but have been run as separate businesses since at least 1968."

(2) Under Clause 3, the parties expressed mutual wishes to benefit from know-how developed by the other, but Clause 3.1 added:

"GLCC wish ... also to obtain the benefit of being associated with the racing activities of Team Lotus as an aid to the promotion and marketing of its own Motor vehicles and the marketing of its own technical services."

(3) This was a benefit in return for which the Claimant agreed to pay sponsorship fees to TLI, as set out in Clauses 17.1, 17.2 and 17.3.

(4) Pursuant to Clause 10.2, the Claimant agreed that:

“it will not be engaged either directly or indirectly in the designing manufacturing or operating of ‘A’ Class Racing vehicles”.

(5) Pursuant to Clause 17.5, the Claimant agreed that:

“all matters affecting race participation, the operation of the racing team and the employment of drivers and employees for and by Team Lotus are the sole responsibility of Team Lotus and GLCC shall not participate in any part of the business of Team Lotus unless so requested by Team Lotus.”

25. As to the sub-paragraphs of paragraph 14:

(1) Sub-paragraph 14.1 is admitted.

(2) Save that it is admitted that each party agreed to allow the other to share know-how it had developed, on terms set out in the agreement, sub-paragraph 14.2 is not admitted.

(3) Save that it is admitted that the Claimant acknowledged TLI's right to continue to use the names TEAM LOTUS and CLUB TEAM LOTUS in relation to its business, and TLI acknowledged the Claimant's right to continue to use the names GROUP LOTUS and LOTUS in relation to its business as set out in Clause 6.2, sub-paragraph 14.3 is not admitted.

(4) It is admitted and averred that:

a. the Claimant further acknowledged TLI's right to continue to use the Roundel *with or without* the words TEAM LOTUS, and

b. TLI acknowledged the Claimant's right to continue to use the Roundel *with* the word LOTUS as set out in the Seventh Schedule to the agreement,

as set out in Clause 6.2.

(5) As to paragraph 14.4, Clause 20 provided that:

(a) The Claimant would cancel its trade mark registrations in respect of TEAM LOTUS, LOTUS WORLD and CLUB TEAM LOTUS.

(b) The Claimant undertook *“not to use any rights under its remaining trade mark registrations world wide against Team Lotus in relation to the business of Team Lotus”.*

(c) The Claimant would consent to world wide registration by TLI of *inter alia* the mark TEAM LOTUS and the Roundel (with or without the words TEAM LOTUS) in relation to TLI's business.

- (d) TLI would consent to registration by the Claimant of *inter alia* the mark LOTUS and the Roundel (with the word LOTUS) in relation to the Claimant's business.
 - (e) The Claimant undertook to restrict its existing world wide trade mark registrations by the removal of "*single seater racing vehicles*" from the specification of goods.
 - (f) The above provisions would survive termination of the 1985 Agreement.
- (6) As to sub-paragraph 14.5, it is admitted that TLI agreed to provide cars for exhibitions and promotional services, on the terms set out in Clause 16.3. It is further admitted that TLI agreed to use reasonable endeavours to make available trophies to the Claimant "*for exhibition as part of any specific promotion of Motor vehicles*", in Clause 17.6.
 - (7) Sub-paragraph 14.6 is admitted in respect of the benefit of, and obligations imposed on the Claimant and TLI by, the 1985 Agreement and during the period prior to termination of that agreement.
 - (8) As to sub-paragraph 14.7, Clause 6.3.2 provided that "*On the transfer of its business Team Lotus will ensure that the transferee executes a deed*" undertaking to be bound by TLI's obligations in the 1985 Agreement. It is denied that the said clause had the effect that TLI's rights could only be assigned upon the execution of such a deed.
 - (9) Save as otherwise admitted, each sub-paragraph is denied.
26. Save that it is admitted that:
- (1) the Claimant surrendered its registrations for the mark TEAM LOTUS;
 - (2) TLI obtained registration of the marks so stated;
 - (3) the Claimant consented to TLI obtaining the registrations (but, for the avoidance of doubt, it is denied that the Claimant's consent was necessary);

paragraph 15 is denied.

The TLI Registrations

27. Paragraph 16 is denied. In particular it is expressly denied that:
- (1) the Claimant had generated any reputation or owned any goodwill in the LOTUS word mark in relation to any aspect of the Racing Business;
 - (2) the Claimant's registrations in respect of the mark LOTUS prevented TLI from using the name TEAM LOTUS without the Claimant's consent;

- (3) any exploitation of the TLI Registrations without the Claimant's consent would have been unlawful and a deception on the public.
28. The first sentence of paragraph 17 is denied. The second sentence of paragraph 17 is vague and wholly inadequately particularised and not understood. In the premises, pending the service of further information, no admissions are made thereto.

The 1991 Agreements

29. The first sentence of paragraph 18 is admitted, save that:
- (1) Infiniti Developments Ltd took over the Racing Business.
 - (2) The transfer to TLL happened in two stages, in 1991 and 1994:
 - a. On 30 January 1991, by an agreement in writing ("the 1991 Sale Agreement"), TLI sold the entirety of its business, including all the goodwill thereof, to TLL but retained the rights in:
 - (i) the business relating to the racing activities of TLI prior to 1991 as set out in Schedule 1 to the agreement ("the Retained Business");
 - (ii) the names TEAM LOTUS and TEAM LOTUS INTERNATIONAL.
 - b. On the same date, TLI entered into a licence agreement with TLL ("the 1991 Licence Agreement"), under which it licensed to TLL the exclusive right to use the names TEAM LOTUS and TEAM LOTUS INTERNATIONAL in connection with the purchased business.
 - c. A third agreement was entered into between the parties on the same date ("the Put and Call Option"), under which TLL acquired an option to purchase all rights in the names TEAM LOTUS and TEAM LOTUS INTERNATIONAL.
 - d. Copies of the 1991 Sale Agreement, the 1991 Licence Agreement and the Put and Call Option agreements are in Annex C to the Amended Particulars of Claim.
 - (3) It is denied, if the same be alleged, that the Claimant's consent was required to transfer the TLI Registrations and/or all and any goodwill which at that date had accrued to TLI.
30. It is admitted that Infiniti Developments Ltd was renamed Team Lotus Ltd ("TLL") on 13 February 1991, and the company Team Lotus Limited was dissolved in or around 1982.
31. It is further admitted that by a written licence agreement dated 30 January 1991, the Claimant licensed TLL to use the trade mark LOTUS on and in relation to Formula 1 racing cars ("the 1991 Lotus Licence") and TLL agreed under Clause 2.2 thereof to enter into "*such registered user or other agreements in respect thereof as GL may reasonably require to protect the trade*

mark "Lotus"". It is admitted and averred that no such registered user or other agreement was ever entered into. It is further averred that TLL never used the trade mark LOTUS (as opposed to the mark TEAM LOTUS, the Roundel or the Livery) on or in relation to Formula 1 racing cars.

32. It is admitted that TLL entered into a deed with the Claimant ("the 1991 Deed"). The 1991 Deed provided that:

(1) The Claimant acknowledged TLL's entitlement to use *inter alia* the name TEAM LOTUS and the Roundel (with or without the words 'Team Lotus') in relation to its business and the activities as set out in Clause 2.1.1.

(2) TLL acknowledged the Claimant's right to use *inter alia* the names LOTUS and GROUP LOTUS and the Roundel (with the word LOTUS) in relation to its business and the activities as set out in Clause 2.1.2.

33. The Claimant is put to strict proof of the allegation that the 1985 Agreement was terminated and the date on which such termination took effect.

34. It is admitted that TLL continued to race in Formula 1, but it is averred that it did so under the name Team Lotus, not Lotus alone. It is denied that TLL needed the Claimant's consent to do so, or that the goodwill arising from TLL's activities accrued to the Claimant or became part of a joint goodwill.

35. Save as set out in paragraphs 29 to 34 preceding, paragraph 18 is denied.

The February 1994 Agreements

36. By a Deed of Assignment dated 24 February 1994, pursuant to the 1991 Put and Call Option, TLI assigned, absolutely, to TLL *inter alia* all right, title and interest in the TEAM LOTUS and TEAM LOTUS INTERNATIONAL marks in relation both to the business as purchased and the Retained Business, the TLI Registrations and the goodwill in both the purchased business and the Retained Business (as set out in Clause 2.2.2). A copy of the Deed of Assignment is in Annex C to the Amended Particulars of Claim.

37. Further, by a licence agreement also dated 24 February 1994 ("the 1994 Licence Agreement", attached hereto at Annex 1), TLL granted a licence to TLI to use *inter alia* the name CLASSIC TEAM LOTUS and the Roundel with the words CLASSIC TEAM LOTUS in relation to the business of exhibiting and exploiting Team Lotus racing cars designed prior to 31 October 1990 and TLI's archive and memorabilia of Team Lotus' Formula 1 racing activities prior to 1991.

38. Further pursuant to the terms of the 1994 Licence Agreement, TLL and TLI agreed that all and any goodwill generated by TLI in and in relation to the use of the rights licensed accrued to the benefit of TLL.

The October 1994 Agreement

39. Save that:

- (1) The first two sentences are admitted. Further and for the avoidance of doubt, TLL's assets (including the TLI Registrations) and goodwill were sold to Investfirm Ltd, pursuant to an agreement in writing dated 27 October 1994 ("the October 1994 Agreement") and a Deed of Assignment of the same date (copies of which are attached hereto at Annex 2). At trial, the Defendants will rely on the entirety of the October 1994 agreement for its full terms, meaning and effect.
- (2) Further and for the avoidance of doubt, the transfer included TLL's rights under the 1991 Deed and/or the 1985 Agreement.
- (3) It is denied that the sale from the administrators of TLL to Investfirm was made without the Claimant's consent and in the face of objections thereto (which alleged objections have not been particularised and are not admitted). It is in any event averred that the Claimant's consent was not required.
- (4) It is consequently denied that the sale was ineffective to transfer to Investfirm either the goodwill or the right to use the mark TEAM LOTUS without the Claimant's consent.
- (5) It is expressly denied that TLL's goodwill ceased to exist or devolved by operation of law to the Claimant upon TLL's dissolution or at all.
- (6) It is denied that the TLI Registrations became subject to a constructive trust. Further and in any event, the assertion that they did is wholly inadequately and insufficiently particularised, vague and embarrassing.

paragraph 19 is denied.

The 1995 Agreement

40. As to paragraph 20, the entire business, assets and rights of Investfirm were subsequently transferred to the Second Defendant by means of a Deed of Assignment dated 9 January 1995, a copy of which is attached hereto at Annex 3.

Subsequent Events

41. As to paragraph 21:

- (1) It is admitted that no team raced as Team Lotus in the Formula 1 World Championships following the 1994 season.
- (2) It is denied that the goodwill (owned by the Second Defendant) has dissipated with the passage of time.

- a. The reputation of and goodwill associated with the TEAM LOTUS mark, the Roundel used with the words 'Team Lotus' and the Livery when applied to and used in relation to the Racing Business and Formula 1 in particular, were sufficiently strong and distinctive as at 1994 that they continued throughout the period during which the team did not race in Formula 1. In the premises, at all material times the relevant public has continued to recognise the TEAM LOTUS mark, the Roundel used with the words 'Team Lotus' and the Livery as uniquely distinctive of the Racing Business and of the Second Defendant.
- b. In January 1995, when Team Lotus ceased racing, David Hunt on behalf of the Second Defendant announced to fans and the media that eventually Team Lotus would return to Formula 1 once it was properly funded.
- c. Since January 1995, the Second Defendant has continuously made efforts to return to Formula 1. It has entered into negotiations with many sponsors and other teams in an attempt to acquire funding, and a Formula 1 entry, to be able to race again. The Second Defendant will rely on all instances of the aforesaid matters at trial. These efforts finally came to fruition in 2010 with the sale of the Second Defendant's parent, Ryalls Lane Limited, to the Third Defendant, the latter having the means to fund and enter a Formula 1 team in 2011.
- d. The media, including newspapers, magazines and the internet, has on a regular basis since 1995 published articles and features about Team Lotus and about routes by which it might return to Formula 1 racing. The Second Defendant will at trial rely on all such publications.
- e. At the Canadian Grand Prix in 1998, the Second Defendant sold Team Lotus merchandise. The merchandise outsold Sauber merchandise (sold alongside it) by a factor of 7:1.
- f. At Christmas 1998, the Second Defendant sold Team Lotus merchandise through the Grand Prix Legende catalogue, the UK's biggest F1 merchandise retailer. The stock outsold Benetton, despite the latter having just finished fifth in the World Championships.
- g. Until the summer of 1999, the Second Defendant operated a retail shop from the Team Lotus workshop premises in Norfolk, selling Team Lotus merchandise including clothing, stickers, badges and memorabilia. A factory tour was also available. People visited from around the world.
- h. Further and by way of example, in a decision dated 29 May 2003, when refusing to accede in full to the Claimant's applications for revocation of the UK registered trade marks numbers 1338435 and 1337455, Mr Reynolds for the Registrar the Comptroller General held that the TEAM LOTUS mark and the Roundel used with the words 'Team Lotus' continued to enjoy a sizeable reputation despite the team not having raced in Formula 1 since 1994.

- i. As part of the Second Defendant's ongoing efforts to return to Formula 1, it has used the TEAM LOTUS mark and the Roundel with the words 'Team Lotus' continuously, including on letterheads and presentations.
- j. Pursuant to the 1994 Licence Agreement, the mark CLASSIC TEAM LOTUS, the Roundel with the words 'Classic Team Lotus' beneath it, the mark TEAM LOTUS, the Roundel with the word 'Team Lotus', and the Livery, have been used *inter alia* as follows:
 - (i) Since at least 1999, memorabilia has been sold, including but not limited to model cars featuring the TEAM LOTUS mark and the Livery, full-size operational Team Lotus Formula 1 racing cars, books about the history of Team Lotus, and clothing and badges featuring the TEAM LOTUS mark and the Roundel (with the words 'Team Lotus') in green and yellow.
 - (ii) On 20 January 1999, the domain name www.classicteamlotus.co.uk was acquired by Classic Team Lotus Ltd, the parent company of TLI, and contains an online shop selling and/or advertising the same items.
 - (iii) The colour scheme of the website www.classicteamlotus.co.uk is that of the Livery.
 - (iv) Tours of the Norfolk workshop formerly used by Team Lotus are sold, which include viewing the collection of Team Lotus Formula 1 cars, watching a film about Team Lotus and taking and receiving photographs of Team Lotus racing cars.
 - (v) The individuals *inter alia* selling the foregoing products and conducting or assisting with the workshop tours wear shirts coloured in the Livery and featuring the Roundel with the words 'Classic Team Lotus'.
 - (vi) A selection of the classic car collection is made available for hire for display and demonstration at special events.
 - (vii) Team Lotus racing cars from before 1991 are raced at events and shows throughout the year. On average 15 races are entered each year, usually with several cars entered across various categories.
 - (viii) Team Lotus racing cars from before 1991 are raced at track testing days.
 - (ix) Members of the public can and do pay to maintain a car from the collection and race the car at events throughout the year in the categories Historic Formula One, The Masters Series, Historic Grand Prix Cars Association and Formula Junior Lurani Trophy.
 - (x) In July 2005, a Classic Team Lotus driver finished second in Class B of the Colin Chapman Trophy Formula Junior race. In June 2008, the

Formula Junior race at the Formula Junior Golden Jubilee meeting was sponsored as 'The Classic Team Lotus Trophy'.

- (xi) In relation to Formula 1 in particular, Classic Team Lotus cars have been entered in races including in July 2006 two FIA Thoroughbred Grand Prix F1 World Championship events at Silverstone, and two races for HGPCA pre-1966 Grand Prix Cars at Silverstone; the August 2003 FIA Thoroughbred Grand Prix Championship event at Donington Park; and the June 2008 FIA Historic F1 Championship event.
 - (xii) Each year, several on-track, non-competitive demonstrations are given.
 - (xiii) The foregoing products and services are promoted and sold at various exhibitions and shows, such as the Goodwood Festival of Speed, Autosport International, Club Lotus Show and Stoneleigh Parts Fair.
 - (xiv) The classic cars are also exhibited at 'open days' hosted by the Claimant, including those in September 2007 and September 2008.
 - (xv) The above events which are attended are almost always high profile, very popular events. The mark TEAM LOTUS appears on many of the cars themselves, on the transporter vehicle used and on the back of the team crew shirts, and the Roundel with the word 'Team Lotus' appears on the front of the shirts.
 - (xvi) The rights to produce a range of model cars and other branded merchandise are sub-licensed to other manufacturers.
- k. Many other Team Lotus racing cars are raced in the UK every year with the Second Defendant's consent, many of which bear the TEAM LOTUS mark and/or the Roundel with the words 'Team Lotus'.
- l. In 2004, celebrations were held for the Team Lotus 50th anniversary. These included:
- (i) In June 2004, the csma Classic Festival (Brand Hatch's biggest motor racing event of the year) marked the anniversary on both days with on-track demonstrations of Team Lotus Formula 1 cars.
 - (ii) In July 2004 (pursuant to the 1994 Licence Agreement), Classic Team Lotus hosted a celebration at Hethel in Norfolk. This included static and track displays of cars. It was attended by around 12,000 people and was reported in the media.
 - (iii) Under a sub-licence from Classic Team Lotus, Sutton Motorsport Images produced three limited edition commemorative box sets including unseen photographs from Team Lotus's history.

- (iv) The Second Defendant licensed to Team Elite the right to use the TEAM LOTUS mark and the Roundel with the word 'Team Lotus'. Pursuant to that licence, the team contested the American Le Mans Series 52nd Sebring 12 Hour race. The car, team clothing and the transporter and support vehicle all bore the aforementioned marks. The team's involvement was covered in the international media and the 12 Hour race was broadcast on UK television on Saturday 20 March 2004.
- m. On or around 29 May 2009, the Second Defendant agreed to grant a short-term licence to LitespeedF3 Ltd to use *inter alia* UK trade mark registrations 1337455, 1338435 and 2297413B until 13 July 2009 to try to secure a Formula 1 entry ("the Litespeed Licence"). A copy of the Litespeed Licence is attached hereto in Annex 4. Pursuant to Clause 3.4 of the Litespeed Licence, any reputation and goodwill accruing to the marks during the licence belonged to the Second Defendant. Litespeed Ltd by itself and/or through its sub-licensee Lotus Racing Technologies Ltd made continuous efforts to obtain sponsorship and a Formula 1 entry during the period of, and pursuant to, its licence.
- n. A website and forum called Team Lotus Associates operates with the consent of the Second Defendant at <http://teamlotus.makemultiple.com/>. The colour scheme of the website is that of the Livery, the mark TEAM LOTUS appears prominently at the top of every page (with the word ASSOCIATES in smaller letters beneath it), beside which is the Roundel with the word 'Team Lotus' in yellow and green, and the TEAM LOTUS mark is used repeatedly on the pages.
- o. Further or alternatively, the Defendants will rely on the Claimant's use of the commercial drawing power of the name TEAM LOTUS for its own ends, including but not limited to the facts and matters set out in the Counterclaim below.
- (3) It is denied that the goodwill has been overtaken by, and/or subsumed into, any goodwill belonging to the Claimant. Further and in any event, the allegation is wholly unparticularised, vague and embarrassing.
- (4) It is denied that any use of the TEAM LOTUS mark, the Roundel and the Livery by the Second Defendant and/or with its consent in relation to the business of motor racing and in relation to Formula 1 in particular would now be misleading or a deception on the public.
42. By reason of the aforesaid, the Second Defendant continues to own a very valuable goodwill in the TEAM LOTUS mark, the Roundel with the words 'Team Lotus' and the Livery when used in relation to the Racing Business. In the premises, the TEAM LOTUS mark, the Roundel with the words 'Team Lotus' and the Livery, and anything colourably similar thereto, when used in relation to the Racing Business and in particular in relation to a Formula 1 motor racing team are to the relevant public distinctive of the Second Defendant and/or endorsed by it and none other.

43. Save that:

- (1) it is admitted that the Second Defendant has registered the mark TEAM LOTUS as set out in the first sentence;
- (2) it is specifically denied that the Second Defendant needed the Claimant's consent;
- (3) the aforesaid application was in any event made with the Claimant's consent as contained in the 1991 Deed and/or the 1985 Agreement;
- (4) further or alternatively, the aforesaid application was made with the Claimant's consent as follows:
 - a. in a meeting on 16 February 1999 between Jon Messent on behalf of the Claimant, Stuart Mayes of Boulton Wade Tennant on behalf of the Claimant, David Hunt on behalf of the Second Defendant, and John Byfield a solicitor acting for David Hunt and/or the Second Defendant, Jon Messent and/or Stuart Mayes stated that the Claimant had no objection whatsoever to the Second Defendant using the mark TEAM LOTUS;
 - b. in response, during the same meeting, David Hunt asked if the Claimant would withdraw the applications it had made for revocation of trade marks belonging to the Second Defendant;
 - c. the Claimant subsequently did withdraw the applications it had made, at some time before 23 July 1999;
- (5) further or alternatively, the Claimant is estopped from denying that it consented and/or estopped from challenging the validity of the registration by virtue of its representation, made verbally and/or by conduct, that it would not object to the Second Defendant's use of the mark TEAM LOTUS, in reliance upon which the Second Defendant made the application and used the mark;
- (6) it is admitted that the Second Defendant has made the trade mark applications referred to and set out in Annex D to the Amended Particulars of Claim and is the proprietor of the marks listed therein;
- (7) it is specifically denied that the green and yellow colours referred to are "*Lotus*" colours;
- (8) it is averred that UK application 2561143 and CTMR application 9414301 are in respect of the colours green and yellow as applied to the body and/or chassis of a racing vehicle;
- (9) the Second Defendant will rely on the full particulars of each application and registration;

paragraph 22 is denied.

44. As to paragraph 23:

- (1) No admissions are made as to the unparticularised assertions in the first sentence. In particular, the Claimant is put to strict proof of the relationship between it and Lotus Cars Ltd.
- (2) No admissions are made as to the second sentence as the facts are not within the knowledge of the Defendants.
- (3) It is admitted that the name LOTUS is well known in relation to the Manufacturing Business. Otherwise, the third sentence is denied.
- (4) The final sentence is denied for the foregoing reasons. Further or alternatively, the Claimant is put to strict proof that it owns the alleged reputation or goodwill. Further or in the further alternative, such use is not material or relevant to the current proceedings. The material issue between the parties is whether the Second Defendant and/or any of the Defendants' use of the mark TEAM LOTUS and/or the Roundel and/or the Livery in relation to the Racing Business and/or in relation to Formula 1 in particular would give rise to a material deception or misrepresentation, which the Defendants deny.

45. Paragraph 24 is denied. Further:

- (1) It is expressly denied, if the same be alleged, that by reason of the 2009 Agreement any goodwill in relation to the mark LOTUS was generated and/or accrued to the Claimant. Pursuant to the terms of the 2009 Agreement no licence was granted in respect of the use of the mark LOTUS alone, nor use of the Roundel whether with or without the word LOTUS.
- (2) Further or alternatively, if, which is denied, any goodwill in the name LOTUS when used in relation to Formula 1 motor racing accrued to the Claimant pursuant to the 2009 Agreement, the same was insignificant in size and extent and/or was extinguished and/or dissipated upon or shortly after the termination of the 2009 Agreement.
- (3) Further or in the further alternative, to the extent that any goodwill in the mark LOTUS accrued to the Claimant (which is denied), such goodwill was different and distinct from and independent of the goodwill residing in the TEAM LOTUS mark and/or the Roundel and/or the Livery as used in relation to the Racing Business.

46. As to paragraph 25:

- (1) It is admitted that TL and its successors have throughout their racing history used the Livery on numerous racing cars.
- (2) It is admitted that the Livery has been used since the 1950s.

- (3) TL and its successors have also used the Livery in relation to the Racing Business in other ways, including on the Team Lotus van, team clothing, and in the ways set out in paragraph 41(2) above.
 - (4) It is denied that the Livery formed part of the licence between the Claimant and the First Defendant, save that the Lotus Racing logo which the First Defendant was permitted to use under the 2009 Agreement was in green and yellow.
 - (5) It is denied that the colour combination is distinctive in the public mind as denoting cars, alternatively racing cars, associated or connected with the Claimant.
 - (6) The colour combination is distinctive in the public mind as denoting the Racing Business and/or racing cars associated or connected with the Second Defendant.
 - (7) The final sentence is denied for the foregoing reasons.
47. Save as follows, paragraph 26 is denied:

- (1) It is admitted the Roundel with the word 'Lotus' has been used in relation to at least some aspects of the Manufacturing Business, but the Claimant is put to strict proof of its role in said use. No particulars of this use have been pleaded or are admitted.
- (2) The Second Defendant and its predecessors have used the Roundel with the words 'Team Lotus' as pleaded above.
- (3) The Second Defendant and its predecessors have used the green and yellow colours as set out in the foregoing paragraph.
- (4) The Claimant has not used the Roundel in relation to the Racing Business or any aspects thereof.
- (5) It is consequently denied that the Roundel (in any form) is distinctive of the Claimant in relation the Racing Business or any aspects thereof.
- (6) It is further denied that any use of the Roundel in relation to the Racing Business without the Claimant's consent would be deceptive.
- (7) It is consequently denied that any registration of the Roundel as a trade mark without the Claimant's licence or consent would be unlawful.

Alleged breach of contract by First Defendant

48. As to paragraph 27:

- (1) The 2009 Agreement was dated 21 December 2009 but was stated to be effective as of 1 October 2009.

- (2) It is admitted that Clause 1.1 contained the statement quoted, but denied that this was "*recognised*" by the First Defendant. By Clause 9.5 the Claimant expressly gave no warranty that "*any of the Trade Marks is or will be valid or subsisting*" or that their use would not "*infringe the rights of any other person*".
 - (3) It is admitted that Clause 1.2 stated as quoted.
49. Paragraph 28 is admitted.
50. Paragraph 29 is admitted. Further:
 - (1) Clause 9.7 required the First Defendant to indemnify the Claimant against any loss resulting from any claim "*concerning the use by IMRT of the words Lotus and Team individually or together or in combination with other words in connection with Formula One activities*"; and
 - (2) Clause 9.8 provided that the Claimant would indemnify the First Defendant against any loss resulting from any claim that "*use by IMRT of the word Lotus as part of its team name in accordance with the terms of this Agreement infringe the rights of David Hunt*".
51. Save as follows, paragraph 30 is denied:
 - (1) Clause 4.3 referred to compliance with the Claimant's corporate identity, quality standards and colour specifications.
 - (2) It is admitted that Clause 4.5 required the First Defendant to submit samples of the branded Licensed Merchandise to the Claimant for approval on the terms set out therein.
 - (3) Clause 4.6 included a provision that products sold by the First Defendant should conform to any pre-production samples approved under Clause 4.5.
 - (4) Clause 4.7 *inter alia* permitted the Claimant to prevent the First Defendant from selling a product where a sample taken by the Claimant did not conform with an approved sample.
52. On 29 June 2010, at a meeting between Darren Choy on behalf of the First Defendant and Wiebke Bauer, Byron Jackson and another individual on behalf of the Claimant, it was agreed that:
 - (1) the First Defendant would send samples of all existing merchandise which had been produced without following the contractual procedures for pre-approval, and the Claimant would retrospectively approve the same provided that it met the contractual quality standards; and
 - (2) as the adidas trainers did not contain the word Lotus or the Lotus Racing logo licensed under the 2009 Agreement, only the colours green and yellow and the mark

LFIR, they did not fall within the definition of Licensed Merchandise, and the Claimant had no objection to the First Defendant selling them.

53. Further, on a proper construction of the agreement and/or Clause 7.2, alternatively by reason of a term implied to give effect to the obvious but unexpressed intentions of the parties and/or to give business efficacy to the contract, it was agreed that the Claimant was not entitled to terminate the 2009 Agreement on the basis of non-material breaches by the First Defendant.

54. Paragraph 31 is admitted.

55. As to paragraph 32:

- (1) It is admitted that the Claimant sent a letter to the First Defendant on 21 May 2010.
- (2) Paragraph 52 above is repeated.
- (3) Pursuant to the agreement made on 29 June 2010, on 15 July 2010 samples were sent to the Claimant of all items which had already been produced pursuant to the 2009 Agreement but in respect of which the contractual procedures for pre-approval had not been followed. This included a cap and all of the 500th GP Collection items, save for the key ring.
- (4) As the Claimant did not approve or disapprove the said samples within three working days, pursuant to Clause 4.5 of the 2009 Agreement approval was deemed to have been granted.
- (5) Although no new commercial merchandise has been produced by the First Defendant since 15 July 2010, on that date the following items were still in production and had yet to be produced:
 - a. The accessories, namely the lanyard, ear plugs, umbrella, flags and keyrings.
 - b. The key ring from the 500th GP Collection Items.
- (6) An image of the brooch was sent to the Claimant on 1 July 2010. Wiebke Bauer, on behalf of the Claimant, approved the brooch on the same date by email. In any event, a total of twelve brooches were produced, ten of which were sold to three shareholders of the First Defendant. The remaining two have not been sold.
- (7) On 3 August 2010, the Claimant refused to approve the leather holdall which the First Defendant supplied for approval, on the basis that it would place the Claimant in breach of a contract with Brands Global Limited which permitted the latter to use the word LOTUS in respect of certain goods. This was not a permissible basis on which to refuse contractual approval. In the premises, the Claimant was in breach of the 2009 Agreement as counterclaimed below, and had no right to terminate under Clause 7 on this basis. The holdall has never been sold.

- (8) For the avoidance of doubt, it is averred that all relevant merchandise produced by the First Defendant pursuant to the 2009 Agreement was of satisfactory quality.
- (9) Otherwise, paragraph 32 is denied.
56. Further or alternatively, if (which is denied) the First Defendant breached the 2009 Agreement, the breach was not material and consequently the Claimant was not entitled to terminate.
57. As to paragraph 33, it is admitted that on 31 August 2010 the Claimant purported to give notice of termination under Clause 7. It is denied that it had a contractual right to do so for the reasons set out above. By its letter of 23 September 2010, the First Defendant accepted the Claimant's wrongful termination as amounting to a repudiatory breach of contract and the 2009 Agreement terminated.
58. Paragraph 34 is admitted. On a proper construction of the 2009 Agreement and Clause 8.1(e), following termination the First Defendant was not prevented from using *inter alia* the mark TEAM LOTUS or the Roundel with the words TEAM LOTUS:
 - (1) As set out in paragraph 50 above, the 2009 Agreement expressly carved out use of the name TEAM LOTUS.
 - (2) As the agreement proceeded on the basis that the Claimant did not have the right to licence use of the name TEAM LOTUS, it cannot have been the intention of the parties that the Claimant would prevent the First Defendant from using that name following termination.
 - (3) Clause 8.1(e) is concerned with the right granted under the 2009 Agreement (namely the right to use the name Lotus Racing) and words which are confusingly or deceptively similar with the word LOTUS, or which suggest or indicate a connection in the course of trade with the Claimant. For the reasons set out above, TEAM LOTUS does not fall within this description.
59. The First Defendant has not used the word LOTUS other than in the form TEAM LOTUS or the Roundel other than with the words 'Team Lotus', nor has the same been alleged.
60. Further or alternatively, by reason of the Claimant's repudiatory breach of the 2009 Agreement set out above, the First Defendant was discharged from any obligations imposed by Clause 8.1(e).
61. Further or alternatively, Clause 8.1(e) is an unreasonable restraint of trade and consequently void and unenforceable in its entirety, alternatively so far as it seeks to prevent the First Defendant from doing any more than infringing any rights owned by the Claimant and/or so far as it is unlimited in duration and/or so far as it is unlimited in relation to any goods or services.
62. For the foregoing reasons, it is denied that the First Defendant has breached Clause 8.1(e) as alleged in paragraph 35 or at all.

63. Between July and September 2010, the Third Defendant acquired all of the shares in Ryalls Lane Ltd and two shares in the Second Defendant as set out in paragraph 4 above.
64. Save as follows, each of the sub-paragraphs of paragraph 35 is denied:
- (1) The extracts from the website in sub-paragraph 35.1 are admitted. It is further admitted that the website is owned and operated by the First Defendant. It is admitted that the announcement was made by the First Defendant but it is denied that it was made by the Fourth Defendant. It is denied that this was use in relation to goods or services within the meaning of Clause 8.1(e), or that it was of a restricted "mark" or "word" which fell within the scope of Clause 8.1(e) as properly construed and/or as enforceable as a matter of law.
 - (2) The press release referred to in sub-paragraph 35.2 is admitted. The press release was made by the First Defendant. It is admitted that it was in substantially the same terms as the announcement. It is denied that this was use in relation to goods or services within the meaning of Clause 8.1(e), or that it was of a restricted "mark" or "word" which fell within the scope of Clause 8.1(e) as properly construed and/or as enforceable as a matter of law.
 - (3) As to sub-paragraph 35.3, it is admitted that the Fourth Defendant appeared at the press conference referred to, beneath a sign containing the Roundel with the words TEAM LOTUS. It is denied that this was use in relation to goods or services within the meaning of Clause 8.1(e), or that it was of a restricted "mark" or "word" which fell within the scope of Clause 8.1(e) as properly construed and/or as enforceable as a matter of law.
 - (4) As to sub-paragraph 35.4, it is admitted that the announcement, press release and image of the Fourth Defendant were published on the website from 25 September 2010. Sub-paragraphs (1) to (3) above are repeated.
 - (5) It is admitted that the First Defendant stated to the FIA that the entry currently held by the First Defendant for the 2010 season may be used by a team named Team Lotus for the 2011 season. It is denied that this was use in relation to goods or services within the meaning of Clause 8.1(e), or that it was of a restricted "mark" or "word" which fell within the scope of Clause 8.1(e) as properly construed and/or as enforceable as a matter of law.
 - (6) The announcement referred to in sub-paragraph 35.6 is admitted. It was published by the First Defendant. It is denied that this was use in relation to goods or services within the meaning of Clause 8.1(e), or that it was of a restricted "mark" or "word" which fell within the scope of Clause 8.1(e) as properly construed and/or as enforceable as a matter of law.
 - (7) It is admitted that the announcement was published on the website from 28 September 2010. The previous two sub-paragraphs are repeated.

- (8) For the avoidance of doubt, at all material times the mark TEAM LOTUS when used in the context of the Racing Business, and Formula 1 in particular, was not confusingly or deceptively similar to the word LOTUS nor suggested or indicated a connection in the course of trade with the Claimant.
- (9) Sub-paragraph 35.8 is denied:
- a. Paragraph 55 above is repeated.
 - b. Further or alternatively, Clause 8.1(a) provides that upon termination for any reason, the First Defendant "*shall as soon as practicable cease all use of the Trade Marks*".
 - c. In its letter purporting to terminate the agreement on 31 August 2010, the Claimant stated that Clause 8.1(a) required the First Defendant to cease using the trade marks by 31 December 2010.
 - d. Clause 8.1(f) stated that except as provided in Clause 8, following termination for any reason "*neither party shall be under any further obligation to the other under this Agreement*".
 - e. Consequently, the First Defendant was permitted to continue using the trade marks until at least 31 December 2010 but was not obliged to seek any approvals from the Claimant.
65. It is in any event denied that any acts of the First Defendant have caused the Claimant loss. The Claimant is put to strict proof of the same. Without prejudice to this, no confusion has been caused as alleged in paragraph 36 or at all. It was not a misrepresentation that the First Defendant may operate a team named Team Lotus in the Formula 1 2011 season.
66. Further or alternatively, if it is intended to be alleged in paragraph 36 that the First Defendant misrepresented that it or the 2011 team had any connection to the Claimant, this is specifically denied. The First Defendant has made clear in its announcements relating to the 2011 team that there is no connection with the Claimant, including by (but not limited to) the following:
- (1) The announcement on 25 September 2010 stated:
"We have enjoyed a successful first year as Lotus Racing, and our thanks go to Proton, Group Lotus and all our partners for the parts they have played in our year as Lotus Racing. But now we move on to a new chapter".
 - (2) The announcement on 28 September 2010 stated:
"This year, we have established ourselves as the leading new team in Formula One™ as a licensee of Group Lotus, and, although we all dreamt of bringing Team Lotus back to where it belongs, we could not do so in 2010 because those rights were owned by Team Lotus Ventures. As Tune Group has now bought Team

Lotus Ventures it means we can now use the Team Lotus name for 2011 and beyond. ...

... given that this is contested by Group Lotus we think now is the time to clear this matter up so there can be no further arguments. We have therefore today issued proceedings in the English High Court for a declaration that Team Lotus Ventures has the rights to use the Team Lotus name and everything associated with that brand in relation to Formula One™.

Racing under the Team Lotus name from 2011 means our licence with Group Lotus has now come to an end."

67. Further or in the further alternative, if it is intended to be alleged in paragraph 36 that confusion was caused to the relevant public as to the relationship between the Claimant and the First Defendant and/or the 2011 team, the same is denied:

- (1) The foregoing paragraph is repeated.
- (2) The Claimant has itself made clear that it is not associated with the proposed 2011 team, including but not limited to in a press release on 27 September 2010.
- (3) The First Defendant will at trial rely on the regular media publications (including in newspapers, magazines and on the internet) identifying Team Lotus and/or the Racing Business and/or the 2011 team as being distinct from the Claimant and/or the Manufacturing Business.

68. It is denied that the First Defendant intends to continue such acts if the Court finds that it has no right to do so (although it is denied that this is the case). It is in any event denied that such acts are wrongful or will cause loss or damage to the Claimant.

The Claimant's trade mark claim

69. It is admitted that the Claimant is registered as the proprietor of the trade marks set out in paragraph 38. It is denied that these registrations were held at all material times. Further, save that it is admitted that the registrations are subsisting, paragraph 39 is denied.

70. Save as follows, paragraph 40 is denied:

- (1) It is admitted that on 25 September 2010 the First Defendant used the name TEAM LOTUS and the Roundel with the words 'Team Lotus' in relation to a Formula 1 motor racing team which has no connection with the Claimant.
- (2) It is denied that the use needed to be authorised or endorsed by the Claimant for the reasons set out above.
- (3) It is in any event averred that the use was with the Claimant's consent as contained in the 1991 Deed and/or the 1985 Agreement.

- (4) It is denied, if the same be alleged, that each or any of the Defendants used or threatened to use the word LOTUS alone, or the Roundel with the word 'Lotus' alone, in relation to a Formula 1 racing team which has no connection to the Claimant.

71. As to paragraphs 41 and 42:

- (1) It is denied that the name TEAM LOTUS is a sign identical or similar to any of the Claimant's registered trade marks for the purposes of the Trade Marks Act 1994 ("the 1994 Act") or Regulation 207/2009.
- (2) It is denied that the Roundel used with the words TEAM LOTUS is identical or similar to the Roundel used with the word LOTUS for the purposes of the 1994 Act or Regulation 207/2009.
- (3) Pending full and proper particularisation of the alleged infringements, it is denied that the Defendants have used the TEAM LOTUS mark in relation to any of the goods or services alleged in paragraph 41 in relation to the 2011 team.
- (4) Further or alternatively, it is denied that the Defendants have used the TEAM LOTUS mark in relation to any goods or services which are identical or similar to those falling within the specifications of the Claimant's registrations.
- (5) It is in any event denied that any of the goods or services in respect of which the Claimant has trade mark registrations (set out in paragraph 38) are identical to any of the goods or services to which the Defendants are alleged to have applied the mark TEAM LOTUS (set out in paragraph 41).

72. It is denied that the Defendants have infringed as alleged in paragraph 42 or at all:

- (1) Neither the marks nor goods and services relied on are identical to those alleged to have been used by the Defendants, nor those in fact used.
- (2) If (which is denied as set out above) similar signs have been used in relation to identical or similar goods, it is denied that there exists a likelihood of confusion.
- (3) It is denied that the Defendants' use of the TEAM LOTUS mark or the Roundel took unfair advantage, or was detrimental to the distinctive character or repute, of each or any of the Claimant's marks. This allegation is wholly inadequately particularised. Further or alternatively, the use was with due cause. The Defendants are entitled to use the name TEAM LOTUS and the Roundel in their own right and are the successors in title to, and/or licensees of, those entities which have been doing so since the 1950s, which have built up substantial goodwill and reputation in the said signs as applied to the Racing Business, which the Defendants may only use through use of the said signs in the Racing Business.

73. Further or alternatively, the use complained of was use by the Defendants of other registered trade marks in relation to goods or services for which they are registered, namely the TLI Registrations and registration 2 297 413B in respect of advertising services relating to

Formula 1. Such use cannot amount to infringement of the Claimant's marks, under s.11(1) of the 1994 Act.

74. Further or alternatively, the use complained of could not infringe the Claimant's marks as it would amount to use by the Second Defendant of its own name under s.11(2)(a) of the 1994 Act or Article 12(a) of Council Regulation 207/2009.
75. Further or alternatively, the use complained of did not infringe pursuant to Schedule 3 para 4 of the 1994 Act. The same uses were made of the Claimant's marks by the Second Defendant and/or its predecessors in title prior to the commencement of the 1994 Act on 31 October 1994 and did not amount to infringing use:
- (1) The uses were in relation to dissimilar goods; and/or
 - (2) The uses were bona fide use of the company name of the Second Defendant and/or its predecessors.
 - (3) Further, the Claimant's trade marks which were not registered under the Trade Marks Act 1938 are marks of which the distinctive elements are the same, alternatively substantially the same, as those of the earlier registrations which include both the word LOTUS and the Roundel with the word 'Lotus'. The Second Defendant relies on Schedule 3 para 4 in respect of those later marks insofar as they are registered for the same goods and services as the earlier registrations.
76. Further or alternatively, the use complained of by the Claimant amounts to a complaint in respect of the use of the Defendants' earlier right, that is to say the use of TEAM LOTUS in relation to the Racing Business, which at all material times was protectable by the law of passing off in England and Wales. In the premises there is no infringement of any of the Claimant's United Kingdom registrations pursuant to s.11(3) of the 1994 Act, nor of any of the Claimant's Community Trade Marks pursuant to Article 110 and/or Article 111 of Regulation 207/2009.
77. Further or alternatively:
- (1) the Claimant encouraged and benefitted from and/or acquiesced in,
 - (2) and/or consented in the 1991 Deed and/or the 1985 Agreement to,
 - (3) and/or consented in the meeting on 16 February 1999 referred to in paragraph 43(4) above,
 - (4) and/or represented by its conduct,
- that it would not complain of, the use of the TEAM LOTUS mark and/or the Roundel with the word 'Team Lotus' in relation to the Racing Business by the Second Defendant and its predecessors in title.

78. Further or alternatively, the Claimant's marks are invalid and/or should be revoked as counterclaimed below.
79. Paragraph 43 is noted but it is denied that there were any acts of infringement or that the Claimant is entitled to any remedy.
80. As to paragraph 44, paragraphs 65, 66 and 67 above are repeated.
81. As to paragraph 45, paragraph 68 above is repeated.

Alleged Passing Off by the Defendants

82. As to paragraph 46, the Defendants repeat their responses to paragraphs 7 to 25 of the Amended Particulars of Claim.
83. No admissions are made as to paragraph 47 which is insufficiently particularised.
84. Save as follows, paragraph 48 is denied:
 - (1) The Claimant is put to strict proof of the existence and extent of any goodwill relied on and the basis on which the same is said to have accrued to the Claimant.
 - (2) It is specifically denied that the Claimant owns any goodwill in (a) the name TEAM LOTUS and (b) the Roundel used other than with the word 'Lotus'.
 - (3) It is specifically denied that the Claimant owns any goodwill in the names LOTUS or TEAM LOTUS or in the Roundel in any form when used in relation to the Racing Business.
85. As to paragraph 49, paragraph 70 above is repeated.
86. As to paragraph 50:
 - (1) It is not understood to which paragraphs of the Amended Particulars of Claim reference should be made.
 - (2) It is denied that the First or Fourth Defendants have sought to associate the proposed 2011 Team Lotus team with the 2010 Lotus Racing team or the Claimant. As set out in paragraph 66 above, the First Defendant has made the distinction between the teams clear.
 - (3) Otherwise, paragraph 50 is denied.
87. Paragraph 51 is denied. As set out above, the Claimant has no relevant goodwill. Further or alternatively, the Defendants have made no misrepresentation to the public; nor would the public be deceived as alleged, on account of the Defendants' goodwill and reputation in the mark TEAM LOTUS and the Roundel used in relation to the Racing Business.
88. Paragraph 52 is noted but it is denied that there have been any relevant instances of deception.

89. Paragraph 53 is denied for the above reasons.
90. Paragraph 54 is denied. If (which is denied) the Defendants' use of the marks in fact caused deception, it is specifically denied that it was obvious that the same would result. It is further denied that the marks were used with the deliberate object of causing deception: they were used because they have been used by the Second Defendant and/or its predecessors in relation to the Racing Business since the 1940s or 50s.
91. Further or alternatively, the Second Defendant was and is entitled to use the name TEAM LOTUS in respect of a team as that is its own name.
92. Further or alternatively, if (which is denied) any members of the public would be misled into thinking the name TEAM LOTUS used in relation to a Formula 1 racing team indicated a connection with the Claimant, the Second Defendant and the Claimant held concurrent reputations in the name such that there was no misrepresentation by the Second Defendant which was likely to deceive the public and/or the marks relied on by the Claimant are not associated by the public with the Claimant and no other. Further or alternatively, the Second Defendant is entitled to continue to make honest use of the name.
93. Further or alternatively:
- (1) the Claimant encouraged and benefitted from and/or acquiesced in,
 - (2) and/or consented in the 1991 Deed and/or the 1985 Agreement to,
 - (3) and/or consented in the meeting on 16 February 1999 referred to in paragraph 43(4) above,
 - (4) and/or represented by its conduct,
- that it would not complain of, the use of the TEAM LOTUS mark and/or the Roundel with the word 'Team Lotus' in relation to the Racing Business by the Second Defendant and its predecessors in title.
94. The Second Defendant and its predecessors in title acted in reliance on the Claimant's position as aforesaid. In the premises, the Claimant is estopped and/or has no right to object to the Second Defendant's continued use.
95. As to paragraph 55, paragraphs 65, 66 and 67 above are repeated.
96. As to paragraph 56, paragraph 68 above is repeated.
97. As to paragraph 57, there being no principal sums due to the Claimant, there is nothing on which interest is due.

The TLI Registrations, registration 2 297 413B and the Second Defendant's Applications

98. As to paragraph 58:

- (1) For the reasons set out above, it is denied that the TLI registrations were held on terms that they would only be used in the business of motor racing with the consent of the Claimant.
 - (2) It is denied that the TLI Registrations could only be transferred with the Claimant's consent. The allegation is embarrassing for want of particulars.
 - (3) It is denied that the absence of a deed had any effect on a transfer of the TLI Registrations.
 - (4) It is denied that the TLI Registrations were or became subject to a constructive trust. The allegations are embarrassing for want of particulars.
 - (5) It is denied that the Claimant has any right to have the TLI Registrations transferred into its name.
99. Paragraph 59 is denied.
100. As to paragraph 60 and the TLI Registrations:
- (1) The first sentence is denied for the reasons set out above.
 - (2) It is denied that the TLI Registrations can or should be revoked under s.46(1)(d). No relevant use has been alleged by the Claimant.
 - (3) It is denied that the registrations should be declared invalid pursuant to s.47(2). The allegation is defective for want of particulars.
 - (4) It is denied that the registrations should be revoked as they have been put to genuine use. The Second Defendant relies on the facts and matters set out in paragraph 41(2) above.
 - (5) Further or alternatively, it is denied that the registrations should be revoked for non-use as there are proper reasons for non-use. These relate to the unique difficulties of (re-)entering Formula 1 racing:
 - a. There is a cap on the number of teams that can race (currently 13).
 - b. The only ways of gaining an entry are to bid successfully for a slot that becomes available by the exit of an existing team, or by merging with or taking over an existing team. The former route requires a very large deposit to be made and the slots are allocated entirely at the discretion of the organisers. As to the second route, there are few teams available in principle at any given time, and a complete package including secured sponsorship must be put together before negotiations even begin.
 - c. In the decision of 29 May 2003 in the Claimant's earlier revocation action in respect of the same marks, Mr Reynolds for the Registrar the Comptroller

General found that since 1995 David Hunt, on behalf of the Second Defendant, had been making (and was continuing to make) every effort he could to return Team Lotus to Formula 1.

- d. David Hunt, on behalf of the Second Defendant, continued to make such efforts to agree sponsorship and obtain a Formula 1 entry under the name Team Lotus.
 - e. In 2010, this was finally achieved in the sale of the Second Defendant to the Third Defendant.
 - f. As Mr Reynolds found, the ability to offer advertising services is inextricably linked to securing entry of a team.
- (6) It is admitted that the revocation proceedings are being transferred to the Court as set out in the final sentence.
101. Further or alternatively, the Claimant is precluded and/or estopped from challenging the TLI Registrations by reason of their acquiescence:
- (1) The Claimant expressly consented to the registrations in the 1985 Agreement, as set out above.
 - (2) Further or alternatively, the Claimant acquiesced for a continuous period of five years in the use of the marks and was aware of their use. It is therefore not entitled to rely on its earlier marks to challenge the validity of the registration of the TLI Registrations or to oppose use of those marks under s.48(1) 1994 Act.
102. Paragraph 61 is denied. It is specifically denied that the Claimant's consent was needed to apply for registration 2 297 413B and the Second Defendant's Applications or that the Second Defendant was not entitled to make the applications. The allegations are supported by insufficient particulars. Further or alternatively, the registration and applications were in any event made with the Claimant's consent, as set out in paragraph 43 above.
103. As to paragraph 62:
- (1) The first two lines are denied for the reasons set out above.
 - (2) It is denied that registration 2 297 413B can or should be revoked under s.46(1)(d). No relevant use has been alleged by the Claimant.
 - (3) It is denied that the registration should be declared invalid pursuant to s.47(2). The allegation is defective for want of particulars.
 - (4) It is denied that the registration should be revoked for non-use. There are proper reasons for non-use, as set out in paragraph 100(5) above.
 - (5) It is admitted that the revocation proceedings are being transferred to the Court as set out in the final sentence.

104. Paragraph 63 is denied:

- (1) It is denied that the application for registration 2 297 413B was made in bad faith. The allegation is embarrassing for want of particulars.
- (2) It is denied that the Second Defendant's Applications were made in bad faith. The allegation is embarrassing for want of particulars.

COUNTERCLAIM

105. Paragraphs 1 to 104 above are repeated.

Threats

106. At some time after 29 May 2009, on which date Lotus Racing Technologies Ltd submitted its application to race as Team Lotus in Formula 1 in 2010, the Claimant implicitly threatened the Second Defendant with proceedings for trade mark infringement by telling the FIA verbally and/or in a letter and/or by implying in a press release on 10 June 2009 that the team had no right to race under the name Team Lotus and/or that the Claimant would take legal action against the Second Defendant if the team were granted an entry. In consequence, the application was rejected on 12 June 2009.
107. Further, between approximately 8 and 12 September 2010, the Claimant implicitly threatened the First and/or Second and/or Defendant with proceedings for trade mark infringement by making groundless statements to leading figures in GP2 racing that the First and/or Second and/or Third Defendant has no right to use the name Team Lotus and/or that the Claimant would take legal action against the First and/or Second and/or Third Defendant if the GP2 application was allowed. In consequence, an application by the Second Defendant and Litespeed to race as Team Lotus Junior GP2 Team was rejected on 13 September 2010. Subsequently, the team name was changed to Team Air Asia and it was permitted to enter.
108. Further, it is inferred and averred that the Claimant has made such implicit threats of proceedings for trade mark infringement on other occasions and/or to third parties. The Defendants are unable to give particulars of the making of these threats, but at trial will seek to rely upon and claim relief in respect of each such threat.
109. For the reasons set out in the Defence, this use would not have constituted an infringement of the Claimant's trade marks.
110. Further or alternatively, the Claimant's trade mark registrations are invalid and/or liable to be revoked as set out below.
111. By reason of the Claimant's acts, the Defendants have suffered loss and damage. Unless restrained, the Claimant threatens and intends to continue such acts, as a result of which the Defendants will suffer further loss and damage.
112. The Second Defendant claims under s.21 of the 1994 Act and, in respect of the Claimant's CTMRs, Reg. 6 of SI 2006/1027:

- (1) damages for the loss sustained by the threats, to be assessed but to include losses resulting from being unable to compete in the relevant competitions;
- (2) a declaration that the threats are unjustifiable;
- (3) an injunction against the continuance of the threats.

Passing Off by the Claimant

113. As set out in paragraph 42 above, the Second Defendant owns a very valuable goodwill in the name TEAM LOTUS and the Roundel used with the words 'Team Lotus' in relation to the Racing Business.
114. The Claimant has used, and continues to use, the mark TEAM LOTUS and/or the Roundel and/or the Livery in relation to aspects of the Racing Business which have no connection with the Second Defendant and were not authorised or endorsed by it. Pending disclosure and/or further information, the Second Defendant will rely on the following acts of the Claimant:
 - (1) Since on or before 21 September 2010, the URL www.grouplotus.com, which is registered in the name of the Claimant, has been set to redirect to www.lotuscars.com.
 - (2) On the front page of www.lotuscars.com, a video starts to play showing clips of single seater race cars racing, on which there appears both the Livery and the TEAM LOTUS mark.
 - (3) Further on the front page of www.lotuscars.com, there also appear the words "*Lotus Heritage*" beneath a picture of a single seater race car.
 - (4) The picture and the words "*read more*" are hyperlinked to further webpages which set out the "*Lotus Heritage*" decade by decade.
 - (5) Numerous references to TEAM LOTUS appear on those further webpages.
115. These acts of the Claimant were calculated to lead and are likely to lead members of the public to believe, contrary to the fact, that the Claimant's goods and/or services are authorised by and/or associated with the Second Defendant. The Second Defendant will rely on *inter alia* the fact that the mark TEAM LOTUS and/or the Roundel were used by the Claimant with the deliberate object of causing deception.
116. At trial, the Second Defendant will rely on all instances of actual deception.
117. In the premises, the Claimant has passed off and/or attempted to pass off and/or enabled, assisted, caused or procured others to pass off the aforesaid matters and its business as being authorised by and/or associated with the Second Defendant and in particular the Racing Business operated under the TEAM LOTUS mark.
118. If (which is denied) as alleged in paragraphs 13, 15 and 16 of the Amended Particulars of Claim the parties were joint owners of the goodwill in the mark LOTUS, and neither party

could exploit such goodwill without the licence or consent of the other, then all uses by the Claimant without the Second Defendant's consent have been unlawful and a deception on the public. The Second Defendant relies on all such uses including those as pleaded by the Claimant.

119. In consequence of the foregoing, the Second Defendant has suffered loss and damage to be assessed.
120. Unless restrained, the Claimant threatens and intends to continue such acts, whereby the Second Defendant will suffer further loss and damage.

Group Lotus Trade Marks

LIABLE TO MISLEAD IN CONSEQUENCE OF USE

121. The Claimant's trade marks should each be revoked under s.46(1)(d) of the 1994 Act, or Article 51(1)(c) of Council Regulation 207/2009 in respect of the CTMRs. The Claimant has made misleading and deceptive use of the name LOTUS and/or the Roundel with the word 'Lotus':
 - (1) By using both marks in conjunction with the activities set out in paragraph 114 above.
 - (2) In a press release on 27 September 2010 by or on behalf of the Claimant, it was stated that *"there is and always has been only one Lotus, the Lotus started by Colin Chapman"*, *"Group Lotus is the owner of all rights in the "Lotus" automotive brand including those relating to Formula 1"*, none of the Defendants *"has the authority of Group Lotus to use ... "Team Lotus" and "Group Lotus is everything Lotus"*.
 - (3) Further, the Claimant has expressly sought to promote a connection between its trade marks and the Racing Business. For instance, the Claimant has sought to promote the heritage and successes of Team Lotus as being its own heritage and successes, including:
 - a. In February and March 2002, the Claimant ran advertisements to sell Lotus Elise cars, to coincide with the start of the Formula 1 racing season. The advertisements referred to the car's *"racing heritage"*, stated that *"World Driving Champions such as Andretti, Clark, Rindt, Fittipaldi and Hill have all been behind the wheel of a Lotus"* and beneath the Roundel featuring the word LOTUS stated *"A Formula 1 Champion"*.
 - b. Through the video and the details of the *"Lotus heritage"* on the website to which www.grouplotus.com redirects, referred to in paragraph 114 above.
 - c. In a press release on 21 September 2010, the Claimant stated *inter alia* that *"With seven F1 Constructors Championships, six F1 Driver Championships and numerous other considerable accolades, Lotus has a unique racing pedigree"*.

- (4) In consequence of the foregoing uses by the Claimant or with its consent, the Claimant's registrations are now liable to mislead the public as to the origin of all goods and services in relation to which they are used.

Earlier rights preventing use

122. Further or alternatively, the Claimant's trade marks are invalid and should each be revoked insofar as the registrations relate to any aspect of the Racing Business, under s.47(2)(b) of the 1994 Act, or Article 53(1)(c) of Council Regulation 207/2009. The Second Defendant relies on its earlier rights and goodwill in the name TEAM LOTUS and the Roundel used with the words 'Team Lotus', in relation to which use of the Claimant's marks as aforesaid is liable to be prevented by the law of passing off.

Claimant's trade marks deceptive

123. If, contrary to the Defendants' primary case above, the mark TEAM LOTUS is found to be confusingly similar (or identical) to the mark LOTUS, then the Claimant's CTMRs 53884, 2708196 and 7389471, and UK registration 2153278, all in respect of the word LOTUS, and its CTMR 53926 in respect of the Roundel with the word 'Lotus', should be revoked and/or declared invalid under s.47(1) of the 1994 Act and Article 52(1)(a) of Regulation 207/2009 as the marks were and are of such a nature as to deceive the public as to the origin of the goods or services to which they are applied, under s.3(3)(b) of the 1994 Act and Article 7(1)(g) of Regulation 207/2009, in light of the pre-existing goodwill owned by the Second Defendant in the mark TEAM LOTUS and the Roundel used with the words 'Team Lotus' in relation to the Racing Business and/or the existence of the TLI Registrations.

Infringement

124. Further or alternatively, if, contrary to the Defendants' primary case above, the mark TEAM LOTUS is found to be confusingly similar (or identical) to the mark LOTUS, the Second Defendant will rely on the following infringing acts of the Claimant.
125. The Second Defendant is and at all material times was the registered proprietor of registration 2297413B and the TLI Registration in respect of the word TEAM LOTUS, registered in Class 35 in respect of advertising services relating to Formula 1 racing.
126. On or around 21 December 2009, the Claimant licensed the First Defendant to use the mark LOTUS RACING in relation to a Formula 1 racing team which had no connection with the Second Defendant and was neither authorised nor endorsed by the same, and related advertising services, under the 2009 Agreement. The First Defendant made such use during the 2010 Formula 1 racing season.
127. In the premises, the Claimant used a mark which was identical or similar to the mark which is the subject of the two aforementioned registrations owned by the Second Defendant. The goods and services in relation to which the Claimant used the mark were identical, alternatively similar, to those falling within the specifications of the aforementioned trade mark registrations.

128. The Claimant's acts constituted an infringement of each of the aforesaid trade mark registrations:

- (1) The acts of using in the course of trade a sign which was identical to the Second Defendant's registered trade marks, in relation to goods or services identical to those for which those trade marks are registered, infringed s.10(1) of the 1994 Act.
- (2) The acts of using in the course of trade a sign where, because the sign was identical or similar to the Second Defendant's registered trade marks and used in relation to goods or services identical or similar to those for which those trade marks are registered, there existed a likelihood of confusion on the part of the public, infringed s.10(2) of the 1994 Act.
- (3) The acts of using in the course of trade a sign which was identical or similar to the Second Defendant's registered trade marks, where the trade marks have the requisite reputation required by law, and the use was without due cause and took unfair advantage of or was detrimental to the distinctive character or repute of the Second Defendant's registered trade marks, infringed s.10(3) of the 1994 Act.

129. The Second Defendant will at trial seek a remedy in respect of each act of infringement.

130. By reason of the foregoing acts, the Second Defendant has suffered loss and damage.

131. Unless restrained, the Claimant threatens and intends to continue using and/or licensing use of the same or a similar mark, by reason of which the Second Defendant will suffer further loss and damage.

The Claimant's Applications

132. The Claimant has recently made the following trade mark applications ("the Claimant's Applications"), details of which are contained in Annex 5 hereto. It has applied to register as CTMs:

- (1) the word mark LOTUS RACING (application 8993586),
- (2) the Roundel above the word LOTUS in green, yellow and steel (application 9056987), and
- (3) the word mark TEAM LOTUS (application 9251497),

and as UK trade marks:

- (4) the word mark LOTUS DPM (application 2556887),
- (5) the word mark LOTUS IPS (application 2556979), and
- (6) the Roundel above the words TEAM LOTUS in green, yellow and steel (application 2560196).

133. It is clear that by applying for the said trade marks, the Claimant is asserting a right that it is entitled to the exclusive use of *inter alia* the words Team Lotus and the Roundel with the words 'Team Lotus'.
134. In the circumstances, the Second Defendant is entitled to and seeks a declaration that, as between it and the Claimant, the Claimant has no right to obtain any trade mark registrations in respect of the mark TEAM LOTUS, the Roundel with the words 'Team Lotus' or the Livery, or any mark containing the word Lotus, the Roundel or the Livery in relation to the Racing Business. The Second Defendant intends to oppose the applications in due course.

Breach of 2009 Agreement

135. Under Clause 3.1 the 2009 Agreement, the Claimant granted to the First Defendant "*a licence to use the Trade Marks in the Territory in relation to the Licensed Products*". The "*Licensed Products*" were defined in Clause 2.1 as including the "*Licensed Merchandise*", which in turn was defined as including "*all goods sold by IMRT ... including but not limited to ... articles of clothing, luggage*".
136. Further, on a proper construction of the contract, alternatively by reason of a term implied to give effect to the obvious but unexpressed intentions of the parties and/or for business efficacy, the Claimant warranted that it had not entered, and would not enter, into exclusive licence agreements with other parties in relation to any of the aforementioned merchandise.
137. As set out in the Defence, the Claimant had no right to terminate the 2009 Agreement. Its purported termination consequently amounted to a repudiatory breach and/or renunciation of contract.
138. Further or alternatively, in repudiatory breach of contract, the Claimant was party to, alternatively entered into, agreements with third parties permitting those third parties exclusively to use the word LOTUS in respect of certain goods which the First Defendant was entitled to produce under the 2009 Agreement. These included:
- (1) An agreement with Brands Global Ltd made in 2007 in relation to Class 18 goods including leather goods and luggage, and Class 19 goods, under which the Claimant agreed not to use any mark containing the word LOTUS in relation to such goods save for certain exceptions which did not include LOTUS RACING.
 - (2) An agreement with a Spanish company called Festina in respect of watches.
 - (3) Agreements in relation to shoes and bicycles.
139. Further or in the further alternative, in repudiatory and/or anticipatory breach of contract, the Claimant refused to approve the production of such merchandise by the First Defendant on the basis of its agreements with third parties:

- (1) At the meeting on 29 June 2010 referred to in paragraph 52 above, the Claimant told the First Defendant that it could not produce watches, bicycles or shoes because the rights had already been licensed to third parties.
 - (2) On 3 August 2010, the Claimant refused to approve a leather holdall which the First Defendant supplied for approval, on the basis that it would place the Claimant in breach of its contract with Brands Global Limited.
 - (3) On or around 3 August 2010, the Claimant told the First Defendant that it could not produce any leather goods featuring the mark LOTUS RACING.
140. Pending disclosure and/or further information, the First Defendant reserves the right to rely on further breaches of the agreement by the Claimant.
141. The Claimant's repudiation and/or renunciation of the agreement was accepted by the First Defendant on 23 September 2010 and the agreement terminated.
142. By reason of the foregoing, the First Defendant has suffered loss and damage to be assessed.
143. Further, the Defendants are entitled to and claim interest on all sums found due to them pursuant to s.35A Senior Courts Act 1981 and/or the equitable jurisdiction of the Court at such rate or rates and for such period or periods as the Court thinks fit.

AND the Defendants claim:

- (1) An injunction to restrain the Claimant from continuing to make the threats referred to above.
- (2) An injunction to restrain the Claimant (whether acting by itself, its servants, agents or otherwise howsoever) from doing any of the following acts:
 - a. passing off a Formula 1 racing team and/or any goods or services connected with a Formula 1 racing team as being connected with and/or authorised or endorsed by any of the Defendants, whether by use of the name TEAM LOTUS and/or the Roundel in any form or otherwise howsoever; or
 - b. enabling, assisting, causing, procuring or authorising others to do any of the acts aforesaid.
- (3) An order that each of the Claimant's trade mark registrations as referred to above be revoked and/or declared invalid and removed from the Register of Trade Marks.
- (4) Alternatively, an order that each of the aforesaid trade mark registrations be revoked and/or declared invalid and removed from the Register of Trade Marks insofar as it relates to any aspect of the Racing Business.

- (5) An order to restrain the Claimant (whether acting by itself, its servants, agents or otherwise howsoever) from infringing the Second Defendant's trade marks as set out above.
- (6) Delivery up to the Second Defendant, or destruction upon oath, of all printed or written matter, labels, merchandise or other articles in the possession of the Claimant, the use of which would be a breach of the foregoing injunctions.
- (7) A declaration that, as between the Second Defendant and the Claimant, the Claimant has no right to obtain any trade mark registrations in respect of the mark TEAM LOTUS, the Roundel with the words 'Team Lotus' or the Livery, or any mark containing the word Lotus, the Roundel or the Livery in relation to the Racing Business.
- (8) Inquiries into damages or at the Defendants' option an account of profits.
- (9) Interest as aforesaid.
- (10) An order for appropriate measures for the dissemination and publication of the judgment to be taken at the expense of the Claimant, under CPR Part 63 PD26.2.
- (11) Costs.

MARK VANHEGAN QC

PATRICIA EDWARDS

Statement of Truth

The Defendants believe that the facts stated in this Defence and Counterclaim are true. I am duly authorised by the Defendants to sign this statement.

Name: Anthony Francis Fernandes

Dated 3 November 2010



SERVED this ^{2nd} day of November 2010 by Macfarlanes LLP of 20 Cursitor Street, London, EC4A 1LT, solicitors for the Defendants.