

# Reflections of a long-running Trade Mark Attorney

In preparing to end his 48-year membership of the CITMA Council, Keith Havelock casts his mind back over his career and some key IP moments

For many of us who began their trade mark careers in the late 1950s, entry into the profession mostly occurred by pure accident, rather than after, say, a university course in IP. My own entry was slightly more structured in that it all began with a talk given to our local church youth club by a friend's father, the principal of a small firm of Patent Attorneys in Quality Court, Chancery Lane, London – and who eventually offered me my first job. The gentleman in question was the original Mr R G C Jenkins of the eponymous firm.

As I had started working at a relatively young age, I enjoyed a lot of responsibility early on, including the conduct of a successful High Court case, *ORANGE GROVE* trade mark, reported in *RPC*. At the end of the hearing, the courtesy of the other attorney, Vincent Thornton of AA Thornton & Co, impressed me as the correct way to behave in such circumstances. I attempted to emulate him in all similar situations thereafter. Our Counsel in the case was RG Lloyd QC, later to become Lord Lloyd of Kilgerran, prominent in the Liberal Party under Jeremy Thorpe. Later, when I co-authored an introductory book on trade mark law and practice with a member of his chambers, Lord Lloyd kindly wrote an introduction.

He also assisted the Institute in parliamentary matters. In his last note before the hearing, Counsel's advice included a recommendation that a Statutory Declaration regarding the collection of the evidence be made by "reference numeral KRH or some more senior member of my instructing agents' firm". Naturally, there was no way in which reference numeral KRH was going to let any other body steal his thunder.

## STARTING OUT IN CITMA

This period saw the beginning of my personal association with the professional body that was to become CITMA, with which I interacted on behalf of my firm, which was expanding. In this way, the firm began to feature on the trade mark map.

After passing my Institute exams, I became active in its affairs and was invited to stand for election to its Council in 1972 and concurrently to join its Law and Practice Committee (L&P) to help with the preparation of evidence for submission to the Mathys Committee, which had been established by government to examine the state of trade mark law in the UK. This was a broad undertaking in which, uniquely, every qualified member of the Institute was invited to participate. The gathering of a considerable body of well-received evidence was eventually and expertly coordinated by the then L&P chairman, Sheila Lesley.

By this time I had changed firms and was working at Reginald Barker alongside Institute stalwart and founder member, Maurice Rowland. Maurice, as a past President himself, encouraged me to stand for election to that office in due course and so it was that I had the good fortune to be elected as President in 1979, at the age of 39. This experience, over the next two years, was very rewarding. Innovations brought about and decisions taken then and subsequently began slowly but surely to place us – as an independent body representing the UK profession – on the international trade mark map.

A significant event in the field of European trade mark practice took place (also for me personally) with the formation of ECTA (originally named The European Communities Trade Mark Practitioners' Association, but the word "Practitioners" was later dropped). The Association's founder was Eric Wenman, the Company Trade Mark Agent at ICI.

The new group was formed as a UK company limited by guarantee, along constitutional lines similar to those of our Institute. It was thought that UK practitioners would form the largest national group of possible members, so chairmanship of the membership committee fell to me, on the proposal of Dr Wim Mak of Philips, one of the original subscribers representing the Netherlands. The numbers of members and of member states grew steadily



over the years so that today, as the Association nears its 40th year, more than 850 Trade Mark Attorneys from all over the world attend its annual conferences. Thus began my involvement with ECTA that was to continue through 35 years as a member of its Council including, after my retirement from full-time professional practice, 10 years as its Secretary General.

#### THE D YOUNG YEARS

In 1983, I was one day enjoying a drink with two professional colleagues, who were also or had been Institute Council members, when one of them, Victor Nichols, informed me that a partner in his firm was about to retire. He asked how I would feel about taking the retiring partner's place. This was the point at which I joined D Young & Co and lived happily ever after – well, for the next 21 years, anyway.

Among the decided cases that were heard during my years at D Young, the ARSENAL and BUDWEISER cases were reported in *RPC*, while one involving the WEST INDIAN SEA ISLAND COTTON certification trade mark, whose owners were my clients, was not, although it featured in case notes published in the ITMA newsletter. This case was the first ever heard by William Aldous QC (as he then was), before he became a High Court judge. Another unreported case involved the marks PIZZAEXPRESS versus PIZZA HUT EXPRESS (our client was Pizza Hut), where the Deputy Judge decided, somewhat to our surprise, that the marks were not confusingly similar.

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Never before had I witnessed a Counsel (in that case ours was Michael Silverleaf QC) rise to his feet so quickly to claim judgment and costs.

In 1991, my firm celebrated its centenary and I had the pleasure of being partnership chairman at the time. We celebrated our 100 years at a reception for clients and friends at The National Portrait Gallery in London and had an engraved crystal ruler, marked in centimetres, made as an anniversary gift for our friends. The senior partner of our principal US associate at the time noted in his acknowledgement of the item that “it might, at long last, make me come to terms with the metric system”. We were also pleased that John Myall, then Head of the UK Trade Marks Registry, who was to be the Hearing Officer in another reported case in which we were later also involved, the AL BASSAM case, felt likewise able to accept one of the items as a souvenir of our long and always amicable association.

#### SIGNIFICANT TIMES

Significant things were happening in the profession around this time, both nationally and in Europe. There were grounds for hoping that Parliamentary time would be found for a root-and-branch revision of UK trade mark



Keith Havelock's firm was involved in the ARSENAL, BUDWEISER and WEST INDIAN SEA ISLAND COTTON cases



Keith Havelock was involved in the PIZZAEXPRESS versus PIZZA HUT case, and represented WATERFORD (above)



law in the form of a completely new statute. The Institute's L&P committee was hard at work on the subject and I was fortunate enough to be a chairman of the committee up to 1994, when its members included John Groom, Richard Abnett, Adrian Spencer and Jeremy Pennant. Each of these and other individuals worked painstakingly to ensure that the eventual new Act reflected the needs of industry and thoroughly updated our law. The above quartet was also responsible for the preparation of one of the Institute's first-ever books, on the subject of the new Act.

Business was brisk after the new Act came into force. An application for registration of our clients' WATERFORD Trade Mark for glassware was successful, reversing the earlier decided case refusing the mark.

Concurrently, in Europe, the Community Trade Mark Regulation

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came into effect, paving the way for the tremendous changes in our field of activity that the subsequent opening of the EUIPO (then the Community Trade Marks Office) would bring.

At the time of one of the significant anniversaries of the formation of the Institute, the editors of the *Review* requested that a timeline be prepared showing the significant dates in the history of the profession in general and the Institute in particular. As my friend and past President Brian March had bestowed on me the dubious distinction of being “I suppose the unofficial custodian of the Institute's history”, the task of composing it fell in my direction.

In doing so, two things struck me forcibly. First, that the specialist organisation formed by a small group of dedicated professionals back in 1934 had quickly become the independent and resilient body we still recognise it as being today. Second, that the profession of Trade Mark Attorney was one that had fought long and solidly for recognition, having had set for it a list of objectives by its founders virtually all of which had by that time been achieved. This achievement of objectives – for example, the Register, mixed partnerships, approved regulation and litigation rights and the statutory recognition of the term registered Trade Mark Attorney – came about as a result of prolonged or inspired action by members of the profession, mainly as members of the Institute. Others occurred as a result of changing attitudes as to what should be happening in a just and civilised society.

Around 2012, the Council and officers of the Institute thought it time to consider making another attempt to obtain

a Royal Charter. I say “another” as a previous application in the 1980s had been unsuccessful, possibly mainly on financial grounds, while a more recent application had been withdrawn on political grounds.

The writer's involvement in the latest venture had a touch of serendipity about it. I had been sitting, by chance, next to a fellow alumnus of The Royal Grammar School, Guildford, Richard Tilbrook, at a lunch at the school. Conversation revealed that one of Richard's current roles was as Clerk to the Privy Council, the body whose responsibility it was to grant Royal Charters. Pretty smartly, I told him that our Institute was considering making a new Charter application, to which he replied, “Well, write in”. So we did and you all know the eventual outcome. Not that an enormous amount of work by successive Presidents and the Institute's staff did not have to be done, and several years elapse before the successful result was achieved. Many people both within and without the Institute contributed to this success, but the main plaudits I believe will ever go to Keven Bader, CITMA's Chief Executive, and Kate O'Rourke MBE, President at the time of the grant.

In contributing occasional articles to the *Review*, over the years, it has from time to time occurred to me to question how and why responsibility for trade mark registration in our country ever came to be the responsibility of the *Patent* Office in the first place. Attention to that question may be given in another article in the future. Perhaps even by this author. ●



#### **Keith Havelock**

is a Chartered Trade Mark Attorney, CITMA past President and Honorary member, UK and European Trade Mark Attorney