

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/05/2011

Before:

MR JUSTICE PETER SMITH

Between:

(1) Group Lotus Plc
(2) Lotus Cars Ltd

Claimants

- and -

(1) 1Malaysia Racing Team SDN BHD
(2) Team Lotus Ventures Ltd
(3) Tune Group SDN BHD
(4) Anthony Francis Fernandes
(5) 1Malaysia Racing Team (UK) Ltd

Defendants

Mr M Silverleaf QC & Mr B Kennelly (instructed by **SNR Denton**) for the **Claimants**
Mr G Morpuss QC & Ms P Edwards (instructed by **Macfarlanes LLP**) for the **Defendants**

Hearing dates: 22, 23, 24, 25, 28, 29 March and 1 April 2011

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE PETER SMITH

INDEX**PARAGRAPH NO.**

INTRODUCTION	1
THE PRESENT DIFFICULTIES	12
PROCEDURAL MATTERS	17
BACKGROUND	19
THE EVIDENCE	22
A BRIEF FACTUAL SURVEY	27
SHARE OFFER IN 1968	37
RACING	41
THE ATTRACTION	47
WHAT'S IN A NAME – GROUP LOTUS	52
COLIN CHAPMAN	55
THE ROUNDEL	59
KEY EVENTS	64
THE 1968 FLOTATION	66
THE 1985 AGREEMENT	73
SUBSEQUENT AGREEMENTS IN 1991	117
INFINITI (TEAM LOTUS LTD) IN ADMINISTRATION	131
GOODWILL	150
THE LEGAL NATURE OF GOODWILL	152
GOODWILL – THE FACTS	163
THE EVIDENCE ON GOODWILL	166
OTHER EVIDENCE	169
CONTEMPORARY WITNESSES	170

INDEX CONTINUED**PARAGRAPH NO.**

THE WRITERS/JOURNALISTS/PRESS	175
CONCLUSION CONCERNING GOODWILL	176
CONFUSION	180
CONFUSION/SIMILARITY	199
THE EVIDENCE ON CONFUSION/SIMILARITY	208
OTHER WITNESSES	224
OBSERVATIONS ON THE EVIDENCE	228
THE JOURNALISTS	229
NON-JOURNALISTS	233
CONCLUSIONS ON CONFUSION	240
EXTENDED INFRINGEMENT	251
LOSS OF MARKS AND/OR GOODWILL BY NON-USE/ABANDONMENT	253
NON USE OF TRADE MARKS	255
CONSEQUENCES OF CANCELLATION OF TRADE MARKS	265
BLACK AND GOLD JPS LIVERY	283
CONCLUSIONS AS REGARDS MAIN ACTION	285
THE LICENSE AGREEMENT	289
BREACHES	296
RESPONSE OF GL	308
GL's ALLEGATIONS OF BREACH	314
NEW PARTNER: CLAIM AND COUNTERCLAIM	325
HAS GL ESTABLISHED ANY BREACHES	336
MEETING OF 29TH JUNE 2010	343
TERMINATION NOTICE 31ST AUGUST 2010	345

INDEX CONTINUED

PARAGRAPH NO.

BREACHES BY GL	356
MATERIALITY OF BREACHES BY 1MRT	357
OTHER BREACHES BY 1MRT	358
CONCLUSION ON THE BREACHES OF THE LICENCE AGREEMENT	362
RESTRICTIVE COVENANT	364
THE CONTRARY ARGUMENT	370
CONCLUSION ON LEGAL ANALYSIS	371
1MRT IN BREACH?	372
RESTRAINT OF TRADE	374
NATURE OF RELIEF	377
CONCLUSION AS REGARDS LICENSING AGREEMENT	381
RESIDUAL CLAIMS	385
OVERALL OBSERVATIONS	387

ANNEXES

1985 AGREEMENT

SAMPLE ROUNDELS

Peter Smith J:

INTRODUCTION

1. This is a trial (on liability only) about three matters.
2. First there is the issue as to whether or not the Claimants and/or the Defendants have the right to race in Formula 1 (“F1”) racing in cars which bear the name “Lotus” or “Lotus” in combination with the word “Team”.
3. Second (and perhaps less important) is a dispute over a License Agreement (“the License”) dated 21st December 2009 granted by the First Claimant Group Lotus (“GL”) to the First Defendant 1Malaysia Racing Team (“1MRT”) whereby GL granted 1MRT various rights including the right to race in Formula 1 under the name “Lotus Racing”.
4. Third the Claimants claim the Defendants are infringing in various ways 10 trademarks registered in their name, in particular by commencing to use the name “Team Lotus” and/or the word “Lotus” and/or the Lotus Roundel (being a special badge created by Colin Chapman, the founder of Lotus Cars; “The Lotus Roundel”) in relation to a F1 motor racing team which has no connection with the Claimants and was neither authorised nor endorsed by it. It is claimed that the name Team Lotus is or includes Lotus and is thus identical to the word Lotus registered in the name of the Claimants, and the goods and services in relation to which the Defendants are using Team Lotus includes goods and services which are identical or similar to those within the specifications of the Claimants’ trade mark registrations (“the Marks”).
5. In this judgment when I refer to Team Lotus I intend to refer to the activity of racing Lotus cars in Formula 1 without thereby indicating who has the right to race Formula 1 cars under that expression. I am merely echoing under what actual name Lotus cars were raced in Formula 1 until 1994. The only other occasion when Lotus cars raced in Formula 1 was in 2010 under the License and under the name Lotus Racing.
6. In addition the Claimants assert that they have for many years developed the Lotus business of sports car development and manufacture and vehicle engineering and in particular promoting its “Lotus” brand. They assert that the Defendants’ actions by using the name Team Lotus and/or Lotus and/or the Lotus Roundel in relation to Formula 1 motor racing which has no connection with the Claimants and was neither authorised or endorsed by them are wrongful passing off.
7. Ancillary to those various claims the Claimants seek relief in respect of trade mark registrations effectively registered in the name of the Second Defendant Team Lotus Ventures Ltd (“TLVL”) as set out in the schedule to the Re-Re Amended Particulars of Claim, where it is contended they are held upon trust for the Claimants. In addition in

the alternative they assert they were invalid, or the assignment to TLVL was void, or alternatively the marks ought to be revoked for non use.

8. Separate revocation proceedings were commenced by GL at the UK Intellectual Property Office (proceedings no. 83660, 83661 and 83780) but were transferred to be determined by me at the same time.
9. Not to be outdone, 1MRT claims that GL has committed repudiatory breaches of the License which entitled it to be absolved from further performance upon its acceptance of those breaches on 23rd September 2010.
10. The Defendants seek injunctions against the Claimants from passing off an F1 racing team as being connected with Team Lotus and/or the Lotus Roundel and in what is called the "JPS livery". That relates to the historically significant colouring of F1 Lotus racing cars in the 1970s when Team Lotus cars raced with the sponsorship of John Player. At that time the racing cars were coloured black and gold. It became an iconic colour and was in fact replicated in some of the sports cars manufactured at that time by GL such as the Europa and later the Esprit.
11. In addition the Defendants claim the revocation of the Claimants' trade marks in so far as they relate to any aspect of racing business and that as between TLVL and the Claimants the latter have no right to obtain any trade mark registrations in respect of Team Lotus or the Lotus Roundel or the livery or the JPS livery or any mark containing the word Lotus in relation to the racing business.

THE PRESENT DIFFICULTIES

12. Without ascribing any significance to the word in this context no Lotus cars raced in Formula 1 after 1995 until the 2010 season. In that season as I have said 1MRT entered into Formula 1 pursuant to the License from GL. That relationship was short lived and dissolved in acrimony in September 2010. Both sides accept that the License has come to an end but both assert that it came to an end by reason of their respective acceptances of the other party's alleged repudiatory breaches.
13. Thereafter (or possibly in anticipation of the fallout) GL entered into a fresh relationship with Renault to enter a car in F1 with the name Lotus or Lotus Racing or possibly Lotus Renault. That entry has been accepted.
14. Not to be outdone 1MRT has entered a car in F1 to race under the name Team Lotus. Last year of course it raced under the name of Lotus Racing. It purports to do so by reason of its acquisition of the Team Lotus trade marks from TLVL. That registration has also been accepted.
15. The issue over the racing colours arises from the decision of GL to paint its cars in the "iconic" black and gold. Last year the Lotus Racing cars were what might be called "traditional" Lotus colours of green and yellow. There are thus currently 2 sets (4 in total) of cars entered into F1 proposing to or already racing with the name Lotus incorporated in their name.
16. The major issue therefore is whether or not 2 sets of Lotus cars can legitimately race in F1 under a name incorporating Lotus in some way and use the Lotus Roundel. The organisers of F1 do not apparently regard it as a problem.

PROCEDURAL MATTERS

17. The Claim Form in this matter was issued on 5th October 2010. The Claimants issued an application for summary judgment of part of the claims and that came before me on 24th January 2011. Then I directed that there be a speedy trial of all issues on liability. The urgency was plain enough to see. If the continued presence of 2 sets of Lotus cars in Formula 1 was contrary to one or other party's rights it was clearly in the interest of the parties and the public as a whole that it should be determined as soon as possible and should not be allowed to sit throughout the Formula 1 season. That season was due to start in March in Bahrain but for reasons unconnected to motor racing the race was cancelled. Later races have taken place. However the other alternative was that the Claimants contemplated a trial before the 2012 season. That would mean there would at least be a full season (depending on the result of this case) where one team might be racing when it ought not to be.
18. The timetable was tight and the parties are to be commended both as regards their witnesses and more particularly their lawyers in the way in which the case was put together before the trial and the way in which the trial proceeded. The case finished within the time limits of 10 days and comfortably so. I have been greatly assisted by the written and oral submissions from both sides and that too has contributed greatly to enable me to deliver a judgment within the time that I have been able to do.

BACKGROUND

19. The background to the case concerns the desire of both parties to exploit an association with Lotus and the late Colin Chapman. To understand the dispute it is necessary to delve in to the historic past in relation to Lotus racing cars and Lotus sports cars. That also necessarily involves an examination of the role and importance of the founder behind all of these activities, the late Colin Chapman.
20. Both sides in effect claim to succeed to the heritage. GL's claim is to succeed to the entirety of the heritage both in the manufacture and sale of road cars and the manufacture and the entry of cars in to Formula 1. The Defendants' claim is limited in reality to entry into Formula 1 in respect of which they claim exclusivity under the name Team Lotus. It is not disputed by the Defendants in reality that they accept at the best on their case that there might be 2 teams racing in F1 under a name which includes the words "**Lotus**". They claim to be entitled to race under the name Team Lotus and to use the Lotus Roundel with the words "Team Lotus" incorporated in it.
21. Mr Morpuss QC who with Miss Patricia Edwards appears for the Defendants accepts that the Defendants' Counterclaim is merely a tit for tat claim. If there is confusion as alleged by the Claimants (which they deny) the conclusion they submit should lead to the cancellation of the Claimants' Marks not theirs. Hence the Counterclaim.

THE EVIDENCE

22. The evidence adduced by the parties to support their respective stances on the historical development fell in to three categories. By far the most important in my view was the contemporary documentation. This is usually the best tool in resolving disputes. It usually sets out (unless the writers are being particularly clever) what people were thinking, saying and believing at the time without "**writing for posterity**" on the basis

of what they then said would be relevant in subsequent litigation, unlike (say) diaries by politicians.

23. Second I had some limited evidence from those who were there at the time in question. People who fell in to that category were Mr Monk, Mr Becker and Mr Bell (for the Claimants); Mr Wright, Mr Peel and Mr Waters for the Defendants. Of those witnesses the one that was most helpful for me was the evidence of Mr Monk. I will elaborate on the analysis of this evidence further in this judgment.
24. The third category was that which consisted of writers and journalists. In that category were Mr Nye, Mr Blunsden for the Claimants; Mr Ludvigsen and Mr Tremayne for the Defendants.
25. I do not overlook the other witness evidence called or agreed dealing with matters other than the history save perhaps of that of Mr Mosley whose evidence attempted to deal with both historical and current matters.
26. In regard to the journalistic evidence I have been provided with a copy of the book written by Mr Ludvigsen, one written by William Taylor (“The Complete History of Lotus Cars 50th Anniversary Special”) and the authorised biography of Colin Chapman by Gerard (“Jabby”) Crombac. In addition I had extracts from a large number of other journals, press cuttings and other books. I found this evidence of limited use. As will be seen from the analysis both sides’ journalists expressed strong views in support of their own beliefs. There is always a difficulty in dealing with mythical figures such as Colin Chapman. Truths become elided with “*urban myths*”. Stories get better with telling and distorted. What appears in the books is often a distillation of fact, myth and conjecture. It is difficult to draw any clear conclusions from it and whilst it was interesting to read it does not in my view help me with the overall picture. I therefore treated the evidence of these witnesses with caution and was only generally prepared to use them if they supported something else.

A BRIEF FACTUAL SURVEY

27. I will set out what is a brief factual survey of the history of the development of Lotus in what I hope are uncontroversial terms. I have identified a number of key events which I shall examine in more detail further in this judgment.
28. Mr Chapman started racing cars in 1947. He built cars for Trials initially. They were mostly single seat racing cars. Some were sold in a kit form (to save purchase tax apparently) to third parties. They raced them but not under the Lotus name. These owners were called “*Privateers*” (the analogy should not be pressed too far). He apparently chose the name Lotus from the start as he called his wife to be “*Lotus Blossom*”. The cars were initially raced in Trials. Thereafter they were raced initially in the 1950s in Formula 2 and some were raced in sports car classes. Significantly he raced under the name “*Team Lotus*” for at least 10 years before GL was even in existence.
29. A change occurred with the manufacture of type 14 in 1957. This was the first on road 2-seater sports car and was sold under the name Elite. In so far as there is any clear evidence I think it is fair to say that his first love was racing. He tended to regard road cars as being an adjunct to his love of racing. By that I mean he tended to view the

road manufacturing side as a method of making money to fund the racing. That is not to say that he did not involve himself in the manufacture of road cars; he was clearly involved in the production of the Elite and later the Elan and the Esprit.

30. In the late 1950s and early 1960s corporate entities were created and ultimately it is this creation of different corporate entities which has led to the present dispute. Lotus Cars Ltd was created on 12th June 1958. In February 1961 Team Lotus Ltd (“TLL”) (company No. 683396) was incorporated. However it is clear that before that incorporation when the Privateers entered their cars they entered in whatever name they chose, Lotus cars were entered under the title “**Team Lotus**” (Nye paragraph 24). Lotus Cars Ltd changed its name to Group Lotus Car Company Ltd and later to Group Lotus Plc and is the First Claimant.
31. In 1961 Colin Chapman entered F1 for the first time. He did it through the newly created TLL until 16th February 1982 until it was struck off and dissolved for failure to submit returns. A new company Team Lotus International Ltd (“TLIL”) (company No. 1229833) was incorporated. It appears to have taken over the F1 operations seamlessly as the GL board minutes show. It is still in existence. At all material times the majority of the shares were held by the Chapman family.
32. Apparently the major reason for this arose from a number of high profile accidents sometime fatal which often exposed the racing car owners and drivers to financial liability and sometimes the threat of imprisonment. The separation therefore was to ring fence the other assets from exposure by having the racing car companies without significant assets to enter races rather than being used for the purpose of car manufacturing. A second reason for the diversification is as I have set out above, namely Mr Chapman’s first passion was racing not building.
33. This is significant in three respects. First GL can claim to be a continuous manufacturer of Lotus Sports Cars under the name “**Lotus**” from 1958 until the present day. The ownership of GL has changed over the years but it remains the same manufacturer. Second GL was clearly created as the vehicle for the manufacture and sale of the Sports Cars starting with the Elite. Third racing still continued under the name Team Lotus but it changed in 1960 primarily to racing in F1. That racing was done through TLL and TLIL until 1994.
34. TLL following its incorporation on 14th February 1961 appears to have carried on the activity which Colin Chapman formerly did under the name Team Lotus but then separated the operation into TLL for the reasons I have set out above. As at April 1967 Hazel Chapman had 3,850 shares, Mr Chapman had 25 and the rest were distributed between Fred Bushell, John Standing, Peter Kirwan-Taylor and Lotus Engineering Co Ltd. On 25th April 1967 all the TLL shares were acquired by Group Lotus. Thus from that date (for a short period) both the car manufacturing and the car racing arms were under one umbrella. The shareholders of TLL received the same number of shares in GL. As at 31st October 1982 shortly before Colin Chapman’s death he held 70 of the 98 issued shares his wife Hazel had 13 and Fred Bushell held 10. I assume his shares were acquired after his death.
35. Thus the name Team Lotus came into being before either GL or TLL was in existence but became deliberately associated exclusively with TLL after 1961.

36. Before 2011 it is important to appreciate that GL *never* raced in F1 directly in its own right. At best it can say that it raced through **TLL and TLIL** from 1960 to 1994 and **through 1MRT** (it's Licensee) in 2010. There has never been a car racing in F1 under the name Group Lotus or just Lotus.

SHARE OFFER IN 1968

37. Colin Chapman in 1968 was persuaded by the allure of selling a large number of shares for a significant amount of money into floating one of his companies. The company which was floated was the car manufacturing company. I have been provided with a copy of the share offer dated 3rd October 1968. There are a number of significant matters in that document. First in the Chairman's letter (i.e. Colin Chapman) it was stated that the motor racing activity in view of the risks has been excluded from the operations of Group. This was done under a contract a copy of which has not survived. It was stated that motor racing ***"continues to be carried on by Team Lotus Ltd with which the Group has no direct financial association but from which it derives substantial benefits from publicity and design information"***.
38. Similarly under "Material Contracts" (item (2)) there is reference to the sale of the shares in TLL to GL by its shareholders as above in consideration of the issue of shares in GL. It also recorded a sale on 26th September 1968 between GL and Mr & Mrs Chapman, Mr Bushell, Mr Standing and Mr Kirwan-Taylor whereby they acquired back for £5,000 the entire share capital in TLL. Accordingly apart from a short period between April 1967 and September 1968 TLL was separate from GL and was never its subsidiary.
39. Given the importance that Colin Chapman attached to racing as opposed to manufacture it would need clear evidence in my view to come to a conclusion that despite this clearly defined and deliberate separation TLL acquired no rights at all to race in F1 under the name Team Lotus. That is GL's case nevertheless.
40. Prior to the flotation that was not of significance because Colin Chapman controlled both arms. It is quite clear that no consideration was made before 1968 of the inter-relation between the activities of the various companies in legal terms. This is shown by the fact that GL was the registered holder of all of the relevant marks including (significantly) Team Lotus 891,303 in class 12 "Land Vehicles". Thus GL had the registration for TLL. In my view there was no legal significance to this because nobody considered it at the time when Colin Chapman controlled both companies. If there was any reason for it, it is because Colin Chapman according to the evidence usually tried to have GL pay for as much as possible. This practice continued after flotation although it was more difficult because Colin Chapman had to account for GL's dealings to the shareholders 48% of which represented outsiders. For example Colin Chapman had qualified as a pilot in the RAF and liked flying (although some of his passengers did not necessarily enjoy it). GL had at its peak I believe 4 aircraft and a helicopter. It paid for the operation of these but they were usually used almost entirely for TLL activities in particular when F1 racing took place around Europe flying to the various events including transportation of parts for the F1 cars. This was apparently not picked up on audit although there were grumbles about this benefit at shareholders meetings which Colin Chapman brushed aside. TLL never paid for this benefit. It also received direct financial support but this was addressed (see below).

RACING

41. Until the 2011 season GL had never directly raced in F1. It is important to appreciate that the entirety of its claim to be entitled to race under the name Lotus and to stop TLL from racing under Team Lotus is based on its claim that it has the goodwill and the Marks which gives it the sole rights in respect of F1 despite that lack of direct involvement in F1 activities both before and after the creation of GL. All racing was done under the name Team Lotus. It was not ascribed to any company formally until an agreement in 1985 (see below) although it was clearly for the reasons above intended to be run through TLL. If the F1 activity was to be regarded as a GL activity it would become exposed to precisely the potential claims which had led to the deliberate creation of TLL. Colin Chapman raced under that name from 1947 but there was no incorporation of a Team Lotus Company until 14th February 1961.
42. I note that for periods GL has raced sports cars. Equally there was racing under the name Team Lotus (before 1961) in Formula 2 and 3. TLL also raced several sports cars see for example the Type 62 which bore a passing resemblance to the Lotus Europa Sports Car but was raced as Gold Leaf Team Lotus by TLL. However these in my view are exceptions and nothing significant turns on them. In my judgment the real dispute between the parties is over the control of the rights to race in F1.
43. From 1961 all racing activities in F1 were done by TLL and TLIL under the name Team Lotus until 1994. Its ownership was separated in 1968 as I have said and that separation was deliberate. The Chapman family became the owners of the majority of the shares in TLL again in September 1968 together with some colleagues as minority shareholders.
44. With the flotation of GL Colin Chapman remained chairman and retained 52% of the shares, nevertheless a significant change had thereby occurred. He lost his independence as the chairman and in effect the sole ownership of a private company. He was still the majority shareholder but the public had a significant interest and that changed things. For the first time he was accountable to outsiders.
45. Jabby Crombac in his authorised biography of Colin Chapman quotes Hazel Chapman as saying this (page 357):-

“With the decision in 1968 that Lotus should become a public company, Colin Chapman became a very wealthy man, but with the benefit of hindsight, Hazel feels that perhaps this was not such a wise move after all. “The pressure”, she says, “was on him all the time. You are manipulated by the Stock Exchange and there is so much going on which you know nothing about. Colin couldn’t stand that side of it. He kept the maximum number of shares for himself and his family that he was allowed, because he wanted to remain the boss but, nevertheless, as far as he was concerned he had become only a puppet. We gave much of it to stockbrokers to invest in a portfolio of shares but they lost most of that for us, so in the end floating the company was nearly all disadvantages”.

Perhaps this is why Chapman moved his own offices, and the racing team, to Ketteringham Hall where he could insulate himself from the factory. "He wanted to be a one man band again", explained Hazel.... He had the Orangery converted into a large drawing office and Team Lotus was fully established in the same building....If he had lived, and if Lotus Cars had been forced into liquidation, as was a distinct possibility at the time of his death, it is pretty obvious that he would have stayed on at Ketteringham Hall, where he would have kept himself busy with his racing cars and his microlight aircraft."

46. It is nevertheless GL's case that had that occurred a liquidator of GL could have stopped Colin Chapman from racing under the name Team Lotus something which he had done since 1947, because TLL had no right to use that name. I find it difficult to believe given the sentiments expressed by Hazel Chapman above, in particular that he would have intended such a possibility to have occurred.

THE ATTRACTION

47. In motor racing Team Lotus is an iconic brand second only to Ferrari. That is despite Team Lotus not having raced in F1 for 15 years and not having won a race since 1987. In the 1960s and the 1970s Team Lotus won F1 Constructors Championships on seven occasions. Its drivers' legendary figures included Graham Hill, Jim Clark, Jochen Rindt, Emerson Fittipaldi and Mario Andretti who together won F1 Drivers' Championships on six occasions. Jim Clark for Team Lotus also won the premier US event in US motoring, the Indianapolis 500. In later years in the 1980s and 1990s Team Lotus had more limited success albeit still with drivers who became household names including Nigel Mansell, Ayrton Senna, Nelson Piquet and Mika Hakkinen. Team Lotus' last Grand Prix wins were by Senna in 1987 i.e. 24 years ago.
48. Despite that passage of time there is still a great allure to Team Lotus in F1. Of particular attraction were the JPS Lotus Cars and their distinctive colours. It was so popular that the colours were copied in sports cars as specials, see for example the Lotus Europa twin cam Special (1971) decked out in the JPS colours of black and gold. The association with successful racing cars was always regarded as of being beneficial to GL. This has continued down to the present day. Advertising material has regularly been issued by GL over the years incorporating racing cars in it. On motor show displays for Lotus Sports Cars, F1 Team Lotus cars regularly made an appearance and there are clear publicity benefits from being associated with being a successful F1 car. However it is to be noted that the benefits are to being associated with a *successful* car. GL clearly cooled to this association in the 1980s and 1990s (see below) when Team Lotus was less successful. It also sought to distance itself from the De-Lorean scandal in so far as that was possible by edging out those associated with it such as Fred Bushell.
49. It is difficult to see any corresponding benefits accruing to TLL in publicity terms from being associated with GL. However I accept that initially there was cross-over of technical assistance and staff. This seemed to me to dilute when the demands of F1 cars became far more complex. The demands of F1 racing cars clearly out stripped from a technical point of view the demands of road cars. Conversely safety and other

requirements in road cars meant there was less interest in F1 cars from a sports car manufacture point of view.

50. Nevertheless there is and remains an allure to the Lotus name in F1 racing. The issue in this case is whether that allure is to Lotus and GL or whether it is to Team Lotus and thus to TLL/TLIL or both GL and TLL. There are consequential issues as to whether TLL/TLIL's rights have been lost or are void for various reasons.
51. All the witnesses called save one support the view that there is still goodwill attached to Team Lotus in F1. The exception is Mr Nye who expressed the view that Team Lotus was dead after 15 years of not racing and was consigned to history. That is contrasted with the evidence of Mr Ludvigsen, Max Mosley and David Tremayne. The real issue is whether or not F1 racing under Team Lotus is part of the goodwill attached to GL or has an independent free standing goodwill vested in TL.

WHAT'S IN A NAME – GROUP LOTUS

52. It is quite clear that Group Lotus has established a distinctive reputation as being a niche manufacturer of road going sports cars under the name Lotus. A number of Lotus cars led to that reputation starting with the Type 7 first produced in 1957 and still apparently in production today as the Caterham 7. Thereafter there was the Lotus Elan famous in the 1960s as the car driven by Diana Rigg in the Avengers, the Lotus Europa driven by George Best in the 1960s and the Lotus Esprit being associated with Roger Moore playing James Bond (although I do not believe there was actually a submersible version).
53. The sports cars clearly had a different allure and were intended so to do. Thus Colin Chapman was apparently quoted as saying this:-

“We sometimes get the feeling that because we are so prominent in racing, the general public still feel that Lotuses are really racing cars. In order to expand our market segment we have got to be able to sell cars to professional men- doctors, dentists, people like that – who do not want a car which they feel has too sporting a background. They feel it wouldn't be a sensible car for their wife to drive, it wouldn't be a sensible car to drive in town and so on.

We are quite sure that we are putting off a potentially large sector of customers because they feel that a Lotus is just a racing car that you can drive on the road. I think there will become a time when we will have to stop racing just to convince people that we no longer build racing cars. (Colin Chapman Inside the Innovator (Carl Ludvigsen at page 359-360)).”

54. The reference to women car drivers might not be quite so apposite in 2011 and is difficult to square with the Lotus Elan and Diana Rigg.

COLIN CHAPMAN

55. Colin Chapman's persona strides like a colossus over the entirety of the issue. He represented what is probably in many ways a dying breed that of the dynamic powerful leader. In addition to this he had very great skills as an engineer. Like many powerful persons he had a "difficult" personality but could easily be witty and charming as required. His personality in business operations appeared to be summarised best in chapter nine of Ludvigsen's book "Man Managing". Cash appears to have been a regular problem. The racing aspect clearly was a drain and had difficulties making money. It obtained some financial support from GL over the years but that was nowhere near enough to finance the Team Lotus operation. I have already alluded to the way in which the trade mark registrations were funded by GL and the aircraft operations were similarly funded. GL provided £75,000 as a minimum each year (there were clearly other sums that appeared in the accounts after the flotation). The outlay was described as being beneficial to GL in the terms of the generation of good publicity by TL through its successful racing operation. An illuminating quote again is to be found in Ludvigsen's book at page 283-284:

"An indication of Chapman's resourcefulness came from the early proliferation of his operating companies. There were a lot of them Lotus Engineering, Lotus Components and Racing Engines Ltd. The reason there were so many companies was that the buyer of a kit car could buy the Chassis from one company the engine and gear box from others so he could legitimately avoid purchase tax by buying components from different sources.

The multiple companies posed puzzles on occasions. Driver Trevor Taylor recalled filling up his racing car transporter sign painted "Team Lotus" at a Cheshunt petrol station. Just as we were filling up he said a voice came out shouting stop stop. We wondered what was going on. You can't fill up here not as Team Lotus anyhow. I said what about Lotus Cars? No. was the reply. Lotus Components? I said. No, no again. I was trying to think of another Lotus company what about Lotus Developments? I said. I'll just check – yes that's all right. Fill it with that account. Lotus had very little money then and what they had was made to go round best it could".

56. This meant that for example Colin Chapman (ibid page 284) said to Fred Bushell (the finance director) **"Fred your job is just to get the money in so I can spend it"**. But there was never enough money there, so they had to do a sponsorship deal as early as possible. Sponsorship got more and more difficult to come by, as it was realised by sponsors like Camel that their money was paying off the previous years' debts. GL's financial contribution became less and less significant as the costs of running an F1 team escalated.
57. Through the various companies Colin Chapman exercised control. Ludvigsen in his book (page 296) set out the position of the various companies as explained to him by Colin Chapman in 1965. He refers to TLL and said this:-

“Develops and designs racing cars and operates or controls various teams which race from the factory or represent the mark on our behalf.”

After the move to Hethel [in Norfolk] 3 more companies were added..... Each company had an executive director. In only one, Team Lotus, did Chapman hold this post. After little more than a decade in business he successfully devolved responsibility to trusted colleagues with former Ford man Denise Austin heading Lotus Cars. All were under the umbrella of Group Lotus Car Companies Ltd, where Chapman, Bushell and Kirwan-Taylor were the only directors. Although cosmetically disguised a dictatorship was still in effect”.

58. I was unimpressed with Mr Ludvigsen’s attempts to suggest that this paragraph showed the separation of TLL. It does exactly the opposite. As a matter of legal principle of course as I have set out above TLL was not part of the Group save for a short period and was certainly not part of the Group in 1965 when Colin Chapman was talking. This shows however accumulatively that up until 1968 Colin Chapman controlled all operations and all cash and manipulated them within all of the companies which he controlled from time to time as required. I do not believe and so find that there was any detailed analysis of inter-company rights and obligations before 1968.

THE ROUNDDEL

59. A significant feature in the case is what I called the Lotus Roundel. The device called the Lotus Roundel has featured in virtually every Lotus car both racing and sports from the inception. It usually comprises of a solid yellow circle inset with a solid green triangle with the four interlocking initials ACBC (Colin Chapman’s initials). Over time the appearance slightly changed. Sometimes it was just the interlocking initials. Other times it had the word Lotus under it and on other occasions it had the words Team Lotus. I have only been able to discern one car where the Roundel does not feature namely the 1971 56B which according to Karl Ludvigsen (page 79) was entered into the Grand Prix at Monza by “Worldwide Racing” to avoid attracting the Italian Authorities. In other races the car was entered with the description Gold Leaf Team Lotus on the side and with the Roundel on it (see the differing pictures on pages 120 and 121 of the Lotus Book). That book of course features a form of the Roundel on its dust cover. Equally the Roundel can be seen on the sports cars see for example the Elite (Type 75), the Europa (Type 65) and the Elan (Type 26R). All the cars in the 1950s bore the Roundel as well. Regularly the Roundel was fixed without any words. However Lotus does appear (especially) on the later sports cars and Team Lotus appears on the later racing cars see Type 102 for example. The Roundel was also missing from some versions of the JPS Special.
60. GL registered the Roundel including the word Lotus as a trade mark (No. 942138). The filing date was 3rd May 1969 in class specification 6, 12, 16, 20, 24 and 26. It registered a similar Roundel (No. 53926). This filing date was 1st April 1996 under classes 9, 12, 16, 28, 37 and 42. It also registered seven further registrations of the mark Team Lotus. All seven were made on 26th February 1966. These marks were surrendered pursuant to the 1985 Agreement (see below).

61. The Roundels were dealt with in the 1985 Agreement. Under clause 6.2 GL acknowledged TLL's right to continue to use the names "Team Lotus" and "Club Team Lotus" in relation to its business. I will deal with this in more detail when I analyse the 1985 Agreement. It also granted TLIL the right to use the ACBC monogram with or without the words "Team Lotus". Examples were provided in the 6th Schedule. One has the Roundel with the interlocking letters and the other has the Roundel with interlocking letters and Team Lotus. Reciprocally TLIL acknowledged the right of GL to continue to use the names Group Lotus and Lotus and the Lotus logo as set out in the 7th Schedule. That shows the Roundel with the addition of the word Lotus. Although there were provisions dealing with the cancellation of trade mark registrations in the name of GL and an agreement to replacement with registrations in the name of TLIL that does not appear to have applied to the Roundel.
62. On 9th April 2002 the Second Defendant ("TLVL") applied to register a trade mark under the name Team Lotus and was granted that registration on 20th May 2005. It also in 2010 applied to register the mark in respect of the Lotus Roundel incorporating the words Team Lotus. Earlier it had filed registrations on 15th March 1988 to register an identical Roundel incorporating the words Team Lotus. That was registered (No. 1338435).
63. Thus at the commencement of the proceedings GL has a Roundel registered under the name Lotus as a trade mark and the Second Defendant had a Roundel incorporating the words Team Lotus registered as a trade mark. I have appended copies (black and white and colour) of the TLL Roundel and the GL Roundel as set out in Schedules 6 and 7 to the 1985 Agreement to this judgment

KEY EVENTS

64. In my view there are a number of key events along the timeline of the life of Lotus sports cars and Lotus racing cars which are of vital significance in this case. They are as follows:-
- 1) The 1968 flotation.
 - 2) The death of Colin Chapman in December 1982.
 - 3) The 1985 Agreement.
 - 4) The associated Agreements dated 30th January 1991 whereby Infiniti Developments acquired the business of TLIL and the benefits and burdens under the 1985 Agreement.
 - 5) The License Agreement between Team Lotus Ltd (aka Infiniti) and TLIL dated 24th February 1994.
 - 6) Sale and Purchase Agreement between TLIL (In administration) and Investfirm Ltd dated 27th October 1994.
 - 7) Deed of Assignment of the same date between the same parties.
 - 8) Deed of Assignment between TLIL (then Team Lotus Holdings Ltd) and Paintglossy dated 9th January 1995.

- 9) Trade Mark License Agreement between GL and 1MRT dated 21st December 2009.

65. I will now go through those key events and the relevant documents in turn.

THE 1968 FLOTATION

66. I have already set out the details of the 1968 flotation above. There was an Agreement between GL and TLL dated 26th September 1968. It has not survived. Under clause 30.2 of the 1985 Agreement it was provided that it should terminate immediately the 1985 Agreement became unconditional with neither side having a claim against the other.
67. It is difficult to discern its terms fully. The GL board meeting held on 19th May 1970 referred to arrangements under the 1968 Agreement. It related to cash sums that were provided by GL to TLL (then £20,000). It was on the basis that GL benefited from being associated with the racing activities of TLL. It is clear that by that time TLL had an additional indebtedness of £124,149 but the bulk had been repaid.
68. Over the years that was increased to £75,000 (board meeting 17th May 1975). By 26th September 1980 the inter-company indebtedness had increased to £114,000 (in addition to the £75,000 charge). By December 1982 GL's position was difficult. It had the adverse impact of the De-Lorean issues by that time. Colin Chapman had died on 16th December 1982 and at the board meeting on 29th December 1982 it was clear that its financial viability was under question. It had an extensive overdraft facility from American Express. That company appeared to be going through its own particular difficulties at that time. The structure of the board meeting is significant with 4 directors and a large number of financial advisors in attendance. There was express reference to concern about dealings between GL and non associated companies owned by Colin Chapman. Mr Kirwan-Taylor advised that in the wake of the 1955 Le Mans accident, car operations (i.e. GL's activities) should be separated from the racing activities (i.e. that activity carried on by TLL from its incorporation in 1961).
69. The continuing operational payment of £75,000 was a small proportion of the overall costs of racing cars in F1 but secured substantial benefits in publicity terms to GL being associated with a successful F1 racing team. It also secured access to technological advances which might be of assistance in sports car manufacture. I accept however the evidence of both sides which showed benefits accruing to both GL and TLL from an informal association both from a technological and administrative point of view.
70. The same stance was taken at the AGM the next day by the next board meeting (27th January 1983). Item 12 was a discussion of GL's relationship with TLIL (by that time) in the light of a note which was circulated. The note has not apparently survived. However the general decision of the board appears to be that TLIL's activities were advantageous to GL and the concept of integration suggested by certain possible investors was noted. However American Express were clearly reluctant to see monies made available to GL for its funding to be applied to possible funds for TLIL. By 2nd January 1982 TLIL was indebted to GL in the sum of £153,775 (E1.138).

71. There is no evidence to suggest that the 1968 Agreement addressed the question of intellectual property rights. The Defendants invite me to infer that but in my view there is nothing that can enable me to infer such a conclusion. The only reference appears to be in respect of financial support.
72. Nevertheless the documents do show a deliberate separation between GL and TLL both as regards the flotation and the subsequent financial arrangements.

THE 1985 AGREEMENT

73. The death of Colin Chapman three years earlier marked a watershed and a tragedy for the Chapman family and probably Lotus Cars.
74. I should set the background as to the 1985 Agreement. GL's previously successful trading had deteriorated. First there was undoubtedly the impact of the death of Colin Chapman in 1982. Second there was the adverse impact of the De-Lorean scandal. By the time of the 1985 Agreement the shareholding of GL was much changed. A consortium led by the British Car Auction Group Plc and Toyota Motor Corporation effectively controlled GL from their acquisition of 2,900,000 and 3,000,000 shares respectively. Further as Mr Monk said in his evidence for the Claimants he discerned afterwards that British Car Auctions were "fattening up" GL for a sale. Part of that exercise involved tidying up the relationship with "Team Lotus". Mr Monk was GL's company secretary from 1978 to 1982 and from 1984 to 1994. In addition between 1978 and 1982 he acted as legal assistant to the financial director of GL.
75. He gave evidence about the negotiations leading to the 1985 Agreement. This is not evidence to aid the construction although it is plainly part of the factual matrix which helps me understand what the parties were thinking and doing in 1985. In my view the evidence therefore is plainly well within the principles enunciated in *Investors Compensation Scheme Ltd v West Bromwich Building Society (no 1)* [1998] 1 WLR 896 as explained in *Chartbrook Ltd & anr v Persimmon Homes Ltd & anr* [2009] 1 AC 1101. In my view the submissions of GL in relation to the 1985 Agreement are so improbable from a commercial point of view that it is useful to look at the background to see what the parties thought they were doing. It is also of great assistance to me. The 1985 Agreement in my view represents the strongest piece of evidence to unlock the background to the operations of GL and TLIL especially in relation to goodwill and trade marks. There is very little other contemporary evidence to help me. In addition Mr Monk was there at the time of the 1985 Agreement came into being. His evidence was therefore also extremely useful.
76. It is clear that the consortium led by British Car Auctions wanted to maintain a relationship with TLIL because at that stage the F1 operation was still successful although not as successful as in the past. GL had its financial problems arising out of tax assessments levied as a result of the De-Lorean scandal and that is essentially I suspect why the Chapman family lost control. The purpose of the 1985 Agreement therefore was to set out the defined relationship between GL and TLIL. It must not be forgotten however that whilst GL wanted to retain the benefits of being associated with TLIL it would nevertheless still be concerned to avoid being directly involved with TLIL because of the risk consequences of F1 racing. That was the guiding light from 1961 and did not in my view diminish in 1985. This has a significant adverse impact on GL's case in my opinion.

77. In addition to that strategy GL wanted Mr Bushell to be out of the GL picture because of his association with the De-Lorean scandal. TLIL offered that exit strategy and Mr Bushell negotiated hard to obtain the maximum position for TLIL under the 1985 Agreement.
78. The negotiations were conducted on behalf of GL by Mr Wickins the chairman of the British Car Auctions and Mr Curtis and Mr Kimberly together with Stuart Mayes of Boulton Wade Tennant trade mark attorneys. The negotiations on behalf of TLIL were conducted by Mr Bushell assisted by lawyers, he having resigned as a director from GL to focus on TLIL activities.
79. Significantly the 1985 Agreement expressly deals with trade marks by requiring GL to surrender the trade marks it had under the name Team Lotus and to permit TLIL to re-register those same trade marks. This arose, Mr Monk said, because Mr Bushell was most insistent the marks be transferred to TLIL. He was offered a license to use them in the negotiations but rejected that.
80. Mr Monk's evidence shows what to my mind is obvious that whilst there was a separation of the structures it was envisaged that there would continue to be a close relationship between GL and TLIL under the terms of the 1985 Agreement. In many ways this merely regulated the informality that existed before. There were clearly crossovers of staff in administration and technical know how. The evidence of both parties does not materially differ in my view. Whilst Colin Chapman was alive there was no need to address those activities in a strictly legal sense although he had had his wings clipped by the flotation in 1968. After his death and after the Chapman family ceased to have the majority shareholding in GL the position changed somewhat. Ultimately this led to the 1985 Agreement. After it was concluded in January 1986 GL's shareholders sold out to General Motors. Between January 1986 and 1996 various other organisations acquired the shares including Bugatti but ultimately in 1996 the shareholding was acquired by Proton its current shareholders. It of course is a well known Malaysian car manufacturer.
81. The 1985 Agreement came into force on 17th May 1985. Before I consider its terms in detail it is instructive in my view to look at the chairman's letter (i.e. Mr Wickins) dated 29th May 1985 addressed to the shareholders about the Agreement. By the time of writing the letter the 1985 Agreement was agreed but was conditional upon shareholder approval at a meeting convened for 21st June 1985.
82. The background to the Agreement is explained. The first purpose of the Agreement is stated to be the desire of the directors of both companies to:

***“demarcate more clearly the businesses of Group and of Team Lotus (which is actively involved in the construction and promotion of racing vehicles and racing activities). That is the purpose of the Agreement. The companies were founded by the late ACB Chapman the former chairman of the company, although they have operated as separate and independent businesses since 1968 when the company shares were introduced to the Official List of The Stock Exchange.*”**

As a result of the close association both historically and geographically between these and other companies formed by Mr Chapman, an informal exchange of technical expertise and use of trade marks (subject to the demands of confidentiality when the companies have been acting for third parties) has existed between your Company, Team Lotus and Technocraft for their mutual benefit. In addition your Company has joined in sponsoring the competitive racing activities of Team Lotus because of the benefits derived from such an association generally....”

83. The letter then went on to summarise various terms of the 1985 Agreement.
84. It is important to appreciate that as at the date of this Agreement TLL and TLIL had raced in F1 from 1961 under the name Team Lotus with the agreement of GL tacit or otherwise. Prior to the death of Colin Chapman this was not a problem for the reasons I have set out above. After 1982 that understanding carried on informally until the 1985 Agreement. TLL had adopted the Team Lotus racing description from that used by Colin Chapman himself in the 1950s. As I have said above GL was incorporated in 1958, TLL in 1961. GL was plainly incorporated to be the manufacturing and marketing operation in relation to the new launch of the 2-seater sports cars. For the Claimants to succeed in claiming the rights not only to Lotus and Lotus Cars but also the use of the name Team Lotus it seems to me they must explain how given that history of use they can assert the right to control it. In my view they fail so to do. Equally their arguments in my view are completely inconsistent with the terms of the 1985 Agreement as I shall show below. I will deal with the other submissions they make in relation to the nature and extent of the goodwill when I deal with goodwill separately in this judgment below.
85. I will therefore go through the 1985 Agreement highlighting the clauses which I think are relevant. As it is of crucial significance I also append a copy of it to this judgment.
86. The Agreement is between GL and TLIL. The recitals set out that GL was engaged in the business of manufacturing and marketing motor vehicles other than single seat racing vehicles and other ancillary matters. Recital (B) set out that TLIL was engaged in the business of making racing vehicles and entering them in motor racing events and other ancillary activities. Recital (C) acknowledged that both businesses originated from the work of the late Colin Chapman *“but have been run as separate businesses since at least 1968”*. I interpellate to observe that in my view that is factually correct and that it was done so deliberately. The recital undermines GL’s position that from 1968 TLIL had no rights to use even the name Team Lotus; a submission which is in my view so improbable that I reject it. As I have said I cannot believe that from the separation in 1968 Colin Chapman not merely restricted his control of GL because of its public persona but also clothed GL with complete control over TLIL. From his point of view that does not make commercial sense and there is no evidence to show in my view that occurred. Second it also goes against as I have said the purpose of the separation. If GL effectively maintained control over TLIL in the way it now submits it makes it difficult if not impossible to suggest it was nevertheless divorced for the purposes of liability arising out of fatal racing accidents.

87. Recital (D) acknowledged that there had been close co-operation and that it was the wish of all that the Agreement should define the nature of the relationship.
88. Clause 3 set out “**Objectives and Benefits**”. The first (clause 3.1) was the desire of GL to obtain the benefit of know how developed by TLIL which might assist it in the manufacture of its own motor vehicles and also to obtain the benefit of being associated with the racing activities of TLIL as an aid to the promotion and marketing of its own motor vehicles. TLIL on the other hand (clause 3.2) stated that it desired to obtain the benefit of know how originated and developed by GL which might assist it in the manufacture of its own racing vehicles and the selling of its technical services. It also was desirous of obtaining financial support.
89. Clause 5 gives GL the right to assign the benefit but not the burden of the agreement to Lotus Cars or any other subsidiary of GL but subject to a number of provisos involving giving notice to TLIL, delivering a certified copy of the assignment together with an undertaking by the assignee under seal to the reasonable satisfaction of TLIL whereby the assignee will be bound to TLL not to do or fail to do anything in relation to the subject matter of the 1985 Agreement which would if done by GL be a breach.
90. Those obligations are clear in the sense that it is the only way in which by a fresh document that an assignee of the benefit of any agreement becomes also liable to the burden. If it covenants under seal of course no further consideration is required see *Cannon v Hartley [1949] Ch 213*.
91. Probably the most important provision is 6.2 which provides:-
- “[GL] hereby acknowledges the right of [TLIL] to continue to use the names of “Team Lotus” and “Club Team Lotus” in relation to its business and the right of Team Lotus to use the [Lotus Roundel], with or without the words “Team Lotus” (examples of which are contained in the 6th Schedule hereto) in relation to its business and Team Lotus acknowledges the right of [GL] to continue to use the names “Group Lotus” and “Lotus” and [the Roundel] (a representation of which appears in 7th Schedule in relation to its business.”***
92. There are provisos to that clause which also require consideration.
93. Regrettably but perhaps understandably the 1985 Agreement does not explain what the actual respective rights of TLIL and GL being acknowledged are and are stated to be being capable of continuing. GL’s case before me is that TLIL had no existing rights at that time. That seems to me to be extremely improbable given the history that I have set out above. It also requires a rejection of a carefully drawn agreement entered into by GL and TLIL after friendly but clearly argued negotiations. Nor should it be forgotten that both sides had experienced business and IP Lawyers acting for them. I do not see that coterie would have entered into an agreement if there were no such existing rights that were acknowledged.
94. It is possible to consider two possible “rights” in relation to TLIL’s activities. It could be said that as part of the goodwill of Lotus Cars which exclusively belonged to GL it was licensed to exploit that goodwill by racing cars under the name of Team Lotus or

Club Team Lotus. The alternative argument is that GL had its own business as set out in recital (A), TLIL had its own separate business as set out in recital (B). Both were the creatures and creation of Colin Chapman but were separated out with the flotation in 1968. On that basis the 1985 Agreement acknowledged that there were two business entities which were associated but since 1968 each has had their own separate business (albeit associated with the other) and its own rights. The 1985 Agreement then acknowledged the rights. It seems to me to be obvious given the material which I referred to above that the uses were the respective uses of GL and TLIL in respect of their businesses. Thus GL had the goodwill associated with the manufacture and sale of sports cars and TLIL had a separate goodwill associated with the manufacture of racing cars. The latter was the inheritor of the racing car activity Team Lotus carried on since the 1950's initially by Colin Chapman and by TLL and it since 1961 until its demise in 1982.

95. By the same clause TLIL acknowledged GL's continued rights in relation to its business. This to my mind makes perfect common and commercial sense. The purpose of the 1985 Agreement as evidenced by Mr Monk and on its face is to put on a proper written footing what had actually gone on in the past. The fact that it had not been put on a proper footing before was entirely down to the control exercised by Colin Chapman over both companies. After his demise the control of GL was removed from the Chapman family with the share acquisitions in 1983 so that it became essential for all of the reasons set out above, for their respective rights to be crystallised and set out formally in a document. I accept that GL has other arguments to the effect even if that was the intention of the parties the 1985 Agreement could not legally achieve it. I will deal with those further in this judgment.
96. There are two important provisos to clause 6.2 as follows:-

“PROVIDED THAT if this Agreement shall have been terminated for any reason whatsoever GL subject to Clause 10.2 below shall be entitled but not otherwise to own or run or be associated with another motor racing team running “A” Class Racing vehicles which may have in its title and use the name “Lotus”. After termination of this Agreement for any reason whatsoever and subject to Clause 10.2 below GL shall be entitled to own or run or be associated with another racing team running Racing vehicles using the name “Lotus” PROVIDED THAT GL shall have given to [TLL] prior notice in writing of their proposal to use the name “Lotus” together with the actual name to be used in relation to such team but shall not in its name use the word “Lotus” on its own nor the word “Team” or any translation thereof in conjunction with the word “Lotus”. Team Lotus will ensure any use that it makes of the name “Lotus” will only be in the form “Team Lotus” with the words “Team” and “Lotus” having substantially equal prominence.”

97. The provisos seem to me to be reasonably clear. If the 1985 Agreement is terminated GL can enter car racing. It can do so under the name Lotus. However it cannot use the word Lotus alone and must use a word submitted to TLIL and cannot use the word Team. Under the 1985 Agreement there was a clear separation of activities. GL made

and sold sports cars. TLIL raced cars. Neither interfered in the other's operation. However the provisos clearly contemplated that after the Agreement ceased to be of effect GL could *enter for the first time* into racing. If it did so it could use the word Lotus but only in association with another word and that other word could not be Team.

98. It is significant that the clause does not attempt to stop GL from using the word Lotus other than in the racing car activity and it does not stop TLIL from using the words Team Lotus in the racing car activity. It goes further in that it prevents GL from using the word Team if it wants to enter the racing car activity. The termination provisions therefore contemplated the possibility of what is precisely happening now namely two Lotus cars simultaneously racing but with different names.
99. If as the Claimants submit at all times all rights including the right to the use of the word Team were vested in it the wording of this clause would be completely different. It would have provided that the limited permission that TLIL was given to use the name Team Lotus pursuant to the Agreement would have terminated and all rights would have reverted to GL. In fact the clause does exactly the opposite. It does not purport to stop any use by TLIL of Team Lotus and restricts GL if it chooses to come and compete with TLIL on the racetrack in the use of the name Lotus. By way of contrast during the currency of the Agreement TLIL's continued principal business is that of designing and manufacturing and operating a team of racing vehicles and during the Agreement's currency it agreed it would not be engaged in the manufacture, sale or consultancy of motor vehicles other than racing vehicles (clause 10.1). GL gave similar obligations as regards racing (clause 10.2).
100. Clause 6.3.2 required TLIL upon the transfer of its business to ensure that any transferee executed a deed expressed to be supplemental to the Agreement whereby it undertook to be bound by TLIL's obligations. There is nothing significant about that; it is a way of ensuring a new party becomes subject to the burdens of the Agreement. The rest of clause 6 addressed co-operation and marketing save at the end of 6.7 TLIL agreed that it should not be entitled to use the word "Lotus" without the addition of the word "Team" before it. Finally clause 6.8 provided that clauses 6.1, 6.2, 6.3, 6.6, and 6.7 remained in full force not withstanding the termination of the Agreement.
101. Thus the important restrictions on their respective rights to use the words Lotus and Team Lotus in 6.2 survive the termination of the Agreement. That demonstrates to me that those arrangements were to be permanent and in view of the restrictions reflected the fact that the parties acknowledged that TLIL had a protectable right in respect of the use of Team Lotus which GL agreed not to infringe. As I have said there are no provisions for transfer back to GL or termination of rights granted by GL; TLIL's rights are declared (although not identified) and are preserved after termination. For that to work sensibly it involves GL's rights being restricted in the sense that they could not stop TLIL using the phrase "Team Lotus" *before, during and after* the 1985 Agreement in respect of F1 racing. As Mr Silverleaf QC was at pains to point out to me on a number of occasions the 1985 Agreement did not (save in respect of cancellation and registration of trade marks) purport to create new rights. It does not make sense in my views for the existing rights of TLIL to be limited to a License. If it were it would have been terminated and the restrictions found in the provisos to clause 6.3 simply would not have come into existence.

102. As part of the continued association for the mutual benefit TLIL (clause 16.3) agreed to make racing cars available for the British Motor Show and the British Motor Fair together with appropriate personnel at a fee of the transport and insurance costs plus 10%. Similarly it agreed to make available for display all trophies won by TLIL (clause 17.6). These two provisions demonstrate the desire of the parties (particularly GL in reality) to exploit the association with a successful F1 racing team. However it does not in my view go beyond an association; the respective party's rights are clearly defined in the 1985 Agreement.
103. Clause 20 dealt with trade marks. It provided for the Team Lotus and Club Team Lotus and Lotus World trade marks currently registered in the name of GL to be cancelled. By clause 20.2 GL undertook not to use any rights under its remaining trade mark registrations worldwide *“against Team Lotus in relation to the business of Team Lotus as described in recital (B) above”*. By clause 20.3 GL agreed upon request to provide written consent to register worldwide the trade marks of Team Lotus referred to in clause 6.2 (i.e. those associated with the names “Team Lotus” and “Club Team Lotus”). By clause 20.4 TLIL agreed to provide a counter-part consent in respect of GL's request to register “Lotus” and “Group Lotus” and the Lotus logo set out in the 7th Schedule. By clause 20.5 GL agreed to restrict its existing trade mark registration by removal of A class racing vehicles from the specifications. It was provided by clause 20.8 that the provisions of this clause survived the termination of the Agreement. Once again this clause in my view demonstrates the clear separation of the ownership of the marks as between GL and TLIL. It is also clear that the separation was intended to be permanent i.e. the GL marks remained its and the Team Lotus marks became TLIL's. This reflected also the division between car manufacturing activities and racing activities. Whilst the provisos in clause 6.2 enabled GL on terms to compete in car racing after its termination no part of the Agreement attempted to undo the registration and the acknowledgment of the rights. It actually did the opposite by providing that the relevant provisions remained enforceable notwithstanding termination of the Agreement.
104. The duration of the Agreement was for an initial period until 31st December 1989 and termination thereafter on 12 months notice (clause 24). Clause 25 sets out termination for breach or insolvency.
105. The consequences of termination are set out in clause 26. The clause is more relevant as to what it does not say i.e. it does not purport to unscramble the trade mark cancellations and it purported to perpetuate a separation between car manufacturing and car racing and restricted GL in its use of Team Lotus even after the Agreement had terminated.
106. Finally clause 32 provided for the Agreement to be personal to the parties and not assignable as regards benefits without the previous written consent of the other party (save as provided in clause 5).
107. The initial period of the 1985 Agreement expired in 1989. There has never been intent by either party to invoke the termination procedures either in clause 24 or upon cause as set out in clause 25.
108. TLIL still exists but it had assigned its rights to Infiniti (below). Nobody has addressed the legal consequence of that but nobody asserts that the 1985 Agreement continues to

bind parties as regards its provisions that operated whilst it existed. Nevertheless the provisions which affected an acknowledgment of their rights and the permanent cancellation and re-registration of trade marks are still relevant because GL still exists and the Defendants contend that TLVL has succeeded to the business which acquired the permanent rights and the acknowledgment in the 1985 Agreement of the existing rights of TLIL. It cannot however enforce the provisions of the 1985 Agreement because it has never become a party thereto whether by novation or by executing the requisite deed as required. Equally GL for the same reasons cannot enforce the provisions of the 1985 Agreement against TLVL, not that it would wish to do so, because its stance is that TLVL absent an assignment with its agreement cannot become a party and any such assignment would be a nullity, see *Linden Gardens Trust v Lenestra Sludge Disposals Ltd [1994] 1 AC 85*. I accept that submission. However that does not stop TLIL and its successors disposing of its business as it wishes. The prohibition in clause 32 is in relation to the Agreement and no more.

109. Equally clause 6.3.2 whilst it puts an obligation under TLIL to ensure that a deed of adherence is obtained from a transferee, that is not phrased as prohibiting TLIL from disposing of its business in my opinion. It is a normal and commonsense arrangement requiring a successor to a business to enter into a direct relationship as otherwise positive obligations would not be enforceable. If there was to be a restriction on TLIL to transfer its business in my view it would have to be expressly set out like clause 32. I therefore reject the Claimants' submissions as to the effect of the 1985 Agreement and accept the Defendants' submissions.
110. They cannot rely upon its terms save insofar as it acknowledged the parties' existing rights and insofar as they establish that they are the successors to TLIL whose rights were acknowledged to exist. They do not seek to enforce the 1985 Agreement and plainly could not do so now for 2 reasons. First it is clearly a dead letter; the parties have acted as if it does not exist. Second Infiniti no longer exists and there is therefore (absent a resurrection from the residual beneficiary of struck off companies Her Majesty the Queen, the Duke of Lancaster or the Duke of Cornwall as the case may be) there is no-one who can actually assign the benefit of this Agreement to any of the Defendants now and no one is liable on it.
111. I therefore accept the Defendants' submission that the effect of the 1985 Agreement was that following its execution there could be no dispute that TLIL had the rights independently of GL to use the name and marks of Team Lotus in relation to single seater racing and merchandising and that that right was made perpetual and permanent. It was acknowledged as being in effect an existing right and was strengthened by the cancellation of the Team Lotus trade marks and the consensual re-registration of the same marks in TLIL's name. The only question in my view is whether there is a valid chain of title from TLL to TLVL and subject to GL's arguments in relation to trade mark issues, goodwill and confusion.
112. It is clear apart from the cancellation and re-registration of the trade marks that it did not purport to grant new rights. TLIL's rights are agreed to be found in 3 areas. First there are the existing rights whose continuation is acknowledged. Second there are the rights created by the 1985 Agreement i.e. the cancellation of the trade marks and the formalisation of arrangements to operate during the Agreement. Third there are the provisions which address what happens after the Agreement has come to an end. TLVL not being a party cannot assert any rights arising under the Agreement.

However it can assert the pre-existing rights such as they are found to be and the right to maintain the trade mark registrations on the basis that they are part and parcel of their existing rights.

113. Equally they can argue that the fact that the Agreement does not upon its termination require TLIL to cancel its registrations, re-vest the Trade Marks in GL and stop using the words “*Team Lotus*” and “*Club Team Lotus*” shows that those rights belonged absolutely to TLIL, survived termination of the 1985 Agreement and are now vested in TLVL.
114. I agree with that analysis for the reasons set out above and in the light of the evidence both of Mr Monk and the arrangements that took place after the 1968 separation and in the light of the historical use of the words “Team Lotus” which in my judgment and I so find have never been directly associated with GL but has exclusively been associated with TLL and TLIL.
115. I accept their submissions that the suggestion that TLL needed GL’s permission to use its own name stems from the myth that GL was the originator of the words “Team Lotus”. That is wrong as the above evidence and documents show. Equally I question whether or not it would be sensible both factually and commercially for TLL to enter into an agreement on the basis that its right to use its own name Team Lotus was precarious. It is plain that Mr Bushell would never have agreed that (see Mr Monk’s evidence). It is equally true in my view that the majority shareholders being the Chapman family would be most unlikely to agree that. TLL/TLIL were Colin Chapman’s main interest. Like the 1968 Agreement I cannot conceive the Chapman family would allow the existence and operation of TLIL and the use of the words Team Lotus to be governed by GL and under its control.
116. However the converse is equally true by reason of the fears of a major crash it would not have been in GL’s interest to be regarded as the controller of TLIL; all it wanted was the kudos of being associated with the successful racing team but certainly not any exposure.

SUBSEQUENT AGREEMENTS IN 1991

117. A number of Agreements were all executed on 30th January 1991. First TLIL entered into a License Agreement with Infiniti Developments Ltd. That company was the vehicle whereby Peter Collins and Peter Wright acquired control of TLIL. Peter Wright gave evidence before me. He had been associated with Colin Chapman. After being involved in the development of composites for Colin Chapman’s boat company and for his cars he joined TLL in 1976/77 and worked there continuously until it was reorganised in 1983 following Colin Chapman’s death. Thereafter he joined Lotus Engineering and worked for them from 1983 to 1991. Ultimately he became the managing director of Lotus Engineering and a GL director. Apart from that he gave evidence supportive of the Defendants’ stance that GL and TLL were kept separate. TLIL its successor by the beginning of the 1990s was in a declining position. The last F1 win was in 1987. Ayrton Senna left and TLIL lost Camel sponsorship and Honda Engines. It had little success and was less use to GL. GL under its new ownership was focusing on road car production and engineering services and as the internal documentation shows had less interest in being associated with an unsuccessful F1 racing team. Peter Wright was approached by Tony Rudd to ask him if he was willing

to save TLIL and, he and Peter Collins took over TLIL. His evidence was largely unchallenged.

118. Turning to the documents the License Agreement dated 30th January 1991 has a number of provisions which are significant. First recital (A) recites that TLIL is ***“absolutely entitled to use the names “Team Lotus” and “Team Lotus International Ltd” in connection with its business”***. It then agreed to give Infiniti a license to use the names “Team Lotus” and “Team Lotus International Ltd” until 30th June 1992. That License extended to use of the Trade Marks. Further before the License Agreement was entered into Infiniti had entered into a direct covenant with GL (“The Direct Covenant”) pursuant to clause 6.3.2 of the 1985 Agreement. By clause 4.1 TLIL warranted that it was the absolute sole beneficial owner in law of the names subject to its obligations pursuant to the 1985 Agreement. Infiniti paid £88,500 for this License which only ran for 6 months.
119. By the Direct Covenant between GL (1) and Infiniti (2) GL acknowledged that Infiniti was entitled to use the names “Team Lotus” and “Club Team Lotus” and the Lotus Roundel limited to using Lotus only in the form of Team Lotus (clause 2.1.1). By way of counterpart Infiniti acknowledged GL was entitled to use the names “Group Lotus” and “Lotus” and the Lotus Roundel in relation to its business. Clause 2.3 provided for each party on transfer of the relevant business or assignment to procure that the relevant transferee or assignee entered into a similar Deed of Accession to the terms of the 1985 Agreement. This Agreement therefore is also in my view strongly supportive of what had happened in 1985 namely that the rights were separated. Recital (A) is demonstrative of that fact. It does not of course directly bind GL but GL signed the Deed of Accession which related back to the 1985 Agreement.
120. By a further Agreement (“the Purchase Agreement”) between TLIL (1) and Infiniti (2) Infiniti agreed to buy various assets and book debts and in particular the business previously carried on by TLIL as a manufacturer of single seater open wheel racing cars operating under F1 motor racing. Intellectual Property was defined (clause 1.1.11) as meaning ***“in relation to the Business inventions, discoveries, processes, improvements, formulae, trade secrets, ideas, technical information, letters patent, trade marks, service marks, trade or brand names, copyright, design copyright, know-how, confidential information, trade names, registered designs and business names and any equivalent thereof....”***. The total purchase price was £2,288,500. Of that £749,999 was attributed to the intellectual property rights as defined in clause 2.1.3. No other provisions are of significance to the dispute before me.
121. On the same day GL and Infiniti entered into a further agreement which recited the Agreement whereby TLIL had agreed to sell its business to Infiniti (recital (a)), that GL had entered into the 1985 Agreement which set out inter alia the rights of TLL to use the name “Team Lotus” in relation to its business and the rights of GL after termination of the 1985 Agreement to own or run or be associated with a racing team running single seat motor car racing using the name “Lotus” (Recital (b)). Recital (c) recited that Infiniti wanted to enter into an agreement with GL where GL at its request upon termination of the 1985 Agreement would permit Infiniti to use the name “Lotus” in relation to motor racing business carried on by Infiniti on the terms and conditions set out. First clause 1 contains an undertaking by GL to terminate the 1985 Agreement on such date that the parties should agree and in any event before 31st December 1991. Clause 2 provided that GL at the request of Infiniti at any time after termination of the

1985 Agreement grant to it an exclusive license to use the word “Lotus” other than on its own or in conjunction with the word “Team” in relation to the business of motor racing. The terms of the license were to be negotiated in good faith. GL also licensed Infiniti to use the trade mark “Lotus” on or in relation to F1 racing cars (clause 2.2).

122. It should be noted that the extended rights are additional to the rights already enjoyed by TLIL as confirmed by the 1985 Agreement and the direct Covenant Deed. This Agreement is giving Infiniti extra rights to use the word “Lotus” which it did not have before it being limited to Team Lotus or Club Team Lotus.
123. At the same time as these Agreements TLIL and Infiniti entered into put and call options as regards the use of the Names and the Marks. Pursuant to that they entered into a further Agreement dated 24th February 1994 between TLIL and Team Lotus Ltd (formerly Infiniti Developments). In consideration of £1 TLIL assigned the entire copyright whether vested, contingent or future in the Names and the Marks and all rights of action all rights of title and interest of whatever nature in and to the Names and Marks (clause 2.2.1). The marks identified are in the case of the United Kingdom a Team Lotus device in class 35 and the words Team Lotus also in class 35. There were provisions requiring the names and marks to be assigned back (a right of pre-emption in clause 3.1.1) and provisions that arose if Infiniti became insolvent. None of those were exercised because TLIL did not carry on business.
124. On the same day Infiniti (under its name Team Lotus Ltd) (company No. 2441483) entered into an Agreement with TLIL.
125. By the Agreement dated 24th February 1994 Infiniti (under the name Team Lotus Ltd) licensed back to TLIL a perpetual license to use the trade mark royalty free in conjunction with the word “Classic”. The trade marks are those which were acquired by Infiniti under its agreements from TLIL in 1991 and 1994. Precisely how Classic Team Lotus a company apparently operated by Clive Chapman the son of Colin Chapman comes to use the name Classic Team Lotus needs to be dealt with in the section of this judgment dealing with goodwill. The Defendants assert this license is an example of TLIL using its goodwill attached to the name Team Lotus by sub-licensing back to TLIL the right to use those marks in conjunction with the word Classic. TLIL is still in existence but does not trade.
126. Infiniti paid rather a lot of money for the various assets acquired. It hoped to save the Lotus name in F1 but it failed so to do and went into administration by an order of the High Court on 12th September 1994. Nevertheless given the size of the payment and the agreement to the transfer to Infiniti by GL it is extremely unlikely in my view that anybody would have acquired those assets if it were known that it did not thereby acquire absolutely and free from any claims of GL the right to use the names Team Lotus and Club Team Lotus and the Lotus Roundel. Nevertheless that is the contention of GL at this trial. Cumulatively GL contends that despite the various agreements as they appear to set out on their face none of them was effective to transfer any absolute right to use of the names and the Roundel to the various parties who obtained the assets of the racing car company, even when done in accordance with the 1985 Agreement.
127. The precise circumstances of the operation of Classic Team Lotus (“CTL”) remain obscure. Clive Chapman did not give evidence (although either party could have

sought to call him). Whatever company he is trading under is not a party to the proceedings. Nor is TLIL.

128. At the opening GL contended that CTL operated as an implicit licensee of its activities in contrast to the Defendants which contend that CTL operates under the 1994 Agreement referred to above. Both of those have a difficulty. GL's case fell apart with the cross examination of Sarah Margaret Price GL's Company Secretary and Head of Legal and in particular paragraph 37 of her third witness statement where she asserted that GL was happy to allow Clive Chapman to continue to use the Lotus name for his activities provided he operated in close co-operation with them. When the two Agreements dated 28th February 2002 and 10th October 2008 were put to her in cross examination (T6/833 and following) her description of those Agreements as sub-licenses to have access to photographs of historic liveries and pictures simply fell apart. Whilst the first of those was not negotiated in her time with GL the second clearly was. Both of them involve GL taking licenses from CTL (not TLIL it is to be noted) to use various marks. This is entirely inconsistent with GL's case that CTL operates its business in respect of classic cars and the preservation of the old Lotus legend with its tacit agreement. If that were the case it would not have needed these licenses. In his closing Mr Silverleaf QC submitted that the evidence showed that neither GL nor TLVL granted CTL a license.
129. It is clear that there has been some skirmishing between the parties over the years in respect of the operation of CTL. It clearly suited GL to keep the Lotus legend alive and use it (with the permission of CTL) when it was re-launching "Classic" sports cars. Nevertheless it is significant to note that after the demise of TLIL despite its asserted right so to do GL never entered into the F1 racing in its own right or at all until 2010. No reason has been given for this and it certainly was not a lack of finance.
130. The nearest position in the evidence was that of the evidence of Mr Florance when asked why GL did not go back into F1. He was unable to give any reason. Certainly given the fact that the ultimate owner of GL is Proton it cannot be said that finance was a problem. The Defendants assert that it did not do it because it knew it had no right to use the words "Team Lotus". The Defendants also rely on the wording of the 2010 License and other documents (see below) in support of that submission.

INFINITI (TEAM LOTUS LTD) IN ADMINISTRATION

131. Infiniti changed its name to Team Lotus Ltd. It went into administration as I have said on 12th September 1994 by an order of the High Court of that date. Its Administrators sold the business of the F1 racing team carried on by Team Lotus Ltd to Investfirm Ltd ("Investfirm") by an Agreement ("the Asset Sale Agreement") dated 27th October 1994 between (1) Team Lotus Ltd (2) Investfirm and (3) The Administrators. Recital (C) recited that Team Lotus Ltd wished to sell and the purchaser wished to buy ***"whatever right, title and interest Team Lotus Ltd might have in the goodwill and other associated assets of the business of running the Lotus F1 Grand Prix motor racing team presently carried on by it"***.
132. Clause 1 (A) had a number of relevant definitions. ***"Business assets"*** is defined as being assets of the business agreed to be sold and purchased as specified in paragraph 2. Two items are relevant namely "the Names" (clause 2 (A) (3)) and "Intellectual Property Rights" (clause 2 (A) (4)). The Names meant "Team Lotus", "Lotus" and

- “Team Lotus International” and all marks and devices and any other names as used in connection with the Business (including the right to sue for past unauthorised use of Names) and the copyright in the devices.
133. ***“Intellectual Property Rights”*** are defined as ***“Intellectual Property Rights, trade and service marks, trade and business names, including without limitation [various trade marks] and all other trade mark and service mark applications and registrations (if any) forming the subject matter of the deed of assignment between TLIL (1) and Team Lotus Ltd (2) dated 24th February 1994, copyrights and neighbouring rights, designs, design rights, drawings, know how, customer lists, technical information and all other proprietary knowledge and information (together with the right to sue for past infringements of any of the aforesaid, and all licenses and permissions under the aforesaid.”***
 134. There was reference to Third Party Rights being excluded but those are defined in respect of particular causes of action (1 (A) (50)). A total consideration of £550,000 was paid of that £200,000 was for the know-how and technical information, £199,000 was for the goodwill and the names and £1,000 was for the intellectual property rights.
 135. There is a definition of TLIL Agreements as meaning ***“all and any agreements between [Team Lotus] and TLIL relating to the Names including without limit the Agreement dated 30th January 1991, the License dated 30th January 1991, the Put and Call Option dated 30th January 1991 and the Assignment dated 24th February 1994”***.
 136. Two agreements that might have been thought significant are not expressly referred to namely the 1985 Agreement and the License back to TLIL dated 25th February 1994.
 137. On the same day Team Lotus by its administrators entered into a further agreement with Investfirm. This is an assignment of trade marks. By Clause 1 Team Lotus Ltd assigned absolutely to Investfirm and it accepted ***“...whatever right, title and interest [Team Lotus] may have at that time in 1.1 The goodwill of the Business; and 1.2 the Registrations of the marks which are the subject thereof, and 1.3 the right to sue for past infringements of the Registrations, and past unauthorised use of the marks which are the subjects of the Registrations and to retain any damage or other awards made in respect thereof the relevant marks include the two Team Lotus device and word marks registered in class 35”***.
 138. Those are precisely the same marks set out in the schedule to the License back to TLIL dated 24th February 1994 (i.e. the so called Classic Team Lotus License).
 139. The Defendants’ case is that Investfirm acquired all rights appertaining to the F1 business including those marks save those expressly excepted by the Sale Agreement and save any rights under the 1985 Agreement which it never acceded to in accordance with it.
 140. Thus it contends that the rights that TLIL had before the 1985 Agreement and were expressly reserved and the trade mark registrations which were subsequently given to it passed first to Infiniti and then passed to Investfirm by the Sale Agreement. It is also claimed that the benefit of the Classic Team Lotus License was passed to it by these two documents. GL challenges this. There is to my mind an important question of fact

which is not clearly made out. As I have said the 25th February 1994 License back was to **TLIL** not Classic Team Lotus. I have no clear evidence as to the relation of Classic Team Lotus to TLIL. Mr Silverleaf QC as I have said suggested in closing that it was a subsidiary. It is true that the Sub-License back to TLIL is not expressly referred to in the sale agreement to Investfirm. However the question to be posed is what happened to that License if it was not sold to Investfirm? I cannot believe that the Administrators would have intended to retain it. Further the sale agreement clearly in my view transfers title (if any) to all of the trade marks that were the subject matter of the License back. It is difficult to see how Team Lotus/Infiniti could have any interest in enforcing the License back when the Administrators had sold all the trade marks to Investfirm. The wording of the definition of intellectual property rights and the wording of the assignment are to my mind all embracing. They are intended to be as I said in argument like the Khedive's rights "we are not sure what rights the Khedive had but all of them are reserved". The clause is intended to pass everything in my view to Investfirm associated with the marks. Whilst reference is made expressly to the agreements whereby Team Lotus **acquired** those rights it does not follow that it would not assign any agreements relating to those rights which it created afterwards. I cannot see the Classic Team Lotus Agreement being held back in limbo.

141. Nor is the fact that Investfirm did not become a party to the 1985 Agreement relevant. The status of the 1985 Agreement by 1994 remains obscure. Under the provisions of the 1991 Agreement it was supposed to be terminated by notice as agreed in any event by 31st December 1991. This might explain the lack of reference to the 1985 Agreement in the Sale Agreement to Investfirm. It was a dead letter by that time and the relationship between TLIL and GL was simply governed by the arrangements entered into on 30th January 1991.
142. Of course the termination of the 1985 Agreement whether by notice or in effect by mutual consent does not affect the rights which I have set out above which were acknowledged to be in existence before it. Nor does it affect the agreement to cancel GL's Team Lotus trade mark registrations and agree to new registrations in the same name in favour of TLIL as those are final agreements and not affected by the termination of the 1985 Agreement. It will be recalled that those clauses are expressly stated to survive the termination of the 1985 Agreement.
143. However merely because Investfirm does not become a party to the 1985 Agreement does not affect the ability of Team Lotus by its Administrators to sell its assets including its marks. There is nothing in my view in the 1985 Agreement which prevents that happening. It solely addresses the obligations of TLIL to procure parties who wish to take the benefit of the 1985 Agreement to seek the consent of GL and enter into accession deed. Failure to do so means that the successor acquires the business but without the benefit of any rights created or subsisting under the 1985 Agreement. Thus for example the clauses relating to use of Lotus and Team Lotus by GL afterwards cannot be enforced by Investfirm and its successors because it has never taken the benefit of the 1985 Agreement in accordance with its terms. The Defendants do not however seek as I have said to enforce any part of the 1985 Agreement. I will deal with the allegation that the sale was in breach of Section 22 (4) TMA 1938 further in this judgment.
144. There are other reasons why even if I am wrong to reject GL's submissions that it was ineffective because it did not comply with the requirements of the 1985 Agreement.

First GL knew of the intended sale and contended that it agreed to join with TLIL making a bid of £750,000 and that its objections to the sale to Investfirm were communicated to the Administrators. Mr Monk could not explain why all that was ever offered by TLIL to the Administrators was £100,000. There is no evidence to show that GL ever offered £750,000. There was no objection to the sale by the administrators, no cross examination of Peter Wright in relation to it and the fact that the sale was approved by the High Court without any reference to an offer from TLIL and Group Lotus of £750,000. For all of those reasons it is far too late in any event for GL to complain of an infringement of the rights of the obligations under the 1985 Agreement. Its lack of action in my view demonstrates convincingly that it never thought until these proceedings that it had any rights that were broken by the sale to Investfirm without obtaining consents and entering into an accession deed as required by the 1985 Agreement. It is a lawyer's afterthought but it is wrong.

145. I therefore conclude that Investfirm acquired such goodwill and trade marks that TLL/Infiniti had at the time of the sale and that included the right to sue and enforce the 1994 Classic Team Lotus Agreement.
146. Of course it may be arguable that TLL/Infiniti broke the 1985 Agreement by failing to procure entry into a deed of accession as it had done. However I assume it is now struck off and dissolved and any cause of action GL has by reason of that breach is entirely academic.
147. On 9th January 1995 Investfirm (Company No. 2974441) then known as Team Lotus Holdings Ltd sold the goodwill of the business together with the exclusive use of "Team Lotus", "Lotus" and "Team Lotus International" and all other marks and devices associated with the business to Paintglossy Ltd (Company No, 298306) for £199,000. Once again the relevant trade marks the subject matter of the earlier agreements are set out in the schedule. This assignment in my view is effective to transfer the same business to Paintglossy Ltd which Team Lotus Holdings Ltd acquired under the agreements the previous October. I have determined what those rights were and Paintglossy is in the same position. Paintglossy is the former name of TLVL. It was controlled by David Hunt until recently. I am told that recently Mr Hunt resigned as a director and that Mr Fernandes is a director and that a company called Tune Group SDN BHD (the Third Defendant) is the beneficial owner of it. It is said that that company is controlled one way or another by Mr Fernandes. I am told that TLVL has licensed 1MRT to race in F1 under the name "Team Lotus" but that license has not been produced. None of this actually matters unless GL has enforceable rights which it can enforce against the Defendants. I am not concerned with the arrangements between the various Defendants.
148. I conclude therefore that by the time of the trial GL has established a goodwill in relation to Lotus sports cars. I also determine that TLVL has purportedly acquired the right to the various trade marks and the goodwill (if any) associated with the F1 racing business initially carried on by TLL subsequently by TLIL and Infiniti/Team Lotus Ltd which was assigned effectually to Investfirm and then Paintglossy thus TLVL.
149. There remains consideration of 4 matters:-
 - 1) Do those rights that the Defendants assert actually exist in the sense that they are to be regarded as part of GL's goodwill or are they divisible?

- 2) If the goodwill is actually divisible so that GL and TLL and its successors have separate goodwill has TLVL's goodwill been lost to the extent that the trade mark registrations are no longer capable of being sustained and any ability to sue for passing off has also been lost?
- 3) Are there any other trade mark issues which affect the registration of those trade marks?
- 4) Even if the Defendants have lost all of their rights to trade marks and business can GL stop them racing in F1 under the name "Team Lotus"?

GOODWILL

150. The identification of the goodwill associated with the names Lotus and Team Lotus is the key to the case. Once the goodwill (if any) is identified the next question to be considered is who owns that goodwill? The main issue is whether or not GL has the entire goodwill in the word Lotus and that extends to the use of Lotus in conjunction with any other word and in particular the word Team. The alternative argument on behalf of the Defendants is that the goodwill has been divided so that GL has the benefit of the use of the word Lotus in isolation but the Defendants through the chain of transactions I identified earlier in this judgment have the benefit of the goodwill associated with Team Lotus.
151. It is clear to me that by the time of the 1985 Agreement the parties to that Agreement believed that the goodwill was divided as between Lotus (manufacturing) and Team Lotus (racing) as I have set out above. In my view that agreement attempted to put on a proper legal footing the reflection of that understanding. I can see no other sensible reason for the agreement and the structure. There remains the question however as to whether or not the parties to the agreement were correct in their understanding of what the goodwill was at the time and whether in fact the goodwill was capable of being divided as they believed or treated as divided as they believed.

THE LEGAL NATURE OF GOODWILL

152. As the Claimants said in their opening (paragraph 136) ***"it is trite law that goodwill is the attractive force which brings in custom. Goodwill comes in to existence as a result of trading activities. It consists of the ability to attract customers to purchase the goods or services of the business which benefit from the goodwill; and it is accordingly that business which owns the goodwill however it is generated."***
153. The difficulty occurs when more than one company is involved in generating the goodwill. Different conclusions might ensue depending on the facts. It might be accepted for example that company A's activities generate goodwill solely for the benefit of company B. It might be contended that company A's activities which generate goodwill for it also generate goodwill for company B. Both parties accept that the ascertainment of the goodwill and its ownership is essentially a question of fact. It is also accepted that no assistance save by analogy can be obtained from previous decisions (*Reckitt & Colman v Borden [1990] 1 WLR 491* at 499 C as per Lord Oliver).

154. The Claimants in their opening submissions (paragraph 137) submitted that 2 factors are crucial: ***“who is behind the goods or services being supplied to the public and the public perception of who this is”***.
155. It should be noted that there are a number of assumptions in that analysis. First it is necessary to identify what are the relevant goods or services being supplied and to what part or parts of the public are they being supplied.
156. GL was formed to manufacture and sell sports cars in 1958. It directly has done nothing else. Colin Chapman started life racing cars. He also manufactured racing cars and sold them to Privateers. In the early to mid 1950s he started racing under the name “Team Lotus”. By 1961 and with the incorporation of TLL a decision was made clearly to compete in F1. Thereafter the Team Lotus raced cars; it did not manufacture them. It is clear that the goods and services that TLL sold when it went into the F1 business were the benefits that might accrue to being associated with a successful team. GL appreciated those benefits and paid for them (see above). Sponsors appreciated them and will have paid for them. Success breeds spin offs. The racing public likes to buy goods and memorabilia associated with successful F1 cars. This has over the years become a significant part of the income for F1 racers. “The public” thereby identified is not the same as the public at large nor is it necessarily in my view the same as the public who might like to watch F1 racing on television. Equally the public from the point of view of GL’s sales of Lotus sports cars is the public who primarily wish to buy its products i.e. Lotus sports cars. Some members of the public will undoubtedly be attracted because of the association with Team Lotus. It will be thought that if GL is associated with successful racing cars they might be expected to produce successful sports cars. There will be people who buy Lotus sports cars who have no interest in F1 racing. They simply buy Lotus sports cars in preference to other sports cars.
157. The Claimants’ case is that all of this analysis is irrelevant because there is one indivisible goodwill held by it and that the whole Team Lotus operation is merely an arm of the goodwill vested in it.
158. Once the goodwill is ascertained it would then be necessary to consider whether the actions of any other party infringes that goodwill or infringes trade marks associated with the relevant business. However consideration of those matters does not arise until the relevant goodwill in the case is ascertained and its ownership is similarly ascertained.
159. There are a number of cases where a single goodwill can in the right circumstances be divided up amongst more than one successor as the Claimants acknowledge. In such cases each successor might be able to sue the other for passing off by encroaching on his territory.
160. As the parties accepted this is essentially a factual inquiry and is unlikely to be aided by the citation of authorities. Thus in the Court of Appeal in ***Scandecor Development AB v Scandecor Marketing AB [1999] FSR 26*** at page 39 the Court of Appeal said this:-

“Who is then entitled to use the mark in relation to goods or services or in the corporate or trading name?”

The legal response is that this problem, if not solved by agreement, is ultimately soluble only by a factual inquiry with all the disadvantages of the length of its duration, the cost of its conduct and the uncertainty of its outcome. There are no quick, cheap or easy answers to be found in hard and fast legal rules, in binding precedents or in clear cut factual and legal presumptions. As Lord Oliver said in his speech in Reckitt & Colman Properties Ltd v. Borden Inc [1990] 1 WLR 491 at 499C

"Although Your Lordships were referred in the course of argument to a large number of reported cases, this is not a branch of the law in which reference to other cases is of any real assistance except analogically. It has been observed more than once that the questions which arise are, in general, questions of fact."

The cases cited by Mr Wyand QC for Development and by Mr Young QC for Limited amply demonstrated the primacy of the particular facts of each case over legal precedent in this area of the law. Neither Leading Counsel found it difficult to distinguish the illustrative authorities cited by the other. Mr Wyand QC liked "Bostitch" TM [1963] RPC 183, in which an overseas proprietor of a UK registered trade mark succeeded in fighting off an attempt by a UK distributor, whose agreement had terminated, to expunge the mark as deceptive in circumstances where the UK distributor had used the mark in relation to goods not supplied by the overseas licensor, had not been under the control of the licensor in respect of that use and had advertised itself during the licence as the distributor of the licensor's goods. The case demonstrates that the absence of the exercise of quality control is not fatal to a claim to the local goodwill by the foreign proprietor of a mark. See also Bowden Wire Ltd v. Bowden Brake Co Ltd (1914) 31 RPC 385; The Roberts Numbering Machine Co v. Davis (1936) 53 RPC 79 and Aktiebolaget Manus v. RJ Fulwood & Bland Ltd (1948) 45 RPC 329, all cases in which a UK agent or licensee was held not to be entitled to use the mark after the termination of the licence under which goodwill had been built up for the benefit of the licensor.

Mr Young QC preferred "Diehl" TM [1970] RPC 435, in which the UK importer and distributor, whose sole agency agreement had terminated, successfully resisted the attempt of the overseas licensor to challenge the registration of the mark used by the distributor in the UK during the currency of the licence both in its corporate name and in relation to the goods. Similarly in T Oertli AG v. EJ Bowman(London) Ltd [1959] RPC 1 the mark in dispute was held not to be distinctive of the foreign licensor when an attempt was made to prevent its use by the UK licensee after the termination of the licence; and in

Adrema Ltd v. Adrema-Werke GmbH [1958] RPC 323 the local goodwill in the mark was held to be with the English subsidiary, which was a separate entity, rather than with the German holding company after they had ceased to be in that relationship.

161. Despite the citation of that decision the parties were undeterred; although I accept the issues are wide ranging I am not convinced I needed the citation of authorities extending to no less than 9 lever arch files in a case which is almost entirely factually based. The parties will forgive me but I have limited my citation of authorities to those which I consider are truly relevant to the matters before me and have some legal significance. There are many cases which address shared goodwill and the differing extent of the nature of the sharing both legally and factually. They are summarised in Kerley's "***Law of Trade Marks and Trade Names***" (14th Edition) paragraphs 15-078-081. The nearest in my view to the facts of this case is the case of ***Sir Robert McAlpine Ltd v Alfred McAlpine Plc [2004] RPC 36*** but even that provides me with nothing more than a potential for similarity without any legal significance.
162. Similar considerations apply on the question of abandonment of goodwill. It is essentially a question of fact and whether or not the goodwill has been lost or survived at whatever residual level it still subsists see ***Sutherland v V2 Music Ltd [2002] EWHC 14***.

GOODWILL - THE FACTS

163. The issue between the parties is whether as the Claimants contend "***Lotus***" was and is a single brand that cannot be divided nor shared and belongs and has always belonged to GL. In paragraph 51 of their closing the Claimants said "***it is GL's goods to which the fame generated by TL's activities attach in the marketplace. It is GL's goods to which the technical prowess indicated by TL's racing performance is attached.***"
164. That analysis in my view is an over simplification. It assumes that the public at large relate to the sports car activity and always have done. As a matter of historical fact that is not the case because GL did not come into existence until 1958. It is clear that Colin Chapman had created goodwill in something before 1958 and that is inevitably going to be identified with his primary activity before then racing i.e. "Team Lotus". Further the sales of sports cars are relatively modest when compared with (for example) the volume car manufacturers. The statistics produced showed over 600 million watching F1 on television. It is extremely unlikely that the majority of those are or would be Lotus sports car purchasers. In addition of course a market for Team Lotus would not be the same. The purpose of generating goodwill in Team Lotus is to make it attractive to its market. Its market is not the same as GL's. Its market is to generate income so as to enable it to participate in the expensive business of F1. Thus it wishes to make itself attractive to sponsors and purchasers of its merchandise and goods to a lesser degree. It was for that reason of course also that it wanted to make itself attractive to GL to obtain money from that source. Thus the problem with the Claimants' identification of the market is that it fails to give credence to the nature of the Team Lotus activity and its potential market. It is true that the more it is argued that Team Lotus is successful the better it is for GL. That is not to mean however that Team

Lotus' activities accrue a goodwill benefit to GL; it is merely that GL has the benefit of being associated with the goodwill generated by Team Lotus *when it is a successful racing car*.

165. In truth before his death Colin Chapman was the creator of the goodwill in both sports car production and sale and F1 racing. No attempt (apart from the lost 1968 Agreement) was made to define the legal relationship between the two and in reality the ownership of the goodwill and the trade marks. That occurred first in the 1985 Agreement.

THE EVIDENCE ON GOODWILL

166. As I have said the documentary evidence and in particular the 1985 Agreement and the subsequent agreements inexorably in my view lead to the conclusion that those in control of GL and those in control of TLL/TLIL at all times believed and acted as if there was separate goodwill namely goodwill in GL as regards sports cars and goodwill as regards racing car operations in TLL/TLIL.
167. Further there is strong evidence which shows GL had repeatedly recognised the separate existence of the Team Lotus marks and name and that the 1985 Agreement marked the separation of the brands. This is not to construe the 1985 Agreement but to demonstrate the parties' views of their rights. Thus Team Lotus sets out a number of factors:-.

1 The letter sent to shareholders on 29th May 1985 (see above).

2 The 12th July 1988 memo saying that Team Lotus was allowed to use its name "in perpetuity". Mr Monk accepted that being a correct statement of the position [T3/59:13-19].

3 The meeting of 9th March 1985 in which Mr Monk is recorded as saying "Team Lotus racing no problem".

4 The meeting of 16th February 1999 in which Mr Mayes (a member of Boulton Wade Tennant the trade mark agents) he said the purpose of the 1985 Agreement in his view of its original purpose was "to split the brands". This was a meeting between Boulton Wade Tennant, David Hunt of TLVL and GL who were represented by Jon Messent GL's Head of Legal. This meeting was in the context of TLVL seeking to register a trade mark in relation to the Roundel (application M2011973) on 23rd February 1995. GL opposed that application and were successful (decision of hearing officer on 23rd October 1998). Mr Messent had provided a statement on behalf of GL in opposition to the application to register the mark. He supported that by referring to the 1995 Agreement and the deed of accession by TLL/Infiniti and he said apparently that "*the intention of the [1985 Agreement] was that the public would not be misled into thinking there remained an*

association between the two companies....” GL’ stance before me is course exactly the opposite. It is said that there is but one goodwill and that is with GL and Team Lotus is associated with that and that there would be confusion if GL and Team Lotus operated under their respective names. Jon Messent is recorded as saying that GL wanted to distance itself as far as possible from TL and its activities so the public could not be in any confusion as to whether GL and TL are the same or related (paragraph 3). It was also recorded that he and Stuart Mayes *“had no objection whatsoever to [TLVL’s] use of the words “Team Lotus”, it was the use of the “duplicate” of the GL roundel logo that was confusing and they wished to stop [it]”* (paragraph 20).

The meeting was followed up by an offer from Mr Mayes on behalf of GL in a letter of 4th March 1999 addressed to John Byfield who was TLVL’s solicitor. That referred to the 1985 Agreement and the respective acknowledgments by GL and TLIL as to their then uses. Clive Chapman made a similar point in his letter of 10th March 1999 to Mr Messent.

- 5 The licence agreements between GL and CTL in 2002 and 2008 are contrary to GL’s present stance and contrary to a note approved by Ms Price made by Katie Dann on 8th December 2008 stating GL was itself prevented from using “Team Lotus”. Ms Dann gave evidence (which was of little assistance to me in reality) but she was not questioned on this note although Ms Price was and did not challenge the veracity of the note as prepared by Ms Dann.
- 6 Mr Florance’s evidence was such that he could not explain why there was never a GL attempt to race in F1 despite the demise of Team Lotus’ operations in 1994.

168. Once again that evidence is entirely consistent with the Defendants’ case and is entirely inconsistent with GL’s case. The 2009 License Agreement between GL and 1MRT also in some of its provisions supports this division as between GL and Team Lotus. I will deal with that when I come to address that agreement further in this judgment.

OTHER EVIDENCE

169. I have considered the documentary evidence and summarised it above. The next question is to consider whether there is any other evidence which enables me to identify the extent to the goodwill and with whom it is associated. I will look at the evidence of the witnesses who had some involvement in the operations. I will then consider the evidence of the journalists and the agreed witness statements produced by the Claimants.

CONTEMPORARY WITNESSES

170. Mr Monk has given valuable evidence as to the motivation of the parties leading up to the 1985 Agreement. He gave evidence which was mostly unchallenged about the sharing of activities during the period he was employed by GL (1978-1982 and 1984-1984). He was the legal assistant to the FD of GL. However that evidence to my mind supports the Defendants' contentions in regard to the effect and purpose behind the 1985 Agreement. I do not see that his evidence in relation to the public perception (paragraph 83 of his second witness statement) assists me. There is no dispute that GL and TLL/TLIL were closely linked. That linkage until 1982 was in reality Colin Chapman. Equally I accept his evidence that GL recognised the value associated with the racing team business (at least as regards a successful Team Lotus see the later attempts to distance themselves from it set out earlier in this judgment). I do not see that assists me in what he calls the public perception as regards the extent of the goodwill and whose goodwill it was. His evidence is equivocal as to the basis for this association between GL and TLL/TLIL. The fact that the public perceived the companies as having some association does not in my mind inexorably lead (for example) to the conclusion that the public saw the entire operation as being one carried out by GL for whom the entire goodwill accrued.
171. Mr Bell's evidence is also similarly unhelpful. He has held a Lotus franchise for 41 years. It is clear however that he had not given much thought to the way Lotus organised its business. Whilst his evidence (paragraphs 10 and following) once again shows the benefits of GL being associated with F1 in particular the apparent mantra "*win on Sunday, sell on Monday*" that to my mind once again does not help me analysing where the goodwill went. That attitude and that statement are equally applicable if GL is merely associated with Team Lotus and obtains the benefit of that association. That is entirely consistent with the Defendants' case under the 1985 Agreement. It does not therefore assist me in determining what the goodwill was and who owned it.
172. Mr Becker's evidence is similarly accepted by the Defendants in respect of the understanding of the co-operation and association between the two arms whilst he was at GL (he having been there for 44 years until his retirement in January 2010). Once again however useful though this is it does not assist me in analysing the nature of the relationship from the point of view of goodwill.
173. The Defendants called Peter Wright. His evidence in my view was significant because not only was he there, he was one of the buyers under the Infiniti purchase. His evidence reinforces the distinctive nature of the operations of GL and Team Lotus. He accepts that there was some overlap especially in relation to active suspension. I have already set out above the amount of money which was paid to acquire Team Lotus by Infiniti. I accept his evidence that he bought the name Team Lotus from the Chapman family. Indeed I cannot conceive of any circumstances where the purchase would have gone through for such a large amount without that asset. His evidence is therefore strongly supportive of the documentary evidence which I have set out above. Similarly the evidence of Patrick Peel is significant. He worked at Group Lotus from 1977 until 1996 as an engineer and latterly as head of PR for Group Lotus. Once again he acknowledged the association but his evidence (paragraph 17) as to the separate relationship is once again in my view significant. Equally I accept what he says about the public perception in paragraph 23. It too is supportive of the documentation in my

view. It also reinforces the distinction between different classes of the public. I can well understand why customers who bought Lotus road cars from GL would enjoy the connection with a successful Team Lotus. The best example of that was the marketing of the Lotus Europa and the Lotus Esprit in the John Players Special colours. That does not suggest in my view that the goodwill was entirely that of GL's; it actually suggests the opposite in so far as it is significant. At best it shows GL during the success of Team Lotus wishing to benefit from being associated with it. The evidence of Glenn Waters is also supportive of the documentation. He after working in an associated company worked for Team Lotus from 1973 until 1980. Thereafter he formed a company and ran his own team to compete in F3 events. In so far as his evidence is of assistance it supports the separation arising out of the Le Mans racing disaster and expresses a view that the public perception would be one of separation. His evidence in that regard is not particularly strong but he makes the point that the purchaser of a Lotus road car would know that their car was not made by Team Lotus. It is not of great assistance to me overall.

174. Apart from the acknowledgments of Mr Monk and the evidence of Mr Wright I did not derive much assistance from this selection of witnesses called by the parties. Nothing in their evidence however undermined the appearance the documents created. If there was any clear evidence the evidence as I have set out above supported the documents which showed in my view a split goodwill acknowledged by both sides in the 1985 Agreement.

THE WRITERS/JOURNALISTS/PRESS

175. I did not find the gathered clan of journalists' and authors' evidence of much use. I have already stated the reason namely it is impossible to sift out in any relevant way fact, opinion and even urban myth in relation to such a legendary figure as Colin Chapman. Equally I was shown various articles in the newspapers, I was referred to various descriptions of the operations in broadcasts and the like. The fact that a team is referred to in a commentary for example as Lotus as opposed to Team Lotus is not in my view significant. Commentators generally use as short a word as possible when describing a party for economy reasons.

CONCLUSION CONCERNING GOODWILL

176. The evidence leads to a conclusion that up until the 1985 Agreement GL and TLL had their own separate goodwill in respect of the separate businesses. That separation was acknowledged by the effect of the 1985 Agreement and the trade mark registrations were cancelled and re-registered to reflect that separation. The 1985 Agreement was clearly intended to finalise this split of the goodwill as it did not provide for any re-transfer of trade marks for example if it was terminated.
177. The parties by allowing the separate trade marks to be re-registered clearly did not believe that the trade marks and their use in the respective businesses would be confusingly similar as regards each other's trade marks.
178. Further that has been acknowledged especially by GL ever since (see above and the matters summarised in paragraph 8 of the Defendants' closing).

179. As I shall set out below in my view that separate goodwill has continued albeit the activities carried on by TLL/TLIL had diminished. There is no F1 racing. Nevertheless as I shall set out below the goodwill still subsists in my view.

CONFUSION

180. GL's case is that if there are two operations one under Lotus and one under Team Lotus the public are likely to be confused.

181. The Defendants contend that GL's stance that there is confusion between its marks and those of Team Lotus such as the public is likely to be confused even if correct is irrelevant. First it points to the fact there have been a number of decisions where two similar or identical marks were in use under separate ownership but that does not mean there is necessarily confusion. They refer to the observations of Laddie J in *Sutherland v V2 Music Ltd [2002] ECHC 14* at paragraph 45:-

“As is well known to trade mark lawyers, there are currently two companies selling beer in the United Kingdom under the name “Budweiser”. Thus it is submitted that if two parties have deliberately created a situation under which they hold similar brands one cannot seek to sue the other for passing off or trade mark infringement. They must co-exist in the arrangement they have created.”

182. The *McAlpine* case above is an example where one of the parties to a deliberately created separation sought to change it unilaterally. In that case the other party successfully ultimately stopped it happening.

183. GL's second argument which is challenged is based on section 48 (1) Trade Marks Act 1994 which provides:-

“48 –(1) Where the proprietor of an earlier trade mark or other earlier right has acquiesced for a continuous period of 5 years in the use of a registered trade mark in the United Kingdom, being aware of that use, there shall cease to be any entitlement on the basis of that earlier trade mark or other right:

(a) to apply for a declaration that the registration of a later trade mark is invalid, or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used

unless the registration of the later trade mark was applied for in bad faith.”

184. The Defendants submit that GL has acquiesced in the use of the marks by TLIL and Infiniti from 1988 to 1993. That is of course the minimum period. The date of 1988 is the date from which the Team Lotus registrations were effected pursuant to the 1985 Agreement.

185. There have been rumbles by GL since 1994 but no action taken on the trade marks before the revocation proceedings. Even they were related to a separate challenge based on non use. The decision of the Registrar dated 29th May 2003 was to revoke the registrations save in respect of class 35 for F1 motor racing advertising services. It is in my view too late to seek to challenge the initial registrations given the lapse of time. The Defendants are correct.
186. I will deal with this further when I address GL's contention that the trade marks should be revoked for non use. It seems to me that merely because GL might be debarred from challenging the *initial* registration by 5 years acquiescence it is not thereby debarred from seeking to have the trade marks removed because there has actually been no subsequent use for the requisite statutory period of 5 years.
187. There is then the question of bad faith. The allegations were set out for the first time in the Claimants' opening (paragraphs 173 and following).
188. In the Re-Re Amended Particulars of Claim the trade mark allegation is limited to infringement of GL's trade marks.
189. All of the revocation applications are for non use for the period 2003-2008 (a follow on from the earlier decision). They thus seek to expand on the Registrar's earlier decision by removing the limitation that survived to F1 racing.
190. There is no allegation either in the action before me nor the revocation proceedings that the registrations should be revoked because they were obtained in bad faith.
191. This was raised by the Defendants during the course of the trial and was repeated in their closing argument. The point is significant because it arises out of the 1985 Agreement which itself has of course loomed large in both sets of proceedings and the trial. The arguments are set out in the opening skeleton argument as I have said. The absence from the pleadings was raised by the Defendants at trial and in their skeleton argument. No application has been made by GL to amend its pleadings.
192. It seems to me that this point is not open to GL on its pleaded case. GL does not repeat the argument in its closing. Given the absence of an application to amend I assume that it has abandoned this point.
193. In case I am wrong I will deal with it. The essence of the case is that when the registrations pursuant to the 1985 Agreement took place it was done by a cancellation and re-registration. It is suggested that instead the parties could and should have invoked provisions of section 22 of the 1938 Act and sought to transfer to TLIL the Team Lotus marks. It is submitted that had it been done it would have been necessary for the parties to submit a statement of case under section 22 (5) and/or to advertise under section 22 (7) the assignments being without goodwill. That submission is only sustainable on the basis that GL had the entirety of the goodwill *and* the 1985 Agreement did not create any new rights. In my view for the reasons I have set out above I do not see that Team Lotus had no goodwill in the name Team Lotus as at the time of the 1985 Agreement. The argument therefore falls at its first stage.

194. In any event it is submitted that the Registrar would not clearly have approved of such assignments but no particulars are given. It is then submitted that this decision was made intentionally to deceive the public.
195. This is a very serious allegation that in effect accuses GL (i.e. one of the Claimants) and TLIL of conspiring to deceive the Registrar and the public. Indeed in the skeleton it is said that they acted unlawfully to avoid a statutory procedure and that constituted bad faith. Further it was submitted ***“it is plain that both the conduct of the applicant fell below any possible acceptable standard of commercial behaviour and that the applicant must have been fully aware of this”***
196. That is somewhat disingenuous because the applicant (i.e. TLIL) could not have started on this course of deception without the agreement of GL. Thus GL is a party to this act of bad faith and the conspiracy to deceive if there was one. Despite that assertion in the skeleton argument any evidence on that point was not led. Mr Monk significantly was of course a party to the negotiations and it was never suggested to him by GL in seeking to widen his evidence that he in effect had acted in such a way.
197. It is further of course a serious allegation against the two firms of experienced lawyers and the trade mark agents who must necessarily have been a party to these actions.
198. Not one shred of evidence has been produced to substantiate such an allegation. Therefore even if it was open to the Claimants to make this argument I would dismiss it as they have failed to establish any grounds for it.

CONFUSION/SIMILARITY

199. The Claimants accept that if there was an independent goodwill in Team Lotus in 1985 then the marks are not confusingly similar. In paragraph 156 of the Claimants’ opening they refer to the Defendants’ argument that they have an independent and distinct right to use and register the name Team Lotus on the ground that the name is not confusingly similar to the name Lotus. In paragraph 158 it is said ***“thus if there was an independent goodwill in Team Lotus in 1985, then the marks are not confusingly similar and the Defendants may now have an independent right to use the name Team Lotus in Formula One. If there was no independent goodwill the marks are confusingly similar and there is no such right. There is no factual analysis which can support the Defendants’ case”***. Further when dealing with the consequence of an independent goodwill in relation to the trade mark registrations the Claimants said this (paragraph 172):-

“Does GL have superior rights of the Lotus mark?”

172 This argument depends entirely upon the parties’ respective contentions as to the nature and ownership of the goodwill of the Lotus brand. If the Claimants are correct in saying that there is and was an indivisible goodwill in that brand, any use or attempted use of the Team Lotus mark by the Defendants would be likely to deceive or cause confusion with the Claimants Lotus name and mark. Accordingly the marks are deceptive and should be revoked pursuant to section 46(1) (d) or section 47 (2) of the Trade Marks Act 1994”.

200. This part of the judgment therefore only arises if I determine that the entirety of the goodwill associated with Lotus was vested in GL. There would then be a question as to whether or not the use by the Defendants of the words “Team Lotus” is confusingly similar. I accept GL’s analysis in respect of the split of the goodwill as being correct.
201. This is essentially a “*jury question*” as shown by Jacob J (as he then was) in *Neutrogena v Golden [1996] RPC 473* at 483.
202. In the Court of Appeal the legal test on deception or confusion was set out namely whether on the balance of probabilities a substantial number of members of the public would be misled into purchasing the Defendants’ product in the belief that it was the Plaintiff’s and that the nature of the confusion and degree of awareness that was required of the public depended on all the circumstances and that the Judge was entitled to give effect to his own opinion as to the likelihood of confusion and deception and in doing so was not confined to the evidence the witnesses called at trial.
203. There were observations by Jacob J on the analysis of evidence “*in a case such as this, there were advantages in members of the public giving their evidence in chief by direct oral examination rather than by confirmation of their witness statement. Market surveys of the type which questionnaires are filled in and the results subject to statistical analysis are unnecessarily elaborate. Further, pure questionnaire evidence is seldom helpful. The Court wants to know whether there is a substantial degree of deception and confusion, and the best evidence is oral evidence of those alleged to have been deceived or confused.*”
204. I have only been asked to consider oral evidence in respect of a number of witnesses called by the Claimants. However in those cases the Defendants elected not to cross examine them so their evidence is in effect oral evidence albeit not direct.
205. It is important to set the scene at this part of the judgment. It is on the basis that Team Lotus has no goodwill attached to it to enable it to race in F1 under that name. As I have set out above my view is that (subject to questions of abandonment and any trade mark issues below and the licence agreement issues) it did have its own definable goodwill in those words and the Roundel and that the benefit of those rights passed to TLVL.
206. If it has no such rights then GL clearly has goodwill attached to the word “Lotus” that is attached to its business and its business activities. It has not directly entered into F1 racing at all before this season. Nevertheless such a finding would be on the basis that TLL and TLIL’s use was on their behalf and 1MRT’s activity last year was also on its behalf and part of the GL business activities which creates goodwill which it is entitled to protect. The fact that GL’s primary market is people who might buy sports cars and Team Lotus’ activity is exclusively racing in F1 is irrelevant for these purposes. GL has the business of the sale of sports cars. Nobody disagrees with the proposition that that business would be enhanced by being associated with a successful racing car. It seems therefore to me that if GL has the exclusive rights to the word “Lotus” even if it is entering into F1 only for the first time this year it does not matter. As part of that activity it is entitled to stop the Defendants using Team Lotus if to do so would be an infringement of its trade marks and passing off its business.

207. The question therefore currently being considered is whether or not the Defendants can escape that infringement by suggesting there is no confusion or similarity in GL racing in F1 under a name including the word “Lotus” and the Defendants racing in F1 under the name “Team Lotus”.

THE EVIDENCE ON CONFUSION/SIMILARITY

208. The Claimants’ case in essence in reality is that it is blindingly obvious that if GL races racing cars in F1 including the word Lotus and the Defendants race in F1 under the name Team Lotus the public are bound to be confused. They elevate it to the status of necessity. They rely in particular on a observation made by Mr Mosley who was called for the Defendants (T3/491) as follows:-

“Q: If a well known car manufacturer’s name is used, you would expect there to be a link between the car manufacturer and the F1 team?”

A: Absolutely. It would be misleading if somebody suddenly entered as Ford Motor Company and they were nothing to do with Ford.”

209. It is important not to read that exchange in isolation. Earlier in the cross examination (page 481) this exchange took place:-

“Q: Why do major motor manufacturers enter race teams in to F1 what is the point?”

A: I think they do so to promote their image.”

210. He was then referred to the witness statement of Mr Barker (paragraph 8):-

“Q: That is why road car manufacturers compete in motor sports to expose their products to buying public with a view to selling cars? He is right about that is he not?”

A: I would not entirely agree about that because the cars that they race and the cars that they sell are so completely different. It is more to do with image than to advertise an actual product. But that is just my opinion.

Q: That is just your opinion. One might reasonably think members of the public might reasonably expect, that they are advertising and promoting their cars by demonstrating their success on the racetrack is it not?”

A: I do not think anybody in the modern era would believe that for a moment, because anyone who follows the sport to any degree at all knows that the cars are completely different, built by different people, using different technologies, different materials, different in every conceivable respect. As I say, it is all to do with image. Not to do with product.

Q: That is exactly what you say in paragraph 10 of your witness statement is it not?

A: Good.”

211. In paragraph 10 of his witness statement he said this:-

“In the case of Lotus, most people with knowledge of Formula one would know that Team Lotus was a separate business during the Chapman era and has since the early 1990s been an entity unrelated to the Lotus car manufacturer (Group Lotus) with entirely different and separate management. It has always been well known in Formula One circles that in the post-Chapman era, the two different divisions of the business (production cars and Formula One) had gone in different directions and, ultimately, with different owners. Furthermore, anybody interested in Formula One would know that the entity making the production road car does not make the Formula One car. No one, again with any knowledge at all of Formula One, would think that Formula One cars are made by the same people who make road cars which bear the same name. I think that everyone with knowledge of Formula One knows that Formula One cars are made at totally distinct manufacturing facilities using totally different engineers, technology and parts from road cars.”

212. This is reinforced by his cross examination over the next pages. Mr Mosley primarily is giving evidence as to the effect of image. F1 creates a certain image and it is useful for manufacturers to be associated with the success of that image.

213. Later (page 493) the following exchange occurred:-

“Q: So one would expect a Honda F1 team to be connected with Honda, the car manufacturer?

A: Yes

Q: A Mercedes F1 team to be connected with Mercedes the car manufacturer?

A: Absolutely

Q: A Toyota F1 team to be connected with Toyota?

A: In all the ones I enumerated it is the same.

Q: A Lotus F1 team to be connected with Lotus the car manufacturer?

A: To be connected with Lotus car manufacturer, yes, but the difficulty there is in F1 that there was always a separate Lotus F1 Team and in the days of Colin Chapman he presided over

the two. When Chapman disappeared, it then – the two went their separate ways to a very large extent. I am not sure whether there was a financial arrangement between them or not, but in all our minds, we all knew about the Lotus F1 team. We did not associate that with – or I never associated it with the car company. When you go back to the late 1980s early 1990s you then have Lotus or Group Lotus or Lotus Car Company owned, I think in the end by General Motors, and then a completely separate F1 team going on in the tradition of Team Lotus. So it is very difficult to say that the two are connected in the sense that perhaps a Renault is with its team or Honda.”

214. Later this exchange took place (page 496):-

“Q: Lets talk about in branding terms. The whole point about a brand is that it tells you that it has an identity, it has a name.

A: Yes

Q: If we take a Silverleaf product

A: Take a?

Q: A Silverleaf product, to use my own name, it comes from something called Silverleaf

A: Yes

Q: You would expect certainly with similar products, that anything bearing that brand would come from either the same company or some closely associated company within an overall organisation, because that is what the brand tells you?

A: I think that is right, but of course if there are a number of different Silverleaf products, it might be different and I think what I am trying to say is this. That when I see Lotus in the context of F1, that is the Lotus F1 team that goes all the way back to Team Lotus in the 60s and 70s and when I see Lotus in the context of a road car, it is completely separate, but of course that is me. That is all I can speak for.

Mr Justice Peter Smith: If you have 2 different racing cars in F1 racing under Lotus would they go back to the 60s?

A: I suppose they could My Lord because rather like, for example, with Red Bull that have 2 different Red Bull cars, they both race and they both come from Red Bull and the only problem that F1 has with them is to make sure that they are designed by different people. So there is a distinction but they are both Red Bull.”

215. Looking at Mr Mosley's evidence as a whole it is not supportive of the Claimants' case in my view. It is supportive of the Defendants' case. He clearly has no problem distinguishing between Lotus sports cars and Lotus racing cars and would not be confused by an F1 car subsequently racing under the name Lotus and one racing under the name Team Lotus.
216. This is not the first time that such a thing has happened in F1. As he said in his evidence there are two different cars racing under the name Red Bull (although one is conveniently called "Toro Rosso" something which I would have thought would fool nobody). If one looks at the F1 website where the teams are listed one finds RBR-Renault, Renault (which is the one with which GL is associated), McLaren- Mercedes, Mercedes, Ferrari, Sauber-Ferrari and SGR-Ferrari. There is also a Lotus Renault but I think that is a technically correct reference to the Defendants. Renault appears in several teams as does Ferrari as does Mercedes. Nobody appears to be confused over all of this.
217. On the BBC website Team Lotus is correctly identified. GL's association with Renault is not noted at all. This is because of course the car is Renault built. GL as I understand it is not manufacturing anything in respect of the car which it seeks to be associated with. This rather undermines its' own evidence and the attempt to extract something out of Mr Mosley's answer above. The website gives a title to the name Lotus Renault but when one clicks on that it is a reference to Team Lotus F1 and Mr Fernandes. Despite all of these matters nobody appears to be confused as to which car is which when it is on the grid.
218. The Claimants submit that the evidence of the likes of Mr Mosley does not assist me. Mr Mosley is not "public". He has inside knowledge which is not available to the 600,000,000 people who it is said are "unique" viewers. In this context "unique" means someone who might from time to time watch F1. That is certainly true. Equally there will be viewers who like to watch F1 racing in its own right and are not interested in (for example) buying Lotus sports cars. Equally there must be many people who like buying fast sports cars (including Lotus ones) who are not interested in F1. As I have said earlier in this judgment the parties accept that there is a benefit to anyone being associated with a successful F1 team. This seems to me to fall into a number of categories. First there is the association of the manufacturing company. It is quite clear that Lotus and Ferrari for example benefit from being associated with a successful F1 team. Equally however it must not be overlooked that many other organisations seek to profit from being associated with successful F1 cars. That is well demonstrated by the extensive number of products that are adorned over the cars, the attire of the drivers and virtually everything else which is capable of being seen on television. This of course is not confined to F1. I do not imagine that the advertisers are going to be confused either. These are the people (for example) that Team Lotus wish to attract. They are not interested in would be buyers of sports cars because they do not manufacture any. They want sponsors to help them finance their business. GL is in a different position. It does not manufacture F1 cars. Its present arrangements as I understand them are that it is entered into some financial arrangement with Renault which took effect this year. I understand them to be in a contractual relationship at the moment for this season. I understand that this is because Renault are considering pulling out of F1 as a manufacturer who runs an F1 team (as opposed to a manufacturer that supplies an F1 team with its engines). GL has become associated with Renault in effect to keep it in as a manufacturer. GL will bring the Lotus name. However the

reality is that GL is seeking to derive benefit from being associated with a successful Renault team which also has the word Lotus incorporated in its new title. It actually brings nothing beyond the word Lotus and money.

219. I do not see drawing all these threads together that this evidence clearly shows that there will be confusion.
220. What is required for GL to succeed in its claim for infringement of its trade marks is set out in section 10 (2) TMA 1994:-

“(2) a person infringes a registered trade mark if he uses in the course of trade a sign where because (a) the sign is identical with a trade mark and is used in relation to goods or services similar to those to which the trade mark is registered, or (b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those to which the trade mark is registered, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with a trade mark”

221. The Defendants contend (closing paragraph 114 and following) the Claimants have failed to identify the relevant public. I do not accept that. The Claimants have always identified the relevant public as those who watch F1 and who are interested in buying or renting sports cars. The Claimants submit that those category of people go beyond those who have an intimate knowledge and understanding of the intricacies of Lotus business before Team Lotus ceased racing. Thus they submit is insufficient for the Defendants to point to some people who might not be confused. As Jacob J put it in *Neutrogena v Golden [1996] RPC 473* at page 481-482:-

“It is of course the effect on the goodwill of Neutrogena which matters. It is not a defence to passing off that many of a Defendant’s sales do not cause deception or confusion. There is passing off even if most of the people are not fooled most of the time but enough are for enough of the time. By “enough” I mean a substantial number of the plaintiff’s customers or potential customers deceived for there to be a real effect on the plaintiff’s trade or goodwill. In this case (where most of these are probably not confused) the crucial question is whether or not the plaintiff established a sufficient degree of confusion and deception to take the case above a de minimis level. For there are always some people who are confused and even when products and names are well- differentiated, mistakes do occur.”

222. I would note that on appeal Morritt LJ as he then was said references to “more than de minimis” were best avoided.
223. The important question therefore is whether or not a substantial number of the public are going to be confused into believing that Team Lotus’ business and the services it has provided are confused with those of GL. The Defendants contend that herein lies GL’s difficulty. None of the Defendants’ activities can possibly be associated with

GL's. They do not manufacture sports cars. F1 sponsors are sophisticated companies and will not be confused. Team Lotus fans who purchase merchandise will do so because they are Team Lotus fans. They will not do so believing that they are purchasing something from Group Lotus. Conversely Group Lotus fans (i.e. those who support the Group Lotus Renault car) are not going to buy Team Lotus products thinking they are buying Group Lotus products.

OTHER WITNESSES

224. I consider now the evidence of the witnesses of both parties called on the confusion issue. It must be appreciated that this exercise requires consideration of a number of important factors. First GL's business is exclusively in the manufacture of sports cars. It personally has never raced in F1. It has been associated with F1 solely for the purposes of enhancing its sports car brand. I have already dealt with the legal and factual basis of that association earlier in this judgment. Even now the arrangement as I understand it with Renault is that Renault is the manufacturer and GL is associated with it. Although it brings in the name Lotus the reality is it is the attraction of money to Renault. Equally GL would hope to be associated once again (since 1987) with a successful F1 car.
225. The question is whether or not the Defendants if they raced in F1 under the name Team Lotus will be confused with GL's sports car business. The immediate obvious answer to that in my view is no. Team Lotus does not manufacture and sell sports cars and never will do. When it races in F1 it cannot affect GL's primary business. If GL had an existing goodwill in F1 racing then of course it could be argued that the introduction of Team Lotus would cause confusion because GL would have a business with an existing goodwill and the use of the word Lotus and the Roundel would give rise to an obvious confusion in that arena. However GL has no such goodwill unless it wishes to rely upon the goodwill created by Team Lotus. If that is GL's case of course it requires an abandonment of its contention that the goodwill associated with Team Lotus no longer exists. I do not consider GL generated any significant goodwill by the racing by 1MRT under Lotus Racing in the 2010 F1 season. The same applies equally to 1MRT. I do not see any goodwill created of a significant amount by either in one short season.
226. There may be confusion as to names when there are two sets of Lotus cars on the start line. However the question is whether that is a confusion that gives rise to an actionable infringement of the trade marks or passing off. Both sets of cars seek to exploit the name Lotus. It is clearly legendary but as Mr Silverleaf QC pointed out in argument there is no property in a name: see *Tavener Rutledge Ltd & Anr v Trexopalm Ltd [1977] RPC 275* at page 278. Anybody is free to use the "Lotus name" so long as it does not interfere with other property rights such as registered trade marks or give rise to a claim for passing off. Thus in my view as I have said above the Lotus goodwill was effectively divided as between GL and TLL before 1985 and was codified as a result of the 1985 Agreement. It might be that TLL and TLIL has lost the goodwill associated with Team Lotus (see below). Equally it might be that TLVL failed to acquire the goodwill and trade marks associated with TLIL (see further below also). If either of those events has occurred GL's interest in its goodwill does not expand proportionate to that loss. A good example given to me was that of a cake. The cake was divided up ultimately as a result of the 1985 Agreement. Perhaps 75% of it went to GL and 25% of it went to TLL. If TLL loses its cake share through non use or the like that does not mean that GL's rights expand to 100%. All that happens is that

GL cannot stop anyone else from using the words Team Lotus because it has no right to protect it. Equally of course TLL and TLVL cannot stop anybody else using the word Team Lotus because they have lost their protectable right.

227. I approach this part of the judgment however on the basis that the cake always belonged 100% to GL and that it acquired goodwill in F1 by reason of TLL's/TLIL's activities effectively on its behalf to 1994 and that those rights were not lost by abandonment and the like. If that is the position then the question is as to whether or not GL's goodwill and GL's trade marks are affected by a new team arising phoenix like out of the ashes of the demised TLL/TLIL using the words Team Lotus and the Roundel.

OBSERVATIONS ON THE EVIDENCE

228. As I have said above apart from the witnesses as to the history of Lotus (including former employees and other officers in the companies) and witnesses as to the dispute under the 2009 License I was provided by both sides with journalistic evidence. In addition the Claimants provided me with evidence by 10 followers of the F1 events as to what their position was. The Defendants called Max Mosley who has of course a detailed knowledge of F1.

THE JOURNALISTS

229. The Claimants called a Mr Nye and a Mr Blunsden. The Defendants called Mr Ludvigsen and a Mr Tremayne.
230. All the journalistic witnesses gave their evidence strongly. However as I have said earlier the difficulty of the evidence they gave was the difficulty in distinguishing out fact, fiction, urban myth and opinion. Mr Nye and Mr Blunsden were clearly of the view that there was one Lotus organisation. Further Mr Nye offered the view that the TLL brand was consigned to history in 1994 and as far as he was concerned 15 years absence from F1 was "forever". I discerned that he was the only person of this view.
231. Mr Blunsden clearly was of the view that there was synergy between GL and TLL. I accept that. However that does not assist me in deciding whether or not there was confusion. At best he described the incidence of two sets of Lotus cars competing on the grid as being an "*unfortunate situation*". He asserts for example that the public perceive Lotus to be one organisation but without giving any basis for that. He also offered the view that after the departure of TLL/TLIL from F1 after 1994 the history and legend of 58 car types produced by TLL has been vigorously preserved and enthusiastically presented since the formation in 1992 by Classic Team Lotus formed and directed by Mrs Chapman and her son Clive. He expressed the view that GL is "*the proper and most certainly the most appropriate successor to Colin Chapman's original Lotus organisation*". He gives no basis for this and with respect it is to my mind purely speculative.
232. Mr Ludvigsen was of just a firm opinion the other way even extending to argue something that was unarguable (see above paragraph 58). Mr Tremayne similarly always perceived a separation between GL and TLL before the death of Colin Chapman and this was continued afterwards. He did not accept that two groups of Lotus cars racing on the grid would be misleading. He observed that it is clear that

GL's chief executive Dany Bahar has perceived as that it is good for GL once again to be associated with a successful racing car. He also expressed the view that one should not underestimate the knowledge of the fans.

NON JOURNALISTS

233. The Claimants produced witness statements of some 10 witnesses:- Mr Bukin, Mr Woods, Mr Barker, Mr Hasking, Mr Ablett, Mr Taylor, Mr Dunn, Mr Shepherd, Mr Bell and Mr Trotter.
234. None of these witness statements was challenged by the Defendants. Given that I indicated to the Defendants that I would not allow their evidence to be criticised in closing because the witnesses have not been given an opportunity to be confronted with the criticism and respond to it. That does not mean that the evidence is accepted nor does it mean that the Defendants cannot comment on what the evidence says.
235. Several of them speak about the confusing situation of two sets of cars on the grid. That might be but I suspect it is more illusory than real. There are as I have said a number of Renault cars, Ferrari cars and two Red Bulls. This does not appear to cause any confusion with those watching F1. There might be some initial confusion as to which car is which but that seems to me to relate to the identification of the relevant car on the race track. I do not see that it relates to confusion as to the Claimants' business with that of TLL's. Some witnesses were clearly aware of the connection between the two groups see for example Mr Bell who had been (and still was) a Lotus dealer for many, many years. I can well understand that. The synergy issues have already been alluded to in this judgment. That synergy does not translate into goodwill being indivisible and belonging to GL and not capable of being owned in part by TLL in my opinion. Some of them thought GL's new association with Renault was the interloper (as the Claimants might put it) and not associated with the Lotus Company. Mr Hasking believed that "*Team Lotus*" is the "*real*" Lotus label in F1. Mr Barker could see why Lotus would want to have 2 teams in F1 and he was not aware of any regulations prohibiting it if you have the money to do that. He referred to Red Bull and he could not see why Lotus should not do the same. Mr Barker clearly would not have been confused.
236. Objection was taken to this evidence by the Defendants because it appeared to be survey evidence and did not comply with the guidelines set out in *Imperial Group Plc v Philip Morris Ltd [1984] RPC 293*. The Defendants never applied to have the evidence struck out but were content to submit that the statements were of no evidential value and ought to be disregarded. They asserted that Team Lotus could have easily found 10 witnesses who said they were not confused (none was produced of course).
237. The Claimants response is robust (paragraph 81 and following of their closing). The evidence is not survey evidence. I was then treated to an historical survey of the rise and fall of surveys as valuable forensic evidence in passing off cases.
238. The debate to my mind is sterile. The purpose of the evidence as I understand it is to produce evidence of confusion in the mind of the public. With respect to the Claimants it simply does not do that. There might be confusion between the progeny of the two different teams on the grid but that is because they wish to exploit the Lotus legend which is not protectable. None of the evidence showed any confusion in relation to

TLL's activities to such an extent that they confused it with GL's business. I found the evidence therefore of no assistance whatever the status.

239. The same applied to the journalists. Both sides' journalists stood their ground. It was impossible to distinguish between either set in the witness box. I am therefore left with largely subjective impressionistic views as to the connection between GL and TLL with the views going both ways. Analytically the evidence of the journalists is of no use. I found it of no use when analysing the history above and it is equally to my mind of no use in deciding whether the activities of TLL in using Team Lotus and the Roundel are such as to cause confusion with the public with that of GL.

CONCLUSIONS ON CONFUSION

240. Superficially it is easy to say that if one has two Lotus cars on the grid racing under Team Lotus and a further two Lotus cars on the grid racing under Lotus Renault or even Lotus Racing there must be confusion. Equally the use of Roundels with Lotus on some and Team Lotus on others superficially looks as if it is bound to cause confusion. I was referred by the Claimants to a number of authorities in paragraph 96 of their closing submissions. They summarise the effect of those in paragraph 97. They are as follows:-

“97 These cases establish a series of propositions which may be summarized as follows:

(1) the likelihood of confusion must be appreciated globally, taking into account all the relevant factors; Sabel BV v Puma AG page 224;

(2) the matter must be judged through the eyes of the average consumer of the goods or services in question; Sabel BV v Puma AG page 224, who is deemed to be reasonably well informed and reasonably circumspect and observant but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV page 84, paragraph 27;

(3) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; Sabel BV v Puma AG page 224;

(4) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; Sabel BV v Puma AG page 224;

(5) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods

and vice versa; Canon Kabushiki Kaisha v Metro-Goldwyn-Meyer Inc page 7 paragraph 17;

(6) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; Sabel BV v Puma AG paragraph 24;

(7) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); Sabel BV v Puma AG page 224;

(8) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; Marca Mode CV v Adidas AG page 732, paragraph 41;

(9) but if the association between the marks causes the public wrongly to believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; Canon Kabushiki Kaisha v Metro-Goldwyn-Meyer Inc page 9 paragraph 29.

98 For present purposes, it is helpful to consider in a little more detail the issue of the comparison of marks. In doing so, we emphasise one or two key points, some of which are self-evident:

(1) It is illegitimate to focus only on points of alleged similarity. In order to take the required “overall impression”, it is necessary to weigh up the points of similarity against the differences but always viewing the matter through the eyes of the average consumer.

(2) The comparison of the marks must take place through the eyes of the average consumer. Hence it is necessary to consider what, as a matter of overall impression, bearing in mind the distinctive and dominant components of each mark, the average consumer (a) sees (visual comparison) (b) hears (phonetic comparison) and (c) thinks of (conceptual comparison) when he or she encounters each mark. The reference to distinctive and dominant components is not an invitation to engage in detailed analysis of each mark: it is simply an analytical tool to enable the tribunal to focus on what the average consumer focuses on.

(3) To the extent that one particular feature in a complex mark is identified as being the or a distinctive and dominant component, it follows that the average consumer will focus on that feature amongst the others in the mark.

However, focussing on a particular feature means that the average consumer will more readily identify differences concerning that feature in the other mark;

(4) In considering whether two marks are similar, the reputation of the earlier mark is not relevant”.

241. This summary is distilled from Kerly’s “Law of Trade Marks and Trade Names” (14th Edition) paragraph 9-032 to 9-058.
242. Applying those principles involves consideration of a number of facts. First GL is in the business of manufacturing sports cars. It is not in the business of manufacturing cars for racing in F1 nor manufacturing such cars to sell to other people in F1. TLL is in the business of racing cars in F1. It manufactures them for that purpose but it is not in the business of manufacturing such cars to sell to other people. It has no business involved in manufacturing and sale of sports cars.
243. Further the purpose of GL participating in F1 is to be associated with a successful F1 car. Thus as I understand it, its association with Renault under the name Lotus Renault is in the expectation or hope that the car will be successful and their name will be associated with it. Thus the purpose of the association in F1 is to boost the sales of sports cars.
244. My conclusion is in my judgment supported by what actually happened. The parties by the 1985 Agreement regularised the existing situation which as I have set out above meant that there was separate and divisible goodwill in GL and TLL/TLIL. I cannot accept that that decision and acknowledgment by the parties and their experienced lawyers and trade mark agents at the time was factually wrong. Further that must therefore be on the basis that the parties acknowledged that the trade mark registrations which came out of the 1985 Agreement would not be confusingly similar as regards the other party’s trade marks. Equally the parties have entered into the agreement on the basis that each has an existing goodwill which is clearly dovetailed to the trade mark registrations and the division between sports cars and racing cars. Thus the parties clearly believed at that time that the carrying on of the activities by the respective parties would not amount to a passing off of the other side’s business as there was no confusion in the minds of the public.
245. Nothing has changed as regards that split. Further GL has acknowledged that separation both as regards trade mark and passing off activities as I have set out earlier in this judgment. I cannot see that GL can simply put a racing car on an F1 track for the first time and then shout “*confusion*” when there has been none before.
246. On that analysis there is no prospect of TLL being confused as a potential supplier of sports cars. The other possibility is that if GL participates in F1 it will seek sponsorship and sale of products. As the Defendants say in their closing (which I accept) F1 sponsors are sophisticated entities paying substantial sums of money: they are not going to enter into contracts with TLL believing that they are advertising on a

GL car. They will have clearly sufficient inside knowledge as to the two different organisations. Similarly fans will be knowledgeable and not like the general public. Those who buy merchandise will want to buy merchandise of a particular car. TLL fans will purchase merchandise because they are TLL fans. They will not do so believing that they are purchasing something from GL and vice versa. No evidence of confusion in the minds of sponsors or knowledgeable fans was produced.

247. Thus whilst there is an association it is merely that. There may be initial confusion where the two sets of teams are racing on the grid but I am quite satisfied that can be addressed and has been addressed by journalists and commentators: see for example the 3 articles that were put to Mr Ludvigsen in cross examination about the recent Australian Grand Prix where two of them made express reference to Team Lotus and one expressly made the point that Team Lotus is not operating under license from Group Lotus. In my view any reference to Lotus alone was simply a shorthand commentary and if there are two Lotus teams participating, the commentary will be adapted to deal with the different names. This is confusion as to a racer. However it is not confusion as to the business carried on by GL.
248. At the end of the day bearing in mind the sensible observations of Jacob J in *Neutrogena* I have to decide the case looking at the evidence as a whole and consider whether the average consumer of the goods or services whom is deemed to be reasonably well informed and reasonably circumspect and observant is likely to be confused. I cannot see it because of the differing nature of the operations. The reality is that both sides are seeking to trade off the name and legend of Lotus which is not protectable.
249. I therefore conclude that as a matter of fact even if GL had the exclusive right to Lotus and the trade mark in the Roundel that it has there is no realistic possibility of confusion if TLVL or anyone authorised by it competes in F1 alone racing cars as opposed to building and selling sports cars. I have already commented on the paucity of the evidence above. The evidence does not to my mind provide me with a clear picture so I am left to deal with it ultimately on the basis of my opinion. In my opinion there is no likelihood of deception in this case where the activities of TLL and its successors are limited to F1 racing.
250. It would have been otherwise if they were competing in the sports car world; it would be otherwise if GL had a reputation in F1 racing as opposed to sports car manufacturing.

EXTENDED INFRINGEMENT

251. The Claimants also suggest that it is an infringement of the trade mark to use a mark which has a reputation without due cause so as to take unfair advantages of the mark's reputation or to be detrimental to its distinctive character as per section 10 (3) TMA 1994. The section says:-

“a person infringes a registered trade mark if he uses in the course of trade in relation to goods or services a sign which is identical with or similar to the trade mark, where the trade mark has a reputation in the United Kingdom and the use of the sign, being without due cause, takes unfair advantage of,

or is detrimental to, the distinctive character or repute of the trade mark”.

252. For this section to be relied upon the registered trade mark must have a reputation in the United Kingdom. I accept the Claimants’ submission that “Lotus” has such a reputation. However the reputation is in relation to sports cars; it is not in relation to F1. Once again in my view this is the fundamental difficulty for the Claimants. I do not believe GL has a reputation in F1; it has a reputation for manufacturing and sale of sports cars. The requirement is for TLL and its successors either taking unfair advantage of the distinctive character or repute of the earlier trade mark or their actions in relation to the goods or services would be detrimental to the distinctive character or repute of the earlier trade mark. Confusion is not apparently necessary. Detriment to and unfair advantage of distinctive character or repute must be probable by real as opposed to theoretical evidence and cannot merely be assumed from the fact that the earlier mark has a substantial reputation: *Mastercard International v Hitachi Credit [2005] ETMR 10*. In my view there is no evidence to suggest that TLL and its successors will either take an unfair advantage of the distinctive character or repute of the earlier mark or their conduct will be detrimental to its distinctive character or repute. First once again there is the fact that they are not seeking to sell goods that compete with GL. It is solely concerned with the manufacture and racing of F1 cars, an activity which GL has not participated in directly ever. Second even if GL could pray in aid the earlier racing history as being on its behalf that has not actually occurred since 1994. I remind myself of what Mr Florance said that he could not explain why if this was so important that GL had not entered F1 between 1994 and 2010. What TLL and its successors want to do is simply race in F1 under the name Team Lotus. I do not see how that takes unfair advantage or is detrimental to GL in its primary business that of the manufacture and sale of sports cars. In my view therefore the claim under this head similarly fails.

LOSS OF MARKS AND/OR GOODWILL BY NON-USE/ABANDONMENT

253. In this section of the judgment I address GL’s contention that TLVL’s registered marks should be struck out for non use and an alternative claim that any goodwill has been lost since 1994 when F1 racing ceased.
254. This only arises on the basis that I have rejected GL’s claim that the Defendants do not have any title to the marks and never had any goodwill which is my view as set out above.

NON USE OF TRADE MARKS

255. GL has made such an application before in respect of the same marks in 2002. That led to the decision of Mr Reynolds for the Registrar on 29th May 2003. His decision is summarised in paragraph 47 of his adjudication where he revoked both the registrations (1338435 and 1337455) save in respect of class 35 relating to F1 motor racing. Thus from that date the only effective trade mark registrations were in F1 motor racing advertising.
256. In the latest round of revocation proceedings GL seek to revoke for non use between 2003 and 2008. This is based on section 46 TMA 1994 where there has been non use without proper reasons for an uninterrupted period of 5 years.

257. There are thus two issues. First has there been non use for the requisite period? Second if there has is there a proper reason for the non use?
258. In his decision (paragraph 46) Mr Reynolds accepted the submission on behalf of TLVL by Mr Hunt that there were proper reasons for non use in respect of the F1 aspect of the registrations (i.e. those which survived GL's challenge). His reasons are found in paragraph 43 namely that Mr Hunt has tried to get into F1 with great efforts which have been unsuccessful.
259. GL criticised that decision but it was not challenged at the time and it is not open to me to revisit the Registrar's decision *as regards the period covered by the decision*. It has no relevance for a fresh attack based on non use in a subsequent period.
260. The Defendants deny there has been non use with an alternative plea that if it is found there was non use then there are proper reasons for such non use. The difficulty with the Defendants' stance however in my opinion is the failure to call Mr Hunt. No reasons were given for him not being called beyond the suggestion that the case would be established on documents and Mr Hunt was unnecessary. I do not accept that is a valid reason for not calling Mr Hunt. He had control of TLVL from 1994 until last year. It is his efforts which are relevant in respect of this attack. There was no doubt about Mr Hunt's availability; he was present throughout the entirety of the court proceedings as an interested observer. The Defendants attempt to summarize the evidence in paragraph 41 and following of their Amended Defence and Counterclaim. In addition they assert (paragraph 100 (5)) that there were proper reasons being the difficulties in entering F1.
261. There was a slight denouement in this regard with Mr Mosley who gave evidence to the effect that there was no difficulty about any number of applicants. However no evidence was adduced by the Defendants in respect of this. I do not regard the selective matters referred to in the defence without evidence as being sufficient. That evidence ought to have been provided by Mr Hunt. As I have said no explanation has been given for him not giving evidence. It was plainly vital evidence if the Defendants were going to seek to establish (1) they were using the mark and (2) in the alternative there were proper reasons for non use if their primary contention is rejected. The very nature of the two pleas presents them with difficulty. First they contend they are using it and in the alternative if it is found they are not using it then there are proper reasons for not using it. This is why it was so vital to have Mr Hunt as a witness. Absent an explanation I am entitled to infer (and I do) that the reason Mr Hunt did not give evidence is that he would not support the case see for example *Lennox Lewis v Eliades (no 4) [2005] EWHC 488; Court of Appeal [2005] EWCA Civ 1627*.
262. There are two further factors to consider. First the period in question is 2003 to 2008. Activities relied upon before that, are irrelevant. Second it seems to me given the decision of Mr Reynolds that the marks are limited to the classes in respect of F1 all activities must relate to F1 only. Self evidently none of them relates to F1 because TLVL was not participating in F1. I accept the submission made by Mr Silverleaf QC (a point I note accepted by Mr Reynolds) that preparatory works do not count. As he (Mr Silverleaf QC) eloquently put it "*use it or lose it*".
263. Equally the reliance upon the Classic Team Lotus operation is shrouded in mystery for the reasons that I have already referred to. The Defendants have not properly addressed this issue and it is unclear to me (once again because Mr Hunt has not been called)

precisely what is the relationship between TLVL and Classic Team Lotus. I have referred to the agreement of 24th February 1994 but Classic Team Lotus is not a party to that agreement. In any event whilst that might have been relevant before Mr Reynolds' decision it fails once again in my view to qualify as use of the trade marks as defined by him.

264. Given all of that in my view GL's case is made out and I determine that there has been non use for the period 2003 to 2008 and no proper reason has been given for that non use. I will therefore cancel those trade mark registrations.

CONSEQUENCES OF CANCELLATION OF TRADE MARKS

265. I have concluded that the Defendants' trade mark registrations should be cancelled. Does that mean that the activity of racing cars in F1 under the name Team Lotus thereby infringes GL's trade marks because the Defendants no longer have the defence of use under their own trade marks?
266. The Claimants contend that it is a defence to a claim for an infringement of a trade mark that the alleged infringer has itself a registered mark see section 11 TMA 1994 and Kerly (paragraph 14.142). The Claimants submit that the registration must subsist at the date of the alleged infringements and if it is cancelled for non use with effect from an earlier date then the defence is not available.
267. The Defendants do not accept that is a complete answer to the question posed and in written submissions provided to me after I requested clarification on this issue submit there are four reasons why the residual goodwill still affords a defence. First they submit that Team Lotus could only infringe GL's trade marks in the name of "Lotus" if its use of the name "Team Lotus" gave rise to *a likelihood of confusion on the part of the public* (section 10 (2) TMA 1994). It is submitted that if there is a separate goodwill in the name of Team Lotus it follows that its use cannot give rise to a likelihood of confusion. It rightly reminds me of what GL said in its written opening (paragraph 158 and 172: see paragraph 199 above). It is submitted on behalf of the Defendants therefore that the evidence does not on its face value demonstrate confusion and that since there is no confusion there can be no infringement of GL's registered trade marks despite the cancellation. This seems to me to be correct and I accept that submission.
268. The Defendants also submit that it would have a statutory defence under section 11 (2) (a) of the TMA 1994 because the use of the words Team Lotus is the use by a person of his own name. I do not accept that because it is not use of its own name. It is different from its own name.
269. Third the Defendants submit that if there is confusion on the F1 track this ought to lead to the conclusion that GL's marks ought to that extent be declared invalid. It is submitted that is so because TLL's rights predate GL's registrations. Those registrations were made on 15th May 2002. The Defendants' use of the name Team Lotus and the Roundel and hence the goodwill and right to bring a passing off action preceded that. GL's earliest trade mark registration of the name "Lotus" was in class 12 (land vehicles) was first made on 20th November 1957 and it is asserted that the Team Lotus name was in use from 1954. That might be right but the use of the name Team Lotus by the Defendants' predecessors flows from the incorporation of TLL in 1961. I have had no evidence which suggest the previous goodwill attached to a different company in respect

of Team Lotus passed to TLL on its incorporation. It might be obvious but it is not evidenced. I do not therefore accept that the Defendants can establish a right to declare GL's registrations invalid. In any event even if that were correct I do not see that the 1985 Agreement can be ignored. By that agreement the rights of GL in respect to its marks and Roundel were acknowledged and were agreed to continue. The successors from TLIL who were a party to that agreement are the Defendants. They cannot in my view be in a better position. Therefore I reject that submission as well.

270. Finally it is submitted that if the existing registrations are revoked neither party has an existing registered "Team Lotus" mark. However it is submitted that the Defendants on this basis still have some goodwill in the words Team Lotus and the Roundel and it can use them and GL cannot prevent that. Thus it is submitted it is entitled to have its mark registered under the TMA 1994. Once that happens it will then be provided with a fresh statutory defence based on those new marks and the Claimants' action for infringement be stayed until those registrations take effect. Both parties have in 2010 made applications for registration of the Team Lotus mark. It is submitted that GL has no grounds for opposing the registration of the mark on the part of the Defendants. Any grounds for objection are those set out in section 5 TMA 1994 and given the findings that there is no likelihood of confusion and the fact that the Defendants have goodwill attached to it there can be no grounds for objecting to the registration. By contrast it is submitted that GL has no right to register its marks under the name Team Lotus. Section 5 (4) TMA 1994 prohibits the registration if its use is liable to be prevented by virtue of any rule of law (in particular the law of passing off) protecting an unregistered trade mark or other sign (section 5 (4) (a) or by virtue of an earlier right (ibid sub-section (b)). GL fails to satisfy any of those criteria. Further it is clear that it gave up any rights to that name by virtue of the 1985 Agreement and has acted consistently during the currency of the Agreement and afterwards (see above) on the basis that it had no rights to the name Team Lotus. Thus it is submitted that the Defendants' new registrations will afford them a defence because they will then have registered trade marks.
271. This seems to me to be correct.
272. The second point I raised in my request for clarification was whether or not if GL had acquiesced in the registration of TLL's trade marks for 5 years and in the activity it was estopped from alleging that the proposed activity was an infringement of the trade mark despite the fact that TLL's trade mark is struck out.
273. The starting point is section 48 TMA 1994 which provides that where a proprietor of an earlier trade mark has acquiesced for a continued period of 5 years in the use of a registered trade mark he is not entitled on the basis of his earlier mark oppose the use of the later mark in relation to goods or services in respect of which it has been used unless the registration was applied for in bad faith. I have already set out above that in my view the acquiescence by GL as a result of the 1985 Agreement and subsequently estopped it from challenging the initial registrations of the trade marks. However it did not prevent it from subsequently applying to strike out those trade marks for non use. It has done that twice. The question was more concerned with whether or not that acquiescence which was also an acquiescence in the registration and the use of the trade mark prevented it from alleging that its marks were infringed. The relevant marks were registered on 21st February and 13th March 1992 pursuant to the 1985 Agreement. The applications to register them was made on 4th and 15th March 1988 respectively. GL clearly acquiesced in the use of the marks and the underlying business activity from the

1985 Agreement and during its currency. However as I have determined there is no evidence before me of use of the marks by the Defendants after the F1 racing ceased (either in 1994 or 1995). In addition of course GL obtained a cancellation of all the trade marks up until 2003 in the revocation proceedings save in respect of F1. At that time the Registrar determined that there was no F1 activity then but there was a good reason for that. Therefore there is no use which can be acquiesced in by GL during that period and equally there is no use thereafter because once again there is no F1 use of the marks and the Roundel. Whilst GL might have been estopped when the 1985 Agreement was running and whilst there was F1 racing I cannot see it has been estopped when the 1985 Agreement no longer operates and when there is no F1 racing.

274. In addition I accept the Claimants' submission that the 5 year period runs from the date of registration. There has not been 5 years of use since that date in respect of which it can be said the GL has acquiesced. Accordingly on the facts I do not see it can be said that GL is estopped by acquiescence in the trade mark registration and the activity.
275. In any event as the Claimants point out in their supplemental submissions this argument is based on the premise that I have struck the trade marks out for non use. Given that I accept that, section 48 TMA 1994 does therefore not apply. Whilst GL might have been estopped from challenging the use during the period of use it does not seem to me that it is estopped forever even when there is no use and it was entitled to exercise its statutory rights.
276. The Claimants accept that under English law a trade mark owner may be estopped from bringing an action for infringement through the application of the conventional principles of estoppel: see Kerly 14-190 to 14-191. The Claimant have set out the principles of estoppel extensively in its supplemental submissions. I accept that I can see no basis for the Defendants asserting that there has been such conduct that GL would be estopped from asserting its rights by virtue of this common law defence. There might have been earlier when the 1985 Agreement was operating but that does not to my mind amount to a perpetual defence to an assertion of the Claimants' rights. It would only be relevant if there was an activity which was an infringement of the Claimants' marks which were still being continued. Since 1994 the evidence shows as I have said rumblings on the part of GL in various activities (by for example Classic Team Lotus) but no F1 activity and clear non use as determined by the Registrar and by me during at least 10 years before the present action. There is nothing there in my view which can show a possible allegation of estoppel according to English law. Therefore that will not avail the Defendants.
277. The third question I raised does not need further clarification because both parties are in agreement that the question does not arise.
278. I therefore determine that for the various arguments that I have accepted on behalf of the Defendants above the loss of the existing marks does not enable GL to stop the use of the words Team Lotus and the Roundel as being an infringement of its marks. First I do not accept that the Team Lotus name and the Roundel are confusingly similar to the Claimants' trade marks and the parties accepted that when they entered into the 1985 Agreement. Second I do not accept that GL had any other belief over the years either as set out in the evidence above. Third GL clearly acknowledged in the License Agreement that it should not license 1MRT to race under the name Team Lotus. That could only be because it was concerned that TLVL would assert that was an infringement of its rights and a passing off claim. Fourth I am entitled also to take into account the accepted

distinctiveness of the words Team Lotus and its Roundel as acknowledged by the parties over the years following the 1985 Agreement: see *Kerly paragraph 9-77*. This seems to me only fair when I considered the distinctiveness of the Claimants' name Lotus and its Roundel (see *ibid* paragraph 9-71).

279. The removal of the marks for non use is an entirely different exercise when compared with analysing whether TLVL has lost its goodwill. The principles are not the same. If TLVL has goodwill in the words Team Lotus and the Roundel then it is capable of protecting that goodwill by a passing off action even if the trade marks are revoked. I am satisfied on the evidence before me that I have set out above that despite the fact that there has been no Lotus car in F1 racing since 1994 there is still a valuable goodwill attached to Team Lotus and the Roundel. I do not need to set out the evidence again as summarised above. In this context the activities referred to in Mr Reynolds' judgment are further examples of the goodwill being in existence at the time of his judgment. I do not consider that the position has changed since that. Indeed the anxiousness with which both parties wish to use at least the word Lotus in the F1 context is strongly demonstrative of the fact that both parties believe there is some goodwill attached to racing in F1 under the name Team Lotus. For the reasons I have set out above the relevant name is Team Lotus. As I have set out above TLVL has the benefit of that goodwill by the devolution set out earlier in the judgment. It may be slightly diminished because there is no racing but it is quite clear that there is goodwill attached to it.
280. I therefore reject GL's contention that the goodwill associated with the name and the Roundel has been abandoned by non use. That goodwill in my view is substantial as the evidence shows. Even if it were minimal it does not require much for there to be some residual goodwill (although it is a question of fact in each case) see *Sutherland v V2 Music Ltd [2002] EWHC 14*. However I must stress that in my view on the evidence that has been produced there is substantial goodwill attached to Team Lotus and the Roundel despite non racing for 15 years and it is vested in TLVL.
281. Drawing all of those threads together it seems to me that on the facts of this case the removal of the Defendants' trade marks does not assist the Claimants.
282. The idea that GL could make a claim for infringement of its trade marks by reason of the striking out of the Defendants' trade marks when there was still a goodwill vested in TLVL seems to me to be absurd and does not arise in this case.

BLACK AND GOLD JPS LIVERY

283. The JPS black and gold livery was first put on Team Lotus racing cars in the early 1970s. The cars were very successful. The colouring is obviously very striking and was attractive. It was so attractive that GL's sports cars received significant demands from would be buyers to paint their sports cars in an identical colour. No objection was taken with that. Type 77 is an example of an F1 car in the John Player get up. Esprit S1 and S2 1976 are Lotus Esprit sports cars in the John Player get up (without the name John Player). However there is reference to a world championship on the side which can only refer of course to the JPS cars. No documentation or evidence has been led as to the rights to use these colours. I do not suppose for one minute that John Player who paid for all of this would have objected to their colouring being on the sports cars; it is in effect further free advertising.

284. Last year 1MRT raced under the License with cars painted in the traditional Lotus colours of green and yellow. However in December 2010 GL announced that it had bought an equity stake in Renault F1 and would be racing as Lotus Renault GP and using the JPS livery. This has upset 1MRT and in an Amended Defence and Counterclaim it asserts that the use of the JPS livery between 1972 and 1986 is highly distinctive of Team Lotus and/or its successors and it is entitled to injunctive relief to prevent GL from racing cars under that livery. No evidence has been led as to how the colouring came to be placed on the cars. It clearly relates to some kind of sponsorship arrangement with John Player. I have no idea what the property rights as regards that colouring are under such an arrangement. As I said above I do not suppose for one minute John Player (especially in this present climate restricting tobacco advertising) is going to complain about something in the public domain which reminds people of John Player cigarettes. Nevertheless I can see no goodwill clearly established on the part of TLL and then TLIL to be passed on to TLVL. Such a limited arrangement ended in 1986. It is far too late in my view to begin to assert any rights to that colour. It is in my view “up for grabs” and GL have simply beaten them. Of course (subject presumably to F1 regulations) there is correspondingly nothing to prevent 1MRT racing under the same colours but I do not suppose that is contemplated for one minute. Therefore this Amended Counterclaim fails.

CONCLUSIONS AS REGARDS MAIN ACTION

285. I determine that up until 1968 nobody addressed the question of the ownership of marks or goodwill in respect of any of the companies until the flotation. On the flotation for reasons of safety the racing operation was separated off in what was then TLL. From that time TLL and GL developed their own goodwill associated with their own activities. In GL’s case that extended to the use of the word Lotus and its registered marks. TLL developed a goodwill associated with Team Lotus carrying on (through Mr Chapman) the activities which he started in 1947. No thought was given to the allocation of marks at that time for financial reasons. That informality continued until Mr Chapman’s death in 1982 and the consequent separation of the ownership of GL from that of (by then) TLIL. That led to the 1985 Agreement which in my view acknowledged the parties’ separate goodwill and entitlement to the trade marks as I have set out earlier in the judgment.

286. The goodwill associated with Team Lotus and the Roundel has devolved to TLVL. The marks however in my view ought to be revoked for non use between 2003 and 2008 but the goodwill remains and is still protectable.

287. Equally GL has the goodwill associated with Lotus and its Roundel and it is free to compete in F1 under that name using that Roundel.

288. Accordingly save in respect of the revocation proceedings the Claimants’ claim fails. Equally the Defendants’ counterclaim fails in its entirety.

THE LICENSE AGREEMENT

289. I now go on to consider the issues arising under the license agreement. The License Agreement heralded the re-entry into F1 of a racing car carrying the name Lotus. It was between GL (1) and 1MRT (2). It was a license granted by GL to 1MRT to use various trade marks namely Lotus, Lotus Racing and the Lotus Roundel. Although

executed on 21st December 2009 its effective date was 1st October 2009. The term of the agreement (clause 7.1) was for a period of 5 years from the effective date unless terminated earlier for any reason but subject to review if sought thereafter.

290. GL granted 1MRT a license to use the trade marks in relation to the Licensed Products. They are defined as being the Team cars, licensed services (being 1MRT's business of running a F1 motor racing team) and the licensed merchandise being all goods sold by 1MRT bearing the trade mark as merchandise associated with the F1 racing team (3.1). By clause 3.2 during the term 1MRT was prohibited from manufacturing or procuring the manufacture of any of the licensed merchandise outside the Territory (being defined as all countries in which F1 races are staged or such other countries as might be agreed from time to time).
291. 1MRT was specifically prohibited from using the Lotus Roundel or the word Lotus on its own and/or in combination with the word "Team" (clause 4.2). Linked to that in my opinion is clause 9.8 whereby GL agreed to indemnify 1MRT against any loss, damages, costs or expenses which are awarded against or incurred by 1MRT resulting from any claim by David Hunt that the use by 1MRT of the word Lotus as part of its team name in accordance with the terms of the agreement infringed his rights. It seems to me that those two clauses are designed to head off any prospective claim that Mr Hunt might bring. I can see no other sensible reason for the prohibition of the word Team except on the basis at the very least GL acknowledged that it would be asserted by Mr Hunt that Team Lotus (not least by reason of the trade marks) belonged to TLVL.
292. Clause 4 of the License Agreement contained important provisions about the use of trade marks. In particular 1MRT was required to submit to GL details of the manner in which the trade marks were to be used prior to use and samples of any promotional materials including printed matter and website information prior to use for GL's approval (4.4). It was also prevented from manufacturing, marketing, distribution or sale or any other dealing in any of the licensed merchandise unless it had submitted to GL pre-production samples in question any packaging together with details of the manner in which the trade marks were to be used (4.5). It was obligated to provide samples of all licensed products to GL (4.6 (e)) and finally if any samples did not conform with any approved samples or any of the standard specification of procedures GL could give notice to 1MRT requiring it forthwith to cease selling and offering to sell all licensed merchandise.
293. By clause 6.5 1MRT acknowledged that any goodwill created through the use of the trade mark by 1MRT would belong exclusively to GL.
294. There are overriding termination provisions in clause 6.2 including if 1MRT committed any breach of the Agreement and if the breach was capable of remedy failed to remedy it within 30 days after being given a written notice containing full particulars of the breach (7.2 (b)) .
295. Finally the most important provision from the point of view of litigation was clause 8.1 (e) which provided :-

“[upon] termination of this Agreement for any reason:

(e) 1MRT shall not at any time after termination use as part of its corporate or business name, or in relation to any goods or services, any of the Trade Marks or any other mark including the word LOTUS or any word which is confusingly or deceptively similar with LOTUS or which suggests or indicates a connection in the course of trade with Group Lotus.”

BREACHES

296. 1MRT admitted breaches of the merchandising provisions. It broke the provisions about merchandising comprehensively as early as 14th December 2009 and the subsequent production of shirts by 23rd February 2010 and the conclusion of an agreement by 10th March 2010 with the chief executive of Mouawad Jewelry Group for production of a limited edition Lotus Racing brooch. On 6th May 2010 1MRT issued a press release announcing the launch of new Lotus Racing merchandise for the Barcelona Grand Prix. That range included replica team shirts and polo shirts, Lotus Racing t-shirts and a number of accessories including lanyards, earplugs, umbrellas and a team flag. It launched its online merchandise in shops the next day and transactions were completed on that day.
297. None of the merchandise was submitted to GL for approval contrary to clause 4.5 of the License Agreement.
298. 1MRT’s senior executives were clearly aware of the obligations at a very early stage. On 23rd January 2010 Sir Harry Nuttall sent an email to Riad Asmat (1MRT’s CEO):-

“Mate. Do we have to send visuals of every item (cars thru caps) to GL for sign off, and, in the case of merchandise, pre-sales examples also?”

I worry to some small degree GL will not approve the new Team Logo as the shape is just a tad similar toetc

or do we just wing it? ”

299. No reply to that email has been produced. However it is clear that Mr Asmat, Sir Harry Nuttall and the ultimate owner of 1MRT Mr Fernandes decided not to comply with the obligations under the License Agreement and decided to “***wing it***”. No evidence was adduced to challenge this inevitable conclusion. This non compliance is shown by the refusal to provide a copy of the License Agreement without explanation to Mr Choy. He at that time was employed by 1MRT from January 2010 to set up the marketing division of which he was the director. He left 1MRT in July 2010. He was therefore deprived of access to the documents which governed the relationship between 1MRT and GL. Mr Asmat in an email of 12th May 2010 to Mr Choy said:-

“As I discussed with you earlier almost everything we produce will need to go through GL for consent. Yes they themselves have legal issues on some products or merchandise but best to avoid them.”

300. Mr Choy's email requesting a copy of the License Agreement reflected his undoubted frustration ***"this is what I mean by no transparency by the CEO. As Tho' I will pass this agreement to a competitor.....Sad. We live to live another day in oblivion...I asked [Asme bin Maulud] to see the contract between [GL] and [1MRT] because, supposedly there are things we cannot do without [GL's] consent.....what are they???? God knows. Add to the Book Birth of Lotus Car Racing – chapter 11 entitled Frustrations"***
301. He had been curtly denied access to the Agreement by the CEO the same day.
302. When he finally saw the Agreement in June 2010 he sent an email to Nik Faruk on 18th June 2010 stating:-
- "We have breached every clause in this Agreement there is to be breached"***.
303. In that he is correct.
304. None of the senior people namely Sir Harry Nuttall, Mr Asmat or Mr Fernandes have given evidence on this issue to explain their conduct and whether they decided to wing it or not. Again no explanation is given for this absence (save apparently an attendance by Mr Fernandes to obtain a CBE at Buckingham Palace on one day of the trial). Ultimately Mr Fernandes' attitude is summarised in his email of 4th August 2010 that he sent to Ms Bauer (GL's Director of Merchandise):-
- "Stop treating us as lepers and stop harassing my staff. We have been so supportive of Group Lotus but quite the opposite from you guys. We will continue with this bag which is similar to the Classic but with a different logo. If you are unhappy sue us"***.
305. Well they did.
306. None of the senior executives have come to give evidence before me and as I have said no explanation has been given for their absence. It is quite clear on the emails that 1MRT knowingly breached all the obligations as regards the merchandising from the start. It made no attempt to comply and then when it was challenged it adopted this belligerent attitude as exemplified by Mr Fernandes' email of 4th August 2010. By then 1MRT had decided the License had no use to it and was looking elsewhere.
307. The failure to call the chief executives shows 1MRT's position on the License Agreement is untenable (applying the principle in the ***Lennox Lewis*** case above). I felt considerable sympathy for Mr Choy who was in effect put up to defend the indefensible and over a sustained period of cross examination was comprehensively destroyed by Mr Silverleaf QC. He was in effect left by the Defendants to hang out to dry.

RESPONSE OF GL

308. Its response was twofold. First via Ms Bauer who was a credible and convincing witness it attempted to put the arrangements on a proper footing. She emphasised she was newly appointed and did not wish to adopt an aggressive stance right from the start. However hand in glove with that GL clearly had to protect its position in accordance with the

License Agreement. Accordingly on 21st May 2010 Sarah Price sent a letter identifying the breaches (which were clearly established) and requiring them to be rectified within 7 days. The letter also indicated that if they were not rectified by 25th June 2010 then GL would have to consider terminating the License Agreement. This provoked a blizzard of internal emails at 1MRT between Mr Choy, Mr Asmat, Mr Faruk and Mr Warren. Those emails showed that internally 1MRT knew it was in breach but that it would cost lots of money and delay them as the F1 season was of course marching on if they attempted to comply.

309. Eventually there were exchanges between Mr Choy and Ms Bauer about a meeting. Ultimately after a number of delays the meeting was arranged at GL's Head Offices at Hethel on 29th June 2010. In addition to Ms Bauer a Ms Kristie Becker and a Mr Byron Jacobson attended on behalf of GL. Ms Becker is a licensing executive and Mr Jacobson is a solicitor. Only Mr Choy attended from 1MRT.
310. Ms Becker gave evidence before me but was unable really to provide any significant input.
311. It is important to appreciate what the Defendants allege came out of this meeting.
312. First in its pleading (paragraph 55 of the Amended Defence and Counterclaim) it is said that there was an agreement made on 29th June that 1MRT would send samples of existing merchandise which had been produced without following the contractual procedures for pre-approval and that GL would retrospectively approve the same providing it made the contractual quality standards. Second it asserted that as the Adidas trainers did not contain the word Lotus or the Lotus racing logo they did not fall within the definition of licensed merchandise and that GL had no objection to the First Defendant selling them. Third it is asserted that samples were sent for approval and they were not approved or disapproved by GL within 3 working days as required by clause 4.5 and were therefore deemed to have been granted. It is then asserted that GL refused to approve the leather holdall on 3rd August 2010 on the basis it would put GL in breach of a contract with Brands Global Ltd and this was not a permissible basis on which to refuse contractual approval. It asserts that all relevant merchandise produced was of satisfactory quality.
313. By the time of its closing submissions (paragraph 198 and following) 1MRT accepted that at the meeting on 29th June 2010 and subsequently it was told that it could not manufacture and sell certain items because GL had co-existence agreements with third parties but contended that was not a basis for objection. It contends (paragraph 202) that the reality is that GL having given 1MRT an unrestricted license "*got itself into a pickle*" and could not by the approval process use that to restrict categories. The evidence led before me showed that there were a large number of potential agreements which might be infringed if the Claimants acceded to the sale of particular items of merchandise. These were not gone in to in detail at the time the License Agreement came into effect. It seems to me nevertheless that it is necessary to give a business efficacy to the License Agreement as regard these issues. That leads me to the conclusion that I accept the Claimants' submissions that the true construction of the License Agreement enabled them to refuse permission for a particular item of merchandise if that would put it in conflict with any other obligations it had or any other potential liabilities. It follows from that that I do not accept GL is in breach as alleged in paragraphs 138, 139 and 142 of the Counterclaim. In so concluding I have no regard to the evidence of Ms Price purporting

to give evidence as to what the agreement meant. Nevertheless it is clear as I have said on the evidence that they did not know precisely what products could or could not be produced. Given that I construe the License Agreement and the restrictions on merchandise without consent as enabling GL to refuse a consent to a particular item if that might expose them to a third party claim. Accordingly the Defendants' Counterclaim in this regard fails and is dismissed.

GL'S ALLEGATIONS OF BREACH

314. GL's letter of 21st May 2010 set out 8 alleged breaches. These range from using the words "Lotus Racing" in a stylised form contrary to the Agreement illustration set out in schedule 3 to the Agreement, granting a sub-license to a third party to use the mark, use of the word "Lotus" in conjunction with the word "Team" and (more significantly in my view) failed to provide details of the manner in which trade marks were to be used on promotional material, manufacture, marketing and sale of products which had not been submitted for approval and failing to use trade marks in the form agreed by GL.
315. The first allegation fails immediately because Mr Bahar acknowledged he approved it in February 2010 (paragraph 15 of his second witness statement).
316. In its letter of termination dated 31st August 2010 GL relied upon the following breaches:-
- 1) an attempt to acquire rights from Mr Hunt
 - 2) the making or authorising of the manufacture of a range of merchandise which had not been submitted for approval
 - 3) the continued manufacture of merchandise without proper consultation and in particular 2 products which would never have been approved namely shoes and the holdall
 - 4) consequential continued failure to comply with the quality control provisions
 - 5) the use of the name Lotus Racing other than in F1
 - 6) sub licensing of rights to a UK company
317. In that notice GL asserted that the breaches were not capable of remedy and that 1MRT was therefore not able to comply. The notice then asserted that the agreement would terminate with effect from the end of the current F1 season namely 14th November 2010.
318. It had a fall back position to deal with the suggestion that 1MRT might say the breaches were capable of remedy.
319. 1MRT responded through its solicitors Macfarlanes by letter dated 23rd September 2010. That letter asserted that it did not accept 1MRT was in breach and that the alleged breaches were manufactured to attempt to justify termination because GL had admitted that the reason for terminating was 1MRT's alleged attempts to acquire the rights to use the name and mark "Team Lotus".

320. Importantly the letter had the following sentence:-

“Our client now accepts that the relationship has, as a result of your client’s actions, irretrievably broken down and as such is willing to accept your client’s unlawful termination of the Agreement and its general conduct of repudiatory breaches, such that the Agreement is terminated on the date of this letter.”

321. The third place where GL sets out its contention that 1MRT has broken the License Agreement is in the Re-re-Amended Particulars of Claim as follows:-

- 1) Manufacture of Licensed merchandise outside the territory (paragraph 31 A.1)
- 2) Solicitation for Licensed merchandise outside of the territory (paragraph 31 A.2)
- 3) Manufacture or authorise the manufacture of a range of products without approval (paragraph 32)
- 4) The attempt to obtain alleged rights of TLVL contrary to clause 6.4 of the Agreement (paragraph 32 A)

322. Of those breaches sales and manufacturing outside the territory is not referred to in the 31st August 2010 termination notice.

323. GL asserts it can rely upon this breach at trial upon the principle of ***Boston Deep Sea Fishing v Ansel [1888] 39 Ch.D 339***. The Defendants’ riposte to this is that principle has no application. The Claimants do not rely upon this extra breach as a repudiatory breach so it cannot be relied upon retrospectively to the notice. However the Defendants accept that if there is another breach that sounds in damages only. With respect to the Defendants I do not understand this analysis. If the breach was discovered afterwards and that breach would have entitled them to serve a notice terminating the License Agreement it is in my view something that the Claimants can rely upon in view of the decision in ***Boston***. A similar situation occurred in the case of ***BDW Trading Ltd (t/a Barratt North London) v JM Rowe (Investments) Ltd [2010] EWHC 1987 (Ch)***. In that case I upheld a notice of termination which was served immediately at the start of the proceedings to rely upon a further non compliance of the conditions. An appeal was dismissed although this point did not arise ([2011] EWCA Civ 548).

324. Therefore I am satisfied that if GL established the breach and the breach entitled them to terminate the Agreement they can rely upon that as being such a breach. In fact this is academic because it is plain in my view that other breaches are clearly established.

NEW PARTNERS: CLAIM AND COUNTERCLAIM

325. It is quite clear on the evidence that by July 2010 GL realised the License Agreement was a mistake and it wished to be rid of it and form another arrangement with a different party. Equally it is clear in my view that 1MRT believed the same. Both wished to be out of the License Agreement by this time but neither was prepared simply to speak to the other and effect something on the lines ***“this has all been a***

terrible mistake let's negotiate an amicable termination". This is unfortunate because it is clear that both parties had this background of wishing to get out of the License Agreement but wished to use the other side's default as a basis for doing so.

326. Motivation is of course irrelevant. If a party wishes to get out of an agreement because it can enter in to a better agreement with somebody else that is irrelevant if it can validly terminate the agreement.
327. However both parties go beyond that. The Claimants assert that 1MRT entering in to negotiations to acquire the rights to use "Team Lotus" from TLVL is a breach of clause 6.4 of the License Agreement. That clause provides:-

"1MRT shall not represent that it has any title in, or right of ownership to, any of the trade marks or do, or permit to be done, any act or thing which in any way may impair the rights of Group Lotus in any of the trade marks or bring into question the validity of the registrations, or which might support an applications of revocation of any of the registrations."

328. Not to be outdone the Defendants assert GL was in breach of clause 3.1 of the License Agreement by entering into negotiations for new business during its currency. That clause provides (inter alia) ***"Group Lotus will not itself or through its servants or agents manage or run a team competing in the FIA F1 world championships nor will Group Lotus license any third party to operate a F1 team under a name including the word "Lotus" during the term of this agreement...."*** Thus the Defendants assert that GL by entering into negotiations which clearly commenced in July 2010 that was a breach of that clause.
329. Much time was devoted to this issue.
330. Mr Bahar was extensively cross examined. Further GL were criticised by 1MRT in its closing concerning the cross examination of Mr Mosley in relation to an alleged telephone conversation. Mr Bahar in his second witness statement (paragraphs 6-7) stated that there was a 2 minute telephone conversation with Mr Mosley in August 2009. Mr Mosley denied such a conversation had taken place. When he verified his evidence he was asked whether he wished to correct that paragraph. He did not. He amplified what was said (T3/429). The conversation was fairly inconsequential in respect of the dispute. Nevertheless GL attempted to ambush Mr Mosley. When he gave evidence he was cross examined by Mr Silverleaf QC (T3/501 et seq). Mr Silverleaf QC for the first time produced a copy of Mr Bahar's mobile phone record. The phone record was plainly in my view deliberately held back to produce at the last minute. There can be no justification for these kinds of tactics under the Civil Procedure Rules. The document was clearly a disclosable document but no disclosure was made and furthermore Mr Bahar did not refer to it when he verified his witness statement. As I said at the trial this is unacceptable and I remain of that view. The days of cross examination by ambush ought to be over under the Civil Procedure Rules. In any event it blew up because the only relevant telephone conversation had a two second duration and Mr Mosley recalled somebody ringing him but not getting through. I am satisfied no conversation took place as alleged by Mr Bahar. It does not

matter however. The reason I say that is that in my view both parties had by July 2010 decided the License Agreement was not for them.

331. Both tried to make alternative arrangements. I have not had the benefit of course of any evidence from the Defendants about these activities because Mr Fernandes and the other executive people were not called. I have had the benefit of Mr Bahar. As I have said he was extensively cross examined. I accept the Defendants' analysis of Mr Bahar's evidence. He was unwilling to accept what the evidence showed namely that he had reached a firm non binding commercial deal with Mr Lopez in August 2010 to the extent that there was a letter of intent agreed between them on 17th August 2010. Mr Lopez is a director of Genii which is the controlling shareholder of Renault Formula One Team Ltd ("RF1"). Those discussions led to various expressions of agreement in the form of letters of intent. As regularly occurs in commercial situations the non lawyers agree tentative terms but then the impact of those tentative terms is reviewed by the lawyers and an agreement is then arrived at which addresses as many problems as possible. Thus for example the draft letter of intent emailed on 17th August 2010 to Mr Lopez and Mr Bahar contains a recital that GL was able to disengage by the end of the 2010 season from its current License with 1MRT but also provided that the parties should negotiate in good faith the terms of the project by 31st August 2010 (clause 8.1) and that they agreed to finalise and execute the final agreement no later than 30th October 2010 (clause 8.2). Finally it stated that the letter of intent should be legally binding for the parties (clause 9.1). However this is merely an agreement to negotiate and it is not in my view a binding agreement when all of the clauses of the terms of the actual relationship between the parties remain to be agreed. The final letter of intent was somewhat different. This was dated 28th August 2010 (3 days before the termination notice). Recital 3.6 required Lotus to use all reasonable endeavours to disengage from the License Agreement by the end of the 2010 season. Significantly it also provided that upon the execution of the letter of intent the parties should agree to finalise and execute the final agreement no later than 31st October 2010 *unless* it becomes evident to [GL] before 31st October 2010 that [It] will not be able to disengage from its current licensed Formula One involvement where upon [GL] will inform Genii in writing and upon receipt of such notification this letter of intent will be null and void (clause 8.2).
332. It is plain when that is seen that all GL was doing was entering into negotiations for a prospective arrangement in the event that the License Agreement came to an end. I do not accept that by so doing they were in breach of clause 3.1 of the License Agreement and I reject that contention by the Defendants.
333. The position is the same as regards the Defendants' negotiations in my view although I accept I have the disadvantage of not seeing the officers of 1MRT give evidence to explain what was going on (see paragraph 358 below). This is consistent with GL's dissatisfaction with 1MRT under the License Agreement. It was entitled to be dissatisfied and as I will set out further in this judgment in my view 1MRT was persistent in a serious breach of the obligations as regards merchandising. Further Mr Fernandes' stance was shown by his sue me if you can email. It is clear that 1MRT never complied with these provisions right from the start. It was determined to go its own way and in the words of the January email "*wing it*". This position did not change throughout the whole period. By July GL had had enough. Thus for example they instructed Mr Jacobson a lawyer who attended the meeting of 29th June 2010 (see

below) to stop doing his work that came from that agreement to provide a note to Mr Choy.

334. In fact none of this assists in my view. If GL establish 1MRT has committed breaches of the License Agreement it has the rights to serve the notices under clause 7.2. Equally if 1MRT establishes that GL has committed a breach of the License Agreement it has rights of termination under clause 7.3. In neither case is a party disabled from serving a notice merely because it itself is in breach of the License Agreement. The relevance of the Defendants' stance on this is in relation to clause 8.1 (e) where a restrictive covenant is imposed on 1MRT at the termination of the Agreement which restricts it from using any of the trade marks or any other mark including the word "Lotus" or any word which is confusing or deceptively similar with "Lotus" or which suggests or indicates a connection in the course of trade with Group Lotus. The sting in the tail is a blanket prohibition on the use of any mark including the word Lotus (whether confusingly or deceptively similar or not). The argument that GL is in breach is used by 1MRT as a platform for suggesting that GL cannot enforce that covenant when it is in breach itself of the License Agreement despite the opening words "***upon the termination of this Agreement for any reason...***". I will deal with this submission further when I come to consider the effectiveness or otherwise of that clause.
335. Thus my analysis would be that if GL establishes breaches which entitle it to terminate under clause 7.2 it can do so. It might be in breach of the Agreement itself but that does not disentitle it from serving the notice. If it is in breach 1MRT might have its own rights to serve a notice but until it elects to do so or in some other way assert that the License Agreement has come to an end by reason of repudiatory breach which is accepted those breaches until accepted are "things in the water".

HAS GL ESTABLISHED ANY BREACHES?

336. I am satisfied that GL has established that 1MRT was in extensive and serious breach of the License Agreement and that these breaches started almost immediately after the License Agreement was entered into in December 2009. Thus for example it procured the manufacture of licensed merchandise outside the territory i.e. in Bangladesh. This was admitted by Mr Choy (T6/947-947). This breach continued through to July as the emails show passing internally in 1MRT. I accept GL's submission that this is an important breach because Bangladesh is not F1 territory and the quality of merchandise sourced there by 1MRT was very poor. Mr Choy admitted this again (T6/946-947). This admission was inevitable given the internal email starting with the email of 10th March 2010 through to the email of 23rd July 2010 referred to in the Claimants' closing (paragraphs 176-182). The last email dated 23rd July 2010 commented that "***QC is quite shocking***". The second email admitted that no care and contents labels were on the merchandise.
337. Equally what GL has established is that 1MRT is in breach of clause 3.2 because it solicited orders for Licensed Merchandise outside the Territory in several countries.
338. Equally all of the goods that were manufactured were never submitted for ***pre-approval***. As GL establishes the planning for the manufacture and sale began as early as 14th December 2009 and the intent by Mr Fernandes (who of course has not given evidence to challenge this) was that the merchandise be commercially available as soon as possible after the end of December 2009.

339. I have already commented on the way in which Mr Choy was kept out of the legal picture and no pre manufacture application was ever submitted.
340. That is a breach in my opinion which is incapable of remedy. It would have entitled GL in my opinion to serve an immediate notice of termination under clause 7.2 (b) as it is not a remedial breach. In fact by their notice of 21st May 2010 GL gave 1MRT 30 days to remedy that breach. So far as I can see 1MRT did not ever remedy that breach.
341. There was of course the meeting on 29th June 2010.
342. As I have already observed Mr Choy in his internal email to Nick Faruk on 18th June 2010 stated “*we have breached every clause in this agreement there is to be breached.*” That is a bit of an overstatement but it is clear that there were deliberate breaches of these important provisions and no serious attempt was made to remedy them. Mr Choy acknowledged that they were serious (T6/924).

MEETING OF 29TH JUNE 2010

343. Much was made of this meeting by the Defendants in the Pleadings and in its opening. The only witness called by the Defendants was Mr Choy (he was the only one there for them). I do not see that Mr Choy’s evidence supported the Defendants’ case. It seems to me that the purpose of the meeting was that identified by the Claimants’ witnesses and in particular the evidence of Ms Bauer who was an impressive witness in my view. I have already commented that Kristie Becker’s evidence was not of assistance. Neither was Mr Jacobson’s. He appeared to recollect very little and did not appear to understand the issues particularly despite the fact that he was there as a lawyer. The meeting took place against the backdrop of the notice that had been served on 21st May 2010. If the Defendants had any credibility I would have expected them to have attempted to address those breaches and provide material to enable GL to give its consent albeit retrospectively. However no product lists or samples of manufactured goods were provided and in my view the meeting was inconclusive. Certainly I reject any suggestion that GL waived any of the breaches by the meeting and agreed anything less than full performance under the Agreement. It was 1MRT’s obligation if it wished seriously to proceed with the License Agreement to remedy its already woeful performance. GL was entitled to wait for 1MRT to make some attempt to deal with these breaches. It had served the notice already and as long as it did not waive or withdraw that notice if 1MRT had not remedied the breaches by 25th June 2010 it was entitled to terminate the License Agreement. The reality is that 1MRT did not make any attempt to remedy these breaches. The reason is obvious. The products would never have been approved by GL and rightly so. This is why in my view I heard no evidence beyond that of Mr Choy. 1MRT had plainly decided to tough it out from the start and were hoping that GL would back off. Further by July 2010 it was clear that it too was seeking to extricate itself from this agreement. The later supply of supposed samples was woeful as GL established by its evidence.
344. I therefore conclude that GL has established that there were material breaches in relation to the merchandise as it alleges. It follows that I am satisfied that those breaches (which are to be found in paragraph 31 A and 32 of the Re-Re Amended Particulars of Claim) are established and entitled it to serve a notice terminating the Agreement which it did by its notice dated 31st August 2010.

TERMINATION NOTICE 31ST AUGUST 2010

345. The notice specified 14th November 2010 as the date of termination but gave 1MRT the option if they contended the breaches could be remedied to remedy them in 30 days.
346. Macfarlanes' response on behalf of 1MRT dated 23rd September 2010 contained a rejection that 1MRT was in breach and a denial that any of the matters entitled GL to terminate the Agreement. It asserted that GL's failure "*to adhere to the spirit of the Agreement and, in particular, the fact that it now seems that [GL] has, for some time, been looking to establish its own F1 team, clearly shows that it no longer intends to be bound by the terms of the Agreement.*"
347. The letter then asserted that the relationship has broken down irretrievably and it was willing to accept GL's unlawful termination and its general conduct of repudiatory breach so that the Agreement was to be regarded as terminated from the date of that letter.
348. None of that in my view is justified. First there are plain breaches in respect to the merchandise which have been established (and were clearly known to 1MRT) right from the start of the License Agreement. That gives GL for the reasons I have already set out a right to terminate the Agreement. If 1MRT evinces an intention not to be bound further by the License Agreement which it plainly did by the letter of 23rd September 2010 GL does not in my view have to wait until the date specified in its notice to expire. It is entitled to regard itself as absolved on further performance from the date when 1MRT evinces an intention not to be bound by the License Agreement. It is strongly analogous to the position of the Privy Council case in *Hasham v Zainab [1960] AC 316*. There the Defendant evinced an intention not to complete an agreement for the sale of land. It was held by the Privy Council that the innocent party had therefore been presented with an anticipatory breach and it was entitled to seek an immediate order for specific performance notwithstanding that the date for completion had not yet passed. Equally GL in my view were entitled to regard 1MRT's response to their notice as itself demonstrating that it did not intend to remedy the breaches and was therefore not intending to abide by the License Agreement. It was therefore no longer required to wait until the time specified in its notice; it was perfectly entitled to accept that stance as being repudiatory and terminate the License Agreement from that date.
349. As some breaches are clearly established I reject the Defendants' submission that the service of the notice itself by GL was a repudiatory breach. Even if I am wrong in my view the service of a notice under an agreement does not of itself amount to a repudiatory breach if it turns out there was no proper basis for the notice see *Woodar v Wimpey [1980] 1 WLR 277*.
350. The Defendants have referred me to two decisions where *Woodar* has been distinguished namely *Dalkia Utilities Services Plc v Seltech International Ltd [2006] 1 Lloyd's Reports 599* where Christopher Clarke J distinguished *Woodar* on the basis in the *Woodar* case the parties had not regarded the service of a notice of termination as a hostile act and that it would have to be determined by the court as to whether *Woodar* could serve the notice by whose decision both parties would abide. Similarly in *Gulf Agri Trade Fzco v Aston Agro Industrial AG [2008] 2 Lloyd's Rep 376* Aikens J

refused to overturn an arbitration award where it had been held that a contractual notice of termination wrongly given amounted to repudiation.

351. Both of those stress that they are distinguishing the *Woodar* case and deciding on the facts of their particular cases that it has no application.
352. I do not see that GL's letter of 31st August 2010 makes it clear that it has no intention of continuing the agreement as 1MRT asserts. By that time there had been a lengthy period when GL was waiting for 1MRT to comply with its obligations as to merchandising. When it has knowledge of breaches GL ultimately will have to elect whether or not to take the appropriate action in respect of such breaches. If it does not do so and continues with the License Agreement it will inevitably be held to a waiver or be estopped from seeking subsequently to rely on those breaches. If however the breaches are not established it seems to me clear by the tenor of the letter GL would have accepted that it would have been still bound by the License Agreement. This in some way reflects the ultimate form of the letter of intent with Genii which has the same effective provisions. Further (and most importantly) is the fact that GL gave 1MRT the opportunity to remedy the breaches if it wished or could. 1MRT spurned that option by its solicitor's letter of 23rd September 2010. Had it done so then the breaches would have been remedied, the License Agreement would have continued in force and GL would plainly have accepted that.
353. I do not see therefore that there are any grounds for suggesting that the *Woodar* case does not apply. Further I am not persuaded that it does not have a general application. I note the observations of my brother Judges but for my part I regard myself as bound by *Woodar* to the effect that merely serving a notice under an agreement purporting to terminate it does not amount to a repudiatory breach if it turns out that notice was invalid. However as I have already determined in my view the notice was not invalid as regards the merchandising breaches.
354. What must be appreciated as I have said is the difference between GL being in breach and its ability to serve a notice under clause 7. The two are not linked. Thus GL was in my view entitled to serve the notice. By way of contrast 1MRT had an opportunity to continue the License Agreement by seeking to remedy the breaches. It chose not to do so. Equally if there were any breaches it could have served its own notice. I do not accept that the letter of 23rd September 2010 constitutes a notice under clause 7 of the License Agreement.
355. If I am wrong where does that take the position? It means that if there was a breach by GL both parties could in effect simultaneously serve notices of termination under clause 7.

BREACHES BY GL

356. The breaches relied upon in the letter of 23rd September 2010 are the negotiations with the Genii Group which I have rejected and "*its general conduct*". This is simply not good enough. The only other matter put up by the Defendants is the service of the notice itself.

MATERIALITY OF BREACHES BY 1MRT

357. It is submitted by 1MRT that the merchandising breaches are not material. I reject that. The purposes of the restriction of the use of trade marks like this to products which are approved and manufactured in a certain way and to a certain quality are self evidently in my view to protect the goodwill of quality associated with the mark. It is of no use to the holder of a mark to find it is associated with poor quality products manufactured in areas outside its control and in a form or affixed to products which have not been approved by it. This to my mind is plainly a material breach. Further 1MRT clearly knew that as the evidence shows above and for unexplained reasons instead of choosing to remedy it perpetuated it right up until the end of the relationship in August 2010.

OTHER BREACHES BY 1MRT

358. The other breach concerns the purchase of TLVL contrary to clause 6.4 of the License Agreement. GL has established on evidence (which was unchallenged due to the absence of witnesses) that 1MRT and TLVL as early as 5th May 2010 signed a confidentiality agreement in light of an agreement in principle for the sale of TLVL's rights to 1MRT. Subsequent to that there were articles in BBC sport. On 23rd July 2010 Mr Fernandes became a director of TLVL and negotiations continued leading to an acquisition by the Third Defendant (which is not bound by the License Agreement) of the shares in TLVL.

359. It is true that once again the Defendants have chosen not to adduce any evidence in the form of Mr Fernandes or any other senior executive. However I am not convinced that the acquisition of TLVL is of itself a breach of clause 6.4. I do not see that acquisition of itself impairs the rights of Group Lotus in trade marks or brings in to question the validity of the registrations or might support an application for the revocation of the registrations. It is the acquisition of separate rights which may or may not exist. It might of course have been otherwise if 1MRT used those matters in a challenge to GL's rights. However it did not so far as I can see do anything like that.

360. Like the Genii acquisition it seems to me that the acquisition was a fall back because 1MRT (interestingly as early as early May 2010) realised that the relationship with GL was not proving to be satisfactory. By that I do not mean unsatisfactory in a legal sense but it is clear that 1MRT wanted far more freedom than the License Agreement permitted it.

361. I therefore conclude that the acquisition *of itself* was not a breach of clause 6.4. If I am wrong about that the transfer of the interest to the Third Defendant by 1MRT was a cure of the breach.

CONCLUSION ON BREACHES OF THE LICENSE AGREEMENT

362. I conclude that GL has established breaches of the merchandising provisions and was entitled to serve a notice in respect of those breaches on 21st May 2010 and 31st August 2010. Nothing in the intervening period in my view prevented it from relying on those breaches by its latter notice. It was therefore entitled to terminate the License Agreement under clause 7 unless attempts were made by 1MRT to remedy the breaches. It rather than attempting to remedy the breaches repudiated the License

Agreement by its letter of 23rd September 2010. From that date GL was entitled to regard the License Agreement as terminated by its acceptance of the premature repudiatory breach by 1MRT.

363. I also determine that GL was not in my view itself in breach of any terms of the License Agreement.

RESTRICTIVE COVENANT

364. By far the most important point from the parties' point of view was and remains the enforceability of clause 8.1 (e). It provides:-

“(e) 1MRT shall not at any time after termination use as part of its corporate or business name, or in relation to any goods or services, any of the Trade Marks or any other mark including the word LOTUS or any word which is confusingly or deceptively similar with LOTUS, or which suggests or indicates a connection in the course of trade with Group Lotus.”

365. As I have observed earlier the agreement purports to enable GL to enforce that if the License Agreement is terminated for any reason. That is a drafting attempt to overcome the well known principle in *General Bill Posting Co Ltd v Atkinsons [1909] AC 118*. That established that where an employer wrongfully in breach of contract dismissed an employee it was not entitled to enforce a covenant against the employee.

366. I have of course determined that GL was not in breach of the License Agreement so this technically does not arise.

367. However in case this matter is considered elsewhere I will express my view. A clause such as this was considered by the Court of Appeal in *Rock Refridgeration Ltd v Jones & Anr [1997] ICLR 938*.

368. In that case the majority of the Court of Appeal (Simon Brown and Morritt LJJs) held that where a party repudiated a contract and the repudiation was accepted the latter was discharged in all further performance of the obligations under the contract. Thus in the case where the employer had repudiated the service contract the employee was no longer bound by his obligations and therefore there could be no enforceable covenants. This extends to an agreement where the draftsmen attempt to provide for the covenant to be enforceable howsoever the agreement is terminated see Simon Brown LJ at page 946 C-D and Morritt LJ at page 950 D. The case mainly dealt with arguments about whether a provision such as that was a restraint of trade. That does not arise in the present case.

369. In the case of *Stone v Fleet Mobile Tyres Ltd [2006] EWCA (Civ) 1209* the Court of Appeal determined the case on an agreed concession by both parties that the franchisor could not enforce covenants if it had wrongfully terminated the franchise agreement but could if it lawfully terminated the agreement under the termination provisions. There was no analysis and no argument about the contrary argument raised by the Claimants in this case.

THE CONTRARY ARGUMENT

370. The contrary argument is based on the observations of Philips LJ in the *Rock* case. This was Philips LJ's alternative route based on the proposition that the majority decision of *General Bill Posting* is inconsistent with later decisions of the House of Lords. In *Hurst v Bryk [1999] Ch 1* Simon Brown LJ referred to Phillips LJ's alternative approach in the *Rock Refridgeration* case as justifying an argument that the Appellant's obligations under a partnership deed to contribute to expenses survived a repudiation of the partnership agreement. In so doing I do not think he intended to cast doubt on the majority decision in *Rock* (including his own). It seemed to me that the decision was based on the construction of the partnership agreement in question. The case went to the House of Lords [2002] 1 AC 185 where Lord Millett gave judgment with which all the other Lordships agreed. This point was not however argued or referred to in his judgment. In *Campbell v Frisbee [2002] EWHC 328* Lightman J considered a covenant similar to the present one. He had the authorities I have referred to above cited to him. Faced with those authorities (paragraph 21) he concluded that if the contract was one of employment he would unhesitatingly follow the majority judgment in *Rock* especially that of Morritt LJ. However he decided that this principle did not apply to a confidentiality obligation. He was reversed on appeal. The Court of Appeal included Lord Phillips who referred to the *Rock* case (using *oratio oblique* Caesar like in relation to his judgment) but he considered that Lightman J's decision that it was inapplicable to a confidentiality clause was arguable.

CONCLUSION ON LEGAL ANALYSIS

371. It seems to me that I am bound to follow the majority decision in *Rock* because it has not been overturned nor subject to any critical analysis. In so far as it has been considered in the Court of Appeal there has been no criticism of that majority decision. It follows therefore that had I decided that GL was in breach of the License Agreement it would not have been able to enforce clause 8.1 (e) if the breach was a repudiatory one which had been accepted by 1MRT.

1MRT IN BREACH?

372. The next matter to consider is whether or not the acquisition of the right to use the name "Team Lotus" and its use amount to a breach of the clause in question. GL's case is straightforward. It extends to the use of the word "Lotus" whether or not it is used with any other word which is confusingly or deceptively similar. 1MRT submits that it does not extend to the use of the words "Team Lotus". This is based on an ingenious argument requiring the word "mark" to be read as a definition of "Mark". Thus it is submitted that it only applies to the words Lotus, Lotus Racing and the Lotus Roundel. As I have said it is ingenious but flies in the face of the obvious wording of the clause.

373. Whether or not the parties were aware of Mr Hunt's rights in the dispute seems to me to be irrelevant. I have observed that the other provisions about not using the words Team Lotus and the indemnity are explicable on the basis that GL did not want to license something which could then be attacked by Mr Hunt. The last thing it wanted was Mr Hunt trying to stop them entering in to their first venture in F1 via 1MRT. It seems to me clear on the wording that the clause does on its face prohibit 1MRT from racing under the words "Team Lotus".

RESTRAINT OF TRADE

374. The Defendants assert that the clause is in any event void as being in restraint of trade. The onus on proving the clause is not in restraint of trade is on GL. It has not produced any admissible evidence on this point. Further the attempt to stop 1MRT from using the words Team Lotus in my view goes beyond the interest which GL could justifiably seek to protect. It seems to me that it has a legitimate interest in protecting its rights provided the protection is reasonable. I can see a protection for a reasonable period by way of covenant therefore in respect of its trade marks and its goodwill. However as I have decided above neither the trade marks nor the goodwill are sufficient to prevent the use by 1MRT of the words Team Lotus.
375. In argument I observed with Mr Silverleaf QC that in reality the covenant gave no better protection than the rights to the owner of a registered mark. His response to that was that clauses were put in agreements like this because it was far easier to enforce a negative covenant without the complexity of dealing with registered trade marks. I am not convinced about that. However the submissions of the Claimants lead to a conclusion that if they can restrain 1MRT from using the words “Team Lotus” by reason of the covenant only 1MRT could be so restrained. By reason of my conclusions above I do not accept that by reason of its marks and its goodwill GL could restrain anybody from setting up on the F1 track under the name “Team Lotus”. It seems to me quite wrong that 1MRT should be prevented by the covenant in doing something that anybody else could do. Further it is prevented from doing so without limit in time.
376. The Claimants have failed to adduce any evidence to justify the covenant and it is too wide in my view by seeking to go beyond its marks and its goodwill. It is also invalid because it is unlimited in space and time and is unlimited as to the goods and services involved extending beyond the activities in relation to which GL does or is entitled to use the mark Lotus. I therefore determine that the covenant is void and in restraint of trade.

NATURE OF RELIEF

377. If GL had established that the covenant is enforceable and is not in restraint of trade the question then for consideration is whether or not it ought to be granted an injunction. The general proposition was summarised in the case of *Insurance Co Ltd v Lloyds Syndicate [1994] CLC 1303* where Colman J analysed the relevant authorities and (following the well known case of *Doherty v Allman [1877-78] LR 3 APP CAS 709*) held that negative covenants will generally be enforced by injunction without proof of damage. There are exceptions where the grant of injunctions might cause severe hardship or if for example the Claimant has delayed and caused the Defendant prejudice see generally *Shaw v Applegate [1977] 1 WLR 970*.
378. Equally the same case establishes that the right to an injunction can be lost by acquiescence (as opposed to the right to damages which requires somewhat more). None of this is present in this action.
379. There remains one factor however which in my view is significant. TLVL cannot be restrained because for the reasons I have set out in this judgment it has an unfettered right to use the words Team Lotus and the Roundel. Therefore if I grant an injunction

against 1MRT that will not stop the activity if it is done through TLVL and possibly a successor company which is not 1MRT. The injunction therefore will be ineffective in reality.

380. I should observe that during the course of argument I suggested that it might be possible to restrain 1MRT not merely by itself from using the words Team Lotus but also *by TLVL*. In that context I referred to the case of *Gilford Motor Company v Horne [1993] Ch 935* where a covenantor was restrained from breaching the covenant not only by his own acts but also through the medium of a separate company which he had set up where his family members were officers. Having considered the matter further it seems to me that the observation should be treated on the basis of a slightly modified well known Latin expression “*timeo iudices et dona ferentes*”. It would in my view on reflection be quite wrong to contemplate such an injunction. It seems to me that the injunction if any should be granted against 1MRT alone. If Mr Fernandes through himself or nominees can acquire TLVL I do not see that acquisition can be used as a basis for stopping TLVL from continuing to exercise its rights to use the words Team Lotus. However given the ease with which the covenant can be evaded in my view I should despite the prima facie entitlement on the part of GL to an injunction against 1MRT decline to grant it because it is worthless. In my view I should exercise my discretion not to grant the injunction and leave GL to its remedy for damages for breach of that covenant.

CONCLUSION AS REGARDS LICENSING AGREEMENT

381. I therefore determine that GL was entitled to terminate the License Agreement by reason of the breach of the merchandising provisions and did so on 23rd September 2010 when after service of its final notice of 31st August 2010 1MRT evinced an intention no longer to be bound by the License Agreement any further. That was itself a breach of contract amounting to a repudiatory breach which thereby justified GL from regarding itself as absolved from further performance and treating the Agreement as ended from that date.
382. GL is entitled to damages for breach of the License Agreement as regards the merchandising provisions but no more.
383. GL is not entitled to an injunction to enforce clause 8.1 (e).
384. GL is not itself in breach of the License Agreement.

RESIDUAL CLAIMS

385. The Defendants in paragraphs 134 A-E of their Counterclaim sought a transfer of the domain name “TeamLotus.com” which was registered by the Claimants in 2010. This part of the issues did not feature in any opening and only emerged in section N2 (paragraph 234) of the Defendants’ closing. No evidence was led as to this and the matter was not explored at the trial. It seems to me that the Defendants have failed to establish a properly pleaded case for an infringement of their right and have not effectively proceeded with it at trial. I will therefore dismiss that claim.
386. Equally in paragraphs 106, 111 and 112 they sought a claim under section 21 of the TMA 1994 in respect of threats. Once again this only featured in the closing and the

Defendants are required to prove their case. The Claimants did not admit the threats. In the light of the failure of the Defendants to adduce any evidence on this issue or raise it at the trial it seems to me that this should also be dismissed.

OVERALL OBSERVATIONS

387. It is unfortunate in my view that this case came before the courts and was incapable of resolution beforehand. However if the parties cannot agree to resolve a dispute that is why the courts are here. At the end of the day I cannot help feeling that nevertheless the parties are better competing against each other on the F1 racetrack. Equally I cannot help avoiding the feeling that F1 followers would actually find that enhances F1 and they would be interested to see which of the two Lotus cars was more successful and which then might possibly be better placed to claim to be successors to the Colin Chapman mantle.
388. I cannot pass without commending the parties in this case. I set a rigorous timetable for this speedy trial and it was complied with. A large amount of documentation has been put together and it has all been dealt with to my complete satisfaction. I am grateful for the lawyers for their commendable written and oral submissions and further for their speedy response to 3 questions I raised shortly before I handed down this judgment.

DATED 17th May 1985

GROUP LOTUS CAR COMPANIES PLC

- and -

TEAM LOTUS INTERNATIONAL LIMITED

- and -

TECHNOCRAFT LIMITED

- and -

HETHEL PROPERTIES LIMITED

AGREEMENT

THEODORE GODDARD & CO.

16 ST MARTIN'S-LE-GRAND
LONDON EC1A'4EJ

THIS AGREEMENT is made the 17TH day of MAY 1985
BETWEEN GROUP LOTUS CAR COMPANIES PLC a company registered in
England under Number 506189 and having its Registered Office-
at Norwich Norfolk NR14 BEZ of the one part TEAM LOTUS
INTERNATIONAL LIMITED a company registered in England under
Number 1,225,833 and-having its Registered Office at Norwich
Norfolk of the second part TECHNOCRAFT LIMITED a company
registered in England under Number 1,066,330 and having its
Registered Office at Norwich Norfolk of , the third part and
HETHEL PROPERTIES. LIMITED a company _registered-in England
under Number B10,360 and having its Registered Office at
Norwich Norfolk of the fourth part

WHEREAS:

(A) GLCC is engaged in the business of manufacturing and
marketing Motor vehicles (other than single seater Racing
vehicles) and engineering consultancy generally and has its
own research and development department, drawing office,
engineers and sales and marketing departments

(B) Team Lotus is engaged in the business of making Racing
vehicles and entering them in motor racing events and
engineering consultancy in connection with Racing vehicles
(other than rallying), and has its own research and
development department, drawing office, engineers and
marketing department and is supported financially through
sponsorship agreements with various other companies

(C) 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

(D) There has always been close co-operation between the
businesses of GLCC and Team Lotus and it is the wish of all
parties hereto that this Agreement shall define the nature of
the relationship which shall exist between the businesses of
GLCC and Team Lotus from the data hereof

NOW IT IS HEREBY AGREED as follows:--

Part I - General Arrangements

1. Preliminaries

In this Agreement the following terms shall have the following
meanings:-

"GLCC"	Group Lotus Car Companies plc
"Lotus Cars"	Lotus Cars Limited a wholly owned subsidiary of GLCC
"Team Lotus"	Team Lotus International Limited
"HPL"	Hethel Properties Limited
"The Main Parties"	GLCC and Team Lotus
"Principal Objectives"	The objectives outlined in Clause 3 hereof
"Motor vehicles"	Powered vehicles for carrying one or more persons on the ground
"Racing vehicles"	Motor vehicles designed or adapted specifically for use in motor racing (excluding rallying)
"'A' Class Racing vehicles"	Single seater Racing vehicles

"'B' Class Racing vehicles" "Know-how"	Non single seater Racing vehicles Confidential design development and process information relating to Motor vehicles and including drawings, specifications of materials, manufacturing specifications, operating specifications and manufacturing techniques.
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2. Conditions

This Agreement is conditional upon:

2.1 The approval of this Agreement generally and of all the transactions the subject of Parts III and IV hereof by the shareholders of GLCC in General Meeting within three months of the date hereof

2.2 The completion of all the Parts of this Agreement simultaneously. GLCC shall not be bound to complete any transaction which is the subject of any Part of this Agreement unless all the transactions the subject matter of the various Parts of this Agreement are completed wholly and simultaneously PROVIDED ALWAYS that GLCC may waive in whole or in part any conditions contained in this Clause 2 imposed by this Agreement on Team Lotus

3. Objectives and Benefits

The parties hereto wish to declare expressly the following objectives and benefits to them:

3.1 GLCC wish to obtain the benefit of know-how originated and developed by Team Lotus which may assist in the manufacture of its own Motor vehicles and the selling of its technical services and 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

3.2 Team Lotus wish to obtain the benefit of know-how originated and developed by GLCC which may assist Team Lotus in the manufacture of its own Racing vehicles and the selling of its technical services and also to receive financial support (as hereinafter described) from GLCC and to have access to certain facilities hereinafter described which will be put at its disposal by GLCC

3.3 The Main Parties agree to co-operate with each other in order to achieve the objectives set out in sub-clauses 3.1 and 3.2 above under the terms of this Agreement

3.4 It is expected that in this connection (but not exclusively) GLCC will innovate and apply advanced new technology to all applications in industry, consumer goods, defence and transportation of any type (including rallying) save in respect of innovations and applications relating to the building and racing of Formula 1 and other "A" Class Racing vehicles for racing events subject to clause 10.2 below

4. Completion

Completion of this Agreement shall take place so far as any matters hereinafter mentioned are usually the subject of

completion by transfer or assurance of title, and payment of consideration therefor 28 days after the passing of the Resolution referred to in Clause 2.1 above or on such earlier date as shall be agreed by the parties hereto

5. Right to Assign

GLCC shall have the right to assign the benefit but not the burden of this Agreement to Lotus Cars or any other subsidiary of GLCC and performance of any part of this Agreement by Lotus Cars or such other subsidiary shall be deemed to be performance thereof by GLCC PROVIDED THAT no such assignment shall take place unless:

5.1 GLCC shall prior thereto have notified Team Lotus of its intention to assign, the identity of the proposed assignee and sufficient evidence to establish that the proposed assignee is a subsidiary of GLCC, and

5.2 GLCC shall deliver to Team Lotus a certified copy of the assignment together with an undertaking by the assignee under seal to the reasonable satisfaction of Team Lotus whereby the assignee is bound to Team Lotus not to do or fail to do anything in relation to the subject matter of this Agreement which if done by GLCC would be in breach of this Agreement, and

5.3 the said assignment shall expressly provide that in the event of the assignee ceasing to be a subsidiary of GLCC all rights vested in the assignee pursuant to the assignment shall terminate forthwith or (at GLCC's option) be reassigned to GLCC.

No such assignment shall in any way alter or reduce the obligations of GLCC to Team Lotus pursuant to this Agreement

Part II - Team Lotus

6. General activity and use of names

6.1 In Part II of this Agreement references to GLCC either specifically or as one of the Main Parties shall include GLCC and Lotus Cars jointly and severally and performance by and notice to GLCC or Lotus Cars will be effective to fulfil the obligations in this Part of this Agreement with regard to GLCC. In any case where account must be made by GLCC pursuant to this Agreement joint account shall be made by GLCC and Lotus Cars

6.2 GLCC hereby acknowledges the right of Team Lotus to continue to use the names "Team Lotus" and "Club Team Lotus" in relation to its business and the right of Team Lotus to use the ACBC monogram, with or without the words "Team Lotus" (examples of which are contained in the sixth Schedule hereto) in relation its business and Team Lotus acknowledges the right of GLCC to continue to use the names "Group Lotus" and "Lotus" and the Lotus logo (a representation of which appears in the Seventh Schedule hereto) in relation to its business PROVIDED THAT if this Agreement shall have been terminated for any reason whatsoever GLCC subject to Clause 10.2 below shall be entitled but not otherwise to own or run or be associated with another motor racing team running 'A' Class Racing vehicles which may have in its title and use the name "Lotus". After termination of this Agreement for any reason whatsoever and subject to Clause 10.2:

below GLCC shall be entitled to own or run or be associated with another racing team running Racing vehicles using the name "Lotus" PROVIDED THAT GLCC shall have given to Team Lotus prior notice in writing of their proposal to use the name "Lotus" together with the actual name to be used in relation to such team but shall not in its name use the word "Lotus" on its own nor the word "Team" or any translation thereof in conjunction with the word "Lotus". Team Lotus will ensure that any use which it makes of the name "Lotus" will only be in the form "Team Lotus" with the words "Team" and "Lotus" having substantially equal prominence

6.3.1 Upon expiration of the notice referred to in 6.2 above the Main Parties shall not use any name or mark in any literature or publicity material or make any reference which would indicate a continuing relationship between the Main Parties or the successors in title to the business of each such party respectively

6.3.2 On the transfer of its business Team Lotus will ensure that the transferee executes a deed expressed to be supplemental to this Agreement whereby it undertakes to be bound by the obligations of Team Lotus hereunder including its obligations under this provision but subject to the transferee enjoying the full benefit of the rights of Team Lotus under this Agreement including its rights under this provision and GLCC undertakes to execute such deed confirming its agreement with the provisions thereof

6.4 During the continuance of this Agreement Team Lotus will ensure that its racing team gives as much prominence as possible on its racing vehicles and support vehicles literature and publicity materials to the name "Team Lotus" subject to the agreements which it has with its sponsors with whom it will use all reasonable endeavours in good faith to procure that such prominence is given.

6.5 Team Lotus undertakes to GLCC that it will not during the continuance of this Agreement make or sell more than twelve 'B' Class Racing vehicles in any period of twelve months

6.6 Team Lotus acknowledge that GLCC shall be entitled to continue to market and arrange for the marketing of jackets and other items of clothing bearing the name "Lotus" or "Group Lotus" (in either case alone or in conjunction with other words not including "Team") as part of their promotional activities in support of their businesses. GLCC shall also be entitled to promote sponsor or run an enthusiasts club or similar organisation provided that the activities of such organisation relate to Road vehicles and not to Racing vehicles. GLCC shall also be entitled to permit toy or model manufacturers to reproduce models of their Motor vehicles bearing the name "Lotus" or "Group Lotus".

6.7 GLCC acknowledge that Team Lotus shall be entitled to market and arrange for the marketing of jackets and other articles of clothing bearing the name "Team Lotus" as promotional aids to their business of motor racing. Team Lotus shall be entitled to continue to promote sponsor or run their club called "Club Team Lotus" which shall continue to be concerned with motor racing and which may be concerned with Lotus or other Motor vehicles.

Team Lotus shall be entitled to market through its club called "Club" Team Lotus" other ancillary products such as photographs maps and parts of Racing cars. Team Lotus shall continue to be entitled to license toy or model manufacturers to produce modals of the Racing vehicles of Team Lotus and to use the name "Team Lotus" in relation thereto. Team Lotus shall not be entitled to use the word "Lotus" without the addition of the word "Team" before it.

6.8 Clauses 6.1, 6.2, 6.3, 6.6 and 6.7 shall remain in force' notwithstanding the termination of this Agreement.

7. Know-how and exchange of technical information

7.1 Within two months after the signing hereof the Main Parties will advise each other of such Know-how as they have produced during the twelve months prior to the signing hereof and during the continuance of this Agreement the Main Parties will advise each other promptly and in confidence of any new Know-how which they may devise from time to time after the date hereof and will communicate such Know-how in the manner provided in Clause 7.6 below. For this purpose each of the Main Parties will designate a chief engineer or director and formal meetings will be held from time to time promptly upon the request of either of the Main Parties. The rights in the Know-how communicated pursuant to this Clause 7.1 shall remain those of the party communicating the Know-how and shall continue after termination of this Agreement.

7.2 Following receipt of Know-how communicated pursuant Clause 7.1 above the party receiving the Know-how shall be entitled to use such Know-how free of royalty or contribution to the costs of development for the purposes of the manufacture by GLCC of Motor vehicles other than 'A' Class Racing vehicles and the manufacture by Team Lotus of Racing vehicles but subject to the provisions of Clause 10.3 below shall not publish or use such Know-how nor communicate it to any third party except by incorporation of such Know-how in its products or in work undertaken pursuant to Clause 7.4.

7.3 A party which has received Know-how communicated to it under the terms of this Agreement shall not be entitled to license a third party to use the communicated Know-how without the consent of the communicating party such consent not to be unreasonably withheld and such licence to contain to the reasonable satisfaction of the communicating party a prohibition against sub-licensing and assignment and provisions for maintaining the confidentiality of the communicated Know-how. Without limiting the general right of the communicating party to withhold consent reasonably it shall (a) not be unreasonable for Team Lotus to withhold its consent in good faith in order to avoid a risk (which is reasonably identifiable) of Know-how becoming available to its racing competitors and (b) not be unreasonable for GLCC to withhold its consent in good faith in order to avoid a risk {which is reasonably identifiable) of Know-how becoming available to a competitor of GLCC or to a racing competitor {other than Team Lotus) of any such racing team as is referred to in the proviso to Clause 10.2. In the event of such a licence being granted by the non-communicating party the non-communicating party shall pay to the communicating party a

royalty in pounds sterling of 3 per cent of the money or money's worth to which the non-communicating party is entitled pursuant to the licence.

7.4 In the event that the party which has received new Know-how communicated to it under the terms of this Agreement shall use such communicated Know-how in work carried out by the non-communicating party for a third party under contract the non-communicating party shall account to the communicating party for the benefit received under the contract and shall pay to the communicating party a royalty in pounds sterling of 3 per cent of that part of the money or money's worth to which the non-communicating party is entitled under the contract and which represents the value of the non-communicating party's entitlement in respect of the articles used to perform the contract employing the use of such Know-how.

7.5 The royalty rate of 3 per cent referred to in Clauses 7.3 and 7.4 above shall not be negotiable and shall not be a matter which affects the granting of any consent required pursuant thereto.

7.6 7.6.1 The exchange of Know-how set out in Clause 7.1 above shall at first be on a general or outline basis together with an indication of effectiveness. Each meeting provided for in Clause 7.1 above shall be minuted to record the subject matter thereof in sufficient detail for subsequent identification of the Know-how communicated at that meeting. If the non-communicating party requires further information the non-communicating party must first formally declare its interest in writing as "own use" or "commercial exploitation". "Own use" shall mean that the non-communicating party desires to use the Know-how in a product made or adapted by or for the non-communicating party and "commercial exploitation" shall mean any licensed use by a third party in accordance with Clause 7.3 above and any work carried out in accordance with Clause 7.4 above, in both cases for which the non-communicating party is entitled to receive money or money's worth.

7.6.2 After the non-communicating party has declared an "own use" interest the non-communicating party shall be supplied by the communicating party with such further information as is needed, for such use.

7.6.3 In the case of "commercial exploitation" the non-communicating party shall in its declaration indicate the area of intended exploitation whereupon the communicating party will supply sufficient information for exploitation. In the case of a proposed licence in accordance with Clause 7.3 above representatives of the Main Parties shall from time to time at the request of either Main Party meet to discuss details of the proposed exploitation prior to the licence being entered into.

7.6.4 In the case where a non-communicating party has declared his interest in writing as "own use" and subsequently wishes to utilise the Know-how for "commercial exploitation" the procedure set out above in relation to "commercial exploitation" will be followed.

7.7 Each of the Main Parties will promptly notify the other in confidence of each and every licence permitted under Clause 7.3 above and every contract permitted under Clause 7.4 above involving new and existing Know-how and entered into with third parties by it. Notifications made under this Clause 7.7 shall include the names of the parties and subject to Clause 7.10 below, sufficient detail of the subject matter of the licence or contract for the other Main Party to identify the product or service involved for the purposes of ascertaining whether or not performance of the licence or contract will involve Know-how previously communicated under Clause 7.1 above. In the case of a licence under Clause 7.3 above the notification shall also include a certified copy of those provisions of the licence prohibiting sub-licensing and assignment and relating to confidentiality. All information disclosed hereunder shall be subject to the provisions relating to confidentiality contained in Clause 10.3 below

7.8 For the avoidance of doubt nothing herein shall prevent either of the Main Parties from licensing or contracting with a third party in relation to subject matter which concerns Know-how wholly belonging to the licensing or contracting Main Party without any payment to the other Main Party

7.9 The "Know-how" referred to in Clause 7.1 above must be capable of identification in written form or in the form of drawings or computer software or other recording materials and the test as to whether it shall be regarded as new shall be in accordance with the following requirements:

- (a) that it shall have been devised by the communicating party or by a consultant to the communicating party; and
- (b) that it shall not have been reduced to writing by, nor appear in drawings software or recording materials of, the non-communicating party prior to the date of communication; and
- (c) that it shall not be in the public domain

In the event of there being any dispute (i) as to whether any subject matter communicated in accordance with Clause 7.1 above shall be regarded as Know-how or new Know-how or (ii) as to the apportionment under Clause 7.4 of the value of the articles used to perform the contract employing the use of Know-how the dispute shall be referred for decision to an expert appointed by

agreement between the Main Parties or in default of agreement by the President for the time being of the Institution of Mechanical Engineers. The person so appointed shall act as an expert and not as an arbitrator and his decision as to the said dispute or difference and as to who shall bear the costs of the reference to him shall be final and binding upon the Main Parties.

7.10 Nothing herein shall oblige either of the Main Parties to communicate to the other Know-how received under an unsolicited restriction of confidentiality from a third party or those details of a contract (other than on a chief executive to chief executive basis the names of the parties thereto) subject to Clauses 7.3 or 7.4 above which it is prevented from disclosing because the same would represent a breach of confidence.

7.11 On termination of this Agreement for whatever reason the Main Parties will continue under an obligation of confidence with regard to all Know-how communicated under Clause 7.1 above and the provisions of this Clause 7 other than the obligation to communicate Know-how under Clause 7.1 shall continue to apply.

7.12 Payments made pursuant to Clause 7.3 and 7.4 above shall be made quarterly within 30 days of the 31st March, 30th June, 30th September and 31st December each year and an annual statement of payments, containing (subject as provided in Clause 7.10 above) adequate information as to the transactions which give rise to them, certified by the auditors of the party making the payments shall be delivered to the party receiving the payments within 60 days of the financial year end of the party making the payments. Upon reasonable prior notice the party making the payments shall allow the party receiving the payments or its duly authorised representative to inspect (during the usual business hours of the party making the payments) such records as may be necessary to verify the immediately preceding annual statement PROVIDED ALWAYS THAT each Main Party shall be entitled to withhold any records of a confidential nature which might provide the other Main Party or its representatives with information (other than mere monetary information) in relation to its customers, affairs or business.

7.13 When any Know-how shall have been developed specifically for a third party customer (which is not a subsidiary of either Main Party) by either Main Party that party shall not be obliged to communicate the same to the other parties hereto unless:

- (a) that party is the beneficial owner of such Know-how; and
- (b) the third party customer has consented to the communication for which purpose each Main Party undertakes that so far as it is reasonably able to do so it will assist in obtaining such consent.

7.14 Nothing herein shall prevent either of the Main Parties from sub-contracting work which is covered by this Clause 7.

B. Patents - New Applications

8.1 Either of the Main Parties may apply for a Patent in its own name in relation to Know-how which that Main Party has made or

developed or any improvement therein. In the event that one of the Main Parties applies for a Patent then it shall notify the other Main Party of the application in writing within seven days from the date of filing of the Application and within eight months from the date of filing shall notify the other Main Party in writing as to the countries in which Applications for Patents have been made and the countries in which it proposes to make Applications within twelve months from the date of filing of the Application. In the event that the other Main Party wishes corresponding Patent protection to be obtained in a country not included in the list of countries supplied to it the other Main Party may request the Main Party making the original Application to make and prosecute Applications with reasonable expedition in additional countries at the expense of the other Main Party and the Main Party making the original Application will comply with this request and give full particulars of such further Applications to the other Main Party which will be liable for all accrued or committed costs and renewal fees resulting therefrom up to the withdrawal, if any, of such request. If, after the Main Party which has made the original Application, has received a request for any additional country, such Main Party decides to prosecute the additional application at its own expense it may do so PROVIDED THAT it does so without delay and that it keeps the other Main Party informed promptly of the progress of the additional application.

8.2 Immediately after communication of Know-how under Clause 7.1 above the non-communicating party shall be entitled to a statement from the communicating party as to whether or not the communicating party proposes to file a Patent Application based on the communicated Know-how. In the event that the communicating party states that it does not propose to apply for any Patent, the non-communicating party shall be entitled to an assignment from the communicating party and the inventor of the invention based on the communicated Know-how of the right to apply for a Patent and all rights associated therewith and the communicating party shall procure that the inventor shall sign all documents and do all necessary acts to enable the non-communicating party to obtain a Patent. Upon the granting of any Patent resulting from any such application to the non-communicating party the non-communicating party shall forthwith grant a royalty free non-exclusive licence to the communicating party for the duration of the life of the Patent. In the event that the communicating party states that it does not wish to apply for a patent and the non-communicating party make an application for a patent, then as from the date of such application the communicating party shall not be entitled to licence any third party to use the communicated Know-how without the prior written consent of the non-communicating party, such consent not to be unreasonably withheld. If this Agreement is terminated for any reason whatsoever, then in relation to any Know-how which is the subject of a patent or patent application under this Agreement, the provisions of Clauses 7 and 8 of this Agreement shall continue to apply as if the Agreement had not been terminated.

8.3 If subsequent to the filing of a Patent Application in accordance with Clause 8.2 above the non-communicating party

makes an improvement to the subject matter of the communicated Know-how then the provisions of Clauses 8.1 and 8.2 will apply mutatis mutandis. In the event that there is a dispute as to whether any new Know-how constitutes an improvement on previous Know-how which is then the subject of a patent or patent application such dispute shall be referred to an expert on the basis set out in Clause 7.8.

8.4 In normal circumstances the inventor or devisor of subject matter forming the basis of a Patent Application will be an employee or consultant of the Main Party first entitled to make the Application for Patent. In the case where the inventor or devisor is a person whose services are provided to the other Main Party under Clause 11 below then such person shall be regarded for the purposes of this Clause 8 as an employee of that other Main Party and the Main Party of whom such person is in law an employee shall carry out all acts and sign all documents, and shall procure that such person shall carry out all acts and sign all documents necessary for vesting all rights in the invention in the other Main Party. Should any compensation be payable to such person under the provisions of Sections 39 to 43 of the Patents Act 1977 and be paid to such person by the Main Party of whom such person is in law an employee the other Main Party shall reimburse the first mentioned Main Party the amount of the compensation and any costs incurred in proceedings brought against the first mentioned Main Party by such person under the said provisions of the said Act.

8.5 If the Main Party owning a Patent Application filed pursuant to Clauses 8.1, 8.2 or 8.3 above or any Patent resulting therefrom decides that it does not wish to continue with that application or Patent it shall notify forthwith in writing the other Main Party who may take over the conduct and expense of further prosecution of the application and/or renewal of the Patent.

8.5 References in this Clause 8 to Patent and Patent Application shall include Registered Design and Registered Design Application mutatis mutandis except that in the case of a Registered Design Application filed under Clause 8.1 above the period of eight months shall be changed to four months.

9. Patents - Existing Applications and Patents

9.1 Short particulars of the Patent Applications and Patents existing at the date hereof and in the name of Team Lotus appear in the First Schedule hereto. Short particulars of the Patent Applications and Patents existing at the date hereof and in the name of GLCC appear in the Second Schedule hereto.

9.2 Each Main Party shall be responsible for those Patent Applications and Patents in its own name as specified in the First and Second Schedules hereto.

In the case of Patent Applications, each Main Party undertakes to the other Main Party that it will prosecute diligently each Application to grant of a Patent and will have the conduct of such prosecution. However, if the Main Party owning one of the Patent Applications appearing in the First and Second Schedules hereto or any Patent resulting therefrom decides that it does not wish to continue with that Application or Patent, it shall

notify forthwith in writing the other Main Party who may take over the conduct and expense of further prosecution of the Application and/or renewal of the Patent.

9.3 Each Main Party will pay all necessary renewal fees on Patents in its own name. In the event that a party owning a Patent does not wish to renew it, that Main Party shall notify the other Main Party forthwith and that other Main Party may take over the responsibility and cost of renewing the Patent thereafter.

9.4 Either Main Party shall grant forthwith to the other Main Party on request a royalty free non-exclusive licence, for the duration of the Patent, under any of the Patents appearing in the First and Second Schedules hereto and under any Patent Application appearing in the First and Second Schedules hereto or made subsequent to the date hereof in connection with an invention which is the subject of one of the Patent Applications in the First and Second Schedules hereto. The licences granted pursuant to this Clause 9.4 shall continue notwithstanding the termination of this Agreement.

9.5 In the case of improvements to existing Patents or Patent Applications the provisions of Clause 8.3 above shall apply.

9.6 In the case of the invention which was the subject of United Kingdom Patent Application Number 83 01 741 ("Active Vehicle Suspension") Team Lotus acknowledges that all Patent rights belong to GLCC and that GLCC may make such use of the invention for its own business in Motor vehicles as it sees fit. However, in the event that GLCC has received prior to the date hereof or shall receive payment for use of the invention by any third party the terms of Clauses 7.4 and 7.11 above shall apply mutatis mutandis as if the subject matter of the invention had been communicated to GLCC by Team Lotus as new Know-how in accordance with Clause 7.1 above except that the rate of royalty payable pursuant to Clause 7.4 shall be two per cent. On termination of this Agreement for any reason this Clause 9.6 shall continue to apply. GLCC agrees that Team Lotus may make such use of the invention for its own business in Racing vehicles as described in clause 10.1 below as it sees fit and Team Lotus will assign to GLCC all that its right title and interest in any designs, drawings or other materials relating to the invention mentioned above in this Clause 9.6.

10. Non-Competition and Confidentiality

10.1 The principal business of Team Lotus will continue to be that of designing manufacturing and operating a team of Racing vehicles principally for entering in world championship Formula 1 motor racing events and other forms of single seater motor racing events (but excluding, for the avoidance of doubt, rallying). During the continuance of this Agreement Team Lotus will not be engaged in the manufacture assembly sale or consultancy either directly or indirectly of or in respect of Motor vehicles other than Racing vehicles nor will it take part either directly or indirectly in Motor vehicle rallying.

10.2 The principal business of GLCC shall continue to be that of designing manufacturing and selling Motor vehicles and providing engineering consultancy to industry and during the continuance of

this Agreement, it will not be engaged either directly or indirectly in the designing manufacturing or operating of "A" Class Racing vehicles PROVIDED ALWAYS THAT GLCC shall not be precluded by the provisions hereof from providing services and engineering to any motor company owning more than fifteen per cent. of its issued ordinary share capital which runs a racing team but shall not associate itself in any way with that racing team.

10.3 All Know-how including technical information details and data of any kind in connection with Motor vehicles or the affairs of GLCC or Team Lotus communicated by one of the parties to any other party hereto but not available to the public generally shall not be communicated to any third party without the previous written consent (not to be unreasonably withheld) of the communicating party in question save to legal advisers Patent Agents and accountants in circumstances importing confidentiality. In the event that one of the Main Parties wishes pursuant to this Agreement to exploit Know-how communicated to it by the other Main Party that Know-how may, subject to the preceding sentence, be communicated to a third party who is a prospective party to a licence or other contract involving the Know-how only after that third party has undertaken in writing (to the reasonable satisfaction of the original communicating Main Party) to keep the Know-how confidential and PROVIDED THAT any such licence or other contract shall be negotiated and entered into on arms length terms.

11. Secondment and liability

11.1 The Main Parties hereby agree that they will each make available to the other for research and development work in respect of or vehicles and on secondment their personnel where requested and where not required for work for their own employer provided that persons seconded to GLCC shall not be concerned with work directly relating to "A" Class Racing Vehicles and PROVIDED FURTHER THAT neither Main Party shall be required to make available personnel on secondment where that Main Party shall be required to supervise or direct in any way the work of its seconded personnel.

11.2 Such secondment shall be recorded in writing at the time of commencement when the period of secondment shall be stated if certain or indicated approximately if uncertain. Where the secondment is stated or indicated to be for less than one year the seconding party will make a charge to the other for each individual service calculated on the basis of the total costs appearing below apportioned for the period of time during each year and/or part thereof during which the secondment continues. Such total costs shall include salary, national insurance, usual bonus (if any) fringe benefits including motor vehicles together with an administrative handling charge of 5 per cent of the aforesaid costs. Where the secondment is stated or indicated to be for more than one year then if the seconding party so requests the person concerned shall (subject to his agreement thereto) be transferred from the seconding party to the other party on a basis involving no loss of benefits or service or accrued service rights of the person, in question.

11.3 Where the period of secondment is for an indeterminate length of time it shall be capable of being terminated on not less than six months written notice given by either party.

11.4 Where any staff are so seconded the party to which they are seconded will take out and maintain insurance cover in relation to liability for injury to that person while on that party's premises or on that party's business and will indemnify the other party in relation to any claims made against that person or the other party arising out of or in connection with the seconded employment. Each of the Main Parties hereby agrees with the other that it will make no claim against the other in relation to negligence or alleged negligence of any staff of the other while seconded to it under the provisions of this Clause.

11.5 Where any person is seconded under the provisions of this clause and that person becomes during actual secondment the author of any copyright material (including the author of any subject matter suitable for registration as a Registered Design) the employer in law of that person shall on request assign in writing the copyright in the work to the Main Party to whom that person has been seconded.

11.6 Nothing contained in this Clause shall prevent the employer in law of a seconded person from determining such person's employment or consultancy provided that the employer shall give notice thereof to the other party as far in advance thereof as is reasonable in the circumstances and shall afford to that other party the opportunity of making an offer of employment or consultancy to such person.

11.7 If one of the Main Parties proposes carrying out work for a third party whether of a research and development nature or otherwise, the other Main Party shall if so requested by the first Main Party give reasonable consideration to performing such work as a sub-contractor on arms' length terms.

11.8 The provisions of this Clause 11 shall notwithstanding termination of this Agreement continue in respect of any secondment which has occurred prior to such termination.

12. Employees and Consultants

Neither of the Main Parties shall (and GLCC shall procure that no subsidiary of GLCC shall) entice any employee or consultant of the other to enter into employment with or consultancy with it while the employee or consultant is employed or retained (as the case may be) by the other. Each of the Main Parties shall (and shall procure that each of its subsidiaries shall) not employ or retain (as the case may be) any present or past employee or consultant of the other as either an employee or consultant of it for a period of one year after such employment or consultancy has terminated during the continuation of this Agreement and for a period of one year if such employment or consultancy is terminated after and within a year of the termination of this Agreement, in either case without the prior written consent of the other (such consent not to be unreasonably withheld in the case of an employee or consultant who has left the employment of or consultancy with the other without any breach of this Clause 12 having been committed).

13. Motor vehicle supplies

While this Agreement remains in force GLCC procure the provision of Lotus cars to personnel employed by Team Lotus at prices no less favourable to Team Lotus than those which are offered to main dealers of Lotus cars provided that the same shall not be supplied for re-sale save after normal useage by such personnel.

14. Use of airfield and facilities

14.1 During the subsistence of this Agreement GLCC will permit or procure Lotus Cars to permit Team Lotus on reasonable prior notice to use Hethel Airfield where it is flying in visitors to the premises of Team Lotus, and (with prior consent in each case such consent not to be unreasonably withheld where the facilities are not being used by Lotus Cars to use the testing facilities at the premises of Lotus Cars (including the airfield with the exception of the area identified in the plan contained in the Ninth Schedule hereto)) for the testing of Team Lotus cars ,or products, provided always that airfield control and similar facilities, and testing facilities shall be at the risk of Team Lotus

14.2 Team Lotus will pay the following amounts to GLCC in respect of the use of the airfield:-

(a) in respect of each time that the airfield is used for the landing of an aircraft - £50 (exclusive of VAT)

(b) in respect of the use of the airfield for testing facilities a contribution by Team Lotus of the additional amount of premium borne by GLCC in relation to cover provided for Team Lotus' activities, subject to a maximum of £100 per annum. If such amount shall exceed £100 per annum GLCC shall give notice of the same to Team Lotus which shall be entitled either to opt to pay the greater sum or to cease to use the airfield.

The Main Parties agree that the use by Team Lotus of the airfield shall not give rise to any tenancy or occupation thereof by Team Lotus and the rights (if any) which Team Lotus might acquire pursuant to the arrangements contained in this clause under the provisions of Part II of the Landlord and Tenant Act 1954 shall be excluded and the Main Parties will at the cost of GLCC make an application to the relevant County Court for an order approving the exclusion of such rights.

14.3 GLCC and Team Lotus agree that with two days prior written notice each will allow to the other accompanied access to its premises for the purpose of showing visitors to its premises round the premises of the other provided that this facility shall not oblige either Main Party to give access to such visitors to any part of the premises where the visitors might obtain confidential information to which the other has not been in the habit of giving its own visitors access.

14.4 If GLCC (whether itself or through Lotus Cars) or if Team Lotus have a resource of manufacturing capacity which is not being utilised and which is required by the other the same shall be provided to the other, and the cost of the use thereof or of the work performed shall be provided to the first named party at a rate of cost plus 10%. In this sub-clause "cost" includes labour plus overheads which latter will not be expected to exceed an amount of 100% in non-manufacturing areas and 220% in

direct production areas.

14.5 Any charges to be made by one party upon another under the provisions of Clause 14.4 shall be chargeable on a monthly account basis.

15. Recommendations and referral of enquiries

15.1 Each Main Party will where appropriate and subject to there being no technical or financial disadvantage arising from doing so use all reasonable endeavours to make use in its products of components produced or invented by the other Main Party. It will also but on a like basis as aforesaid use all reasonable endeavours to make use of components produced by outside parties which are used in the manufacture or assembly of the other Main Party's products.

15.2 Team Lotus will refer to GLCC all enquiries relating to GLCC products of which Team Lotus is aware and technical services relating to Motor vehicles other than Racing vehicles received by Team Lotus.

15.3 GLCC will refer to Team Lotus all enquiries relating to Racing vehicles other than "B" Class Racing vehicles and technical services relating to "A" Class Racing vehicles received by GLCC provided always that GLCC shall not be precluded by the provisions hereof from providing services and engineering to any motor company owning more than fifteen per cent of its issued ordinary share capital which runs a racing team but shall not associate itself in any way with that racing team.

16. Publicity and Promotions

16.1 Neither Main Party will use the name of the other in any publicly available documents without the prior written consent of the other (save as required by law or by the Rules of the Stock Exchange) but subject thereto during the subsistence of this Agreement both Main Parties will use all reasonable endeavours to associate the other with itself in any appropriate promotional or publicity material.

16.2 Team Lotus will procure that Lotus Marketing Services Limited will continue to publish "Lotus World" as the official magazine of Club Team Lotus and Lotus Cars. Both Main Parties will contribute to the magazine and contribute to the attraction of advertising revenue. The costs of the magazine previously budgeted and agreed by the Main Parties prior to the beginning of each financial year are to be shared on an equal basis. Both Main Parties will provide editorial material to the Editor who will be responsible for balancing the feature content of the magazine to maintain fair presentation and coverage of both Main Parties' input to appeal to subscribers and readers. The Editor shall be provided with a policy brief agreed by the Main Parties which shall have due regard to the good name of each of the Main Parties and the need for each to retain its separate identity. GLCC shall be entitled to procure that Lotus Cars withdraws from these arrangements at any time on six months' notice. Team Lotus shall be entitled to withdraw from these arrangements at any time on six months' notice if the Main Parties fail to agree a budget as referred to above prior to the beginning of any financial year provided that it withdraws within three months of the beginning of such year. During the operation of these arrangements the Main Parties agree that

Lotus Cars shall be entitled to nominate a director to the Board of Lotus Marketing Services Limited provided that such nominee is acceptable to both Main Parties. If the Main Parties fail to agree on the budget for a financial year then the budget for the previous year shall be deemed to have been agreed as the budget for the year in question. In the event that GLCC procures withdrawal of Lotus Cars as provided above Team Lotus shall within three months from the date of such withdrawal

(a) procure to change the name of the magazine to "Team Lotus World"; and

(b) procure the change of the name of Lotus Marketing Services Limited to Team Lotus Marketing Services Limited

16.3 Subject to availability and to its commitments to its racing programme Team Lotus will for a period of not more than 7 days in any particular instance other than the British Motor Show and the British Motor Fair when the period shall be 14 days make available Racing vehicles for exhibition and promotional services in the UK at transport cost plus insurance plus Ten per cent to GLCC PROVIDED THAT, in all cases other than the British Motor Show and the British Motor Fair, those viewing the Racing vehicle shall not directly or indirectly be required to pay to do so. Team Lotus will also on request participate in and provide personnel and cars wherever reasonably possible for functions at the premises of GLCC or in the Norwich area which participation and provision will be free of charge. Team Lotus will also give reasonable consideration to request by GLCC for Racing vehicles for exhibition or promotional services in Europe.

16.4 For the duration of this Agreement neither Main Party will make any statement or remark or do any act which would have the effect of damaging the reputation of the other and each will use all reasonable endeavours to promote the business of the other.

17. Sponsorship

17.1 During the subsistence of this Agreement GLCC will provide sponsorship to Team Lotus in the amounts determined in accordance with Clauses 17.2 and 17.3 below. The basic sponsorship referred to in Clause 17.2 below shall be payable monthly and both the basic sponsorship and the additional sponsorship referred to in Clause 73 below shall be used in the business of Team Lotus in racing single seated competition cars and promotional activities in relation thereto.

17.2 The basic sponsorship payment for each of the three years starting 1st January 1985, 1st January 1986 and 1st January 1987 shall be £100,000. The basic sponsorship for every following year during the continuation of this Agreement shall be reviewed in September of the preceding year. The first such review shall take place in September 1987. The review shall be an upwards review only for not less on each occasion than the increase in the official retail price index during the preceding 12 months to 1st September provided that at the request of one Main Party the other will give consideration to a lower basic sponsorship coupled with an incentive bonus. If such lower basic sponsorship is agreed for any one year the putative basic sponsorship figure to be the subject of review in the following

September shall be the previously determined basic sponsorship figure (whether or not putative) which was not coupled with an incentive.

17.3 In addition to the basic sponsorship of £100,000 for 1985 and 1986 specified in Clause 17.2 above GLCC will make the following incentive sponsorship payments calculated on the following basis in connection with the 1985 and 1986 American race programmes:

17.3.1 In this Clause. 17.3 for every "Point" attained by Team Lotus US Dollars 2,500,

17.3.2 In the Indianapolis Grand Prix a win shall be worth 20 points, a second place 6 points and a third place 2 points.

17.3.3 In the CART competition (about 15 races) in each race a win shall be worth 6 points, a second place 2 points and a third place 1 point.

17.4 If Team Lotus shall not complete its competition programme in any year in which sponsorship is provided under this Clause 17 Team Lotus shall return to GLCC a proportionate amount of the total basic sponsorship payment for that year equal to the proportion of the competition programme which has not been completed. In lieu of part or in all of such return GLCC shall be entitled to withhold monthly payments thereafter.

17.5 The Main Parties agree 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.

17.6 Team Lotus shall use reasonable endeavours to make available to GLCC such Team Lotus trophies as GLCC may request for exhibition as part of any specific promotion of Motor vehicles by GLCC. GLCC shall be fully responsible for the care and preservation of the trophies thus lent to it by Team Lotus and shall keep them fully insured in favour of Team Lotus until they are returned to Team Lotus such insurance to be for the amounts for which Team Lotus itself shall at the relevant time have insured the relevant trophies and written evidence of such insurance shall be made available to Team Lotus on request.

Part III

Technocraft Limited

18. On completion of this Agreement Technocraft Limited will cause a Special Resolution of its Shareholders to be passed in General Meeting to change its name to another name which does not include the word "Technocraft" or any name which is similar thereto or might be confused therewith and will not thereafter use the name "Technocraft" or any name similar thereto save for the purposes of identifying its previous corporate name.

19. Short particulars of Patents held by Technocraft Limited appear in the Third Schedule hereto. At completion Technocraft Limited will reassign to GLCC or its nominee ALL THAT its right title and interest in the VARI Process, and all patents and other intellectual property relating thereto and such assignment shall be as Beneficial Owner and free of all liens charges and encumbrances, for the consideration of £40,000

payable in cash at Completion.

20. Trade Marks and Registered Designs

20.1 Short particulars of certain Trade Mark Registrations of the Trade Marks "TEAM LOTUS", "LOTUS WORLD" and "CLUB TEAM LOTUS" registered in the name of GLCC appear in the Fourth Schedule hereto. On completion of this Agreement GLCC will cancel the said Trade Mark Registrations

20.2 GLCC hereby undertakes not to use any rights under its remaining trade mark registrations world wide against Team Lotus in relation to the business of Team Lotus as described in recital (B) above

20.3 GLCC hereby agrees to provide Team Lotus upon request with its written consent to register world wide the trade marks of Team Lotus referred to in Clause 6.2 above in relation to the business of Team Lotus

20.4 Team Lotus hereby agrees to provide GLCC upon request with its written consent to register world wide the trade marks "LOTUS", "GROUP LOTUS" and the Lotus logo (a representation of which appears in the Seventh Schedule) in relation to the business of GLCC

20.5 GLCC hereby undertakes upon request by Team Lotus to restrict its existing world wide trade mark registration by the removal of 'A' Class Racing vehicles from the specifications of goods

20.6 Team Lotus hereby agrees as from the date hereof to phase out its existing use of the Lotus logo (a representation of which appears in the Seventh Schedule)

20.7 Short particulars of certain registered designs and a design application all in the name of Lotus Cars Limited appear in the Eighth Schedule hereto. On completion of this Agreement GLCC shall procure that Lotus Cars Limited will hold the said design registrations and design application on trust for Team Lotus and that at the expense of Team Lotus Lotus Cars Limited will take any action including proceedings for infringement and maintain any defence at the request of Team Lotus and under their control. Renewal of the said registrations will be the responsibility of Team Lotus who may instruct the trade mark agents for Lotus Cars Limited for the time being at the expense of Team Lotus to renew the registrations which instructions GLCC shall procure that such trade mark agents will accept. GLCC shall procure that Lotus Cars Limited appoint no licensees under the registrations without the prior written approval of Team Lotus nor take any action which would impair or invalidate the registrations.

20.8 The provisions of this Clause 20 shall continue notwithstanding the termination of this Agreement.

Part IV - Properties

21.1 HPL will sell to GLCC all that its freehold interest in the property details of which are set out in Clause 21.2 below, on the terms and conditions set out in Clauses 21.3 and 21.4 below.

21.2 The property referred to in Clause 21.1 above is:-

"Hanger 3" Potash Lane Hethel Norfolk edged red for identification only on the plan annexed hereto.

21.3 (a) The property is sold subject to the National

Conditions of Sale (20th Edition) so far as they are not inconsistent herewith and are applicable to a sale by private treaty.

(b) Completion monies will be provided by such of the methods set out in National Condition 5(3) as the Vendor may require provided that a remittance sent by telegraphic or other direct transfer shall be treated as being made on the date and at the time when the particular branch of the Bank receives it.

(c) No deposit shall be payable hereunder.

(d) Any resale (whether under National Condition 22 or otherwise) may be made by private treaty or by public auction either subject to a reserve price or not.

(e) Title shall be deduced and shall commence with a Conveyance dated 25th February 1965

(f) HPL is selling as Beneficial Owner.

(g) The property is sold with vacant possession on Completion.

(h) The property is sold subject to the matters contained or referred to in the said Conveyance dated 25th February 1965. Particulars or copies of the same having been supplied to the Purchaser he shall be deemed to purchase with full knowledge thereof and shall make no requisition or objection in relation thereto.

(i) Where the property is sold subject to stipulations or restrictive or other covenants (including personal indemnity covenants relating to the property) and whether or not breach thereof would expose the Vendor to liability the Purchaser shall in the assurance of the property covenant by way of indemnity only to observe and perform the same and to indemnify the Vendor against actions and claims in respect thereof whether or not a covenant for indemnity will be implied by Section 77 of the Law of Property Act 1925.

(j) The purchaser shall on completion execute and deliver to the Vendor a duplicate of the assurance to him.

(k) The Vendor shall not be obliged to convey the property or any part of it to any person other than the Purchaser.

21.4 The price shall be. £250,000.

22.1 GLCC will assign to Team Lotus All That its leasehold interest in the property details of which are set out in Clause 22.2 below on the terms and conditions set out in Clause 22.3 and 22.4 below. Such assignment being in the form set out in the Fifth Schedule hereto.

22.2 The property referred to in Clause 22.1 is:

Ketteringham Hall, Ketteringham, Wymondham, Norfolk as the same is comprised and more particularly described in a Lease dated 16th July 1976 made between (1) Terence Cubitt Sowden and Others and (2) GLCC under which the property is held for a term of fifteen years computed from 1st July 1974 at the rent and subject as therein and subject to and with the benefit of a protected shorthold tenancy granted by GLCC to Roger C. Scammell for a fixed period of one year from 1st September 1984 to 31st August 1985 and also

the two licences dated 1st February 1982 in respect of Orchard 'House and Wood Cottage.

22.3 The provisions of Clause 21.3 shall apply to the sale agreed pursuant to this Clause.

22.4 The price payable in respect of the property shall be £80,000 payable as to £20,000 on completion and the balance of £60,000 by 36 equal calendar monthly instalments commencing on the anniversary of such completion.

23.1 Lotus Cars having given Notice of Termination of all its right title and interest in the property details of which are set out in Clause 23.2 below HPL will accept such Notice as terminating the said tenancy as at 31st March 1985

23.2 The property referred to 'in Clause 23.1 above is the property known as Factory 6, Potash Lane, Hethel, Norfolk, comprised and more particularly' described in a Lease dated 31st March 1965 made between (1) HPL and (2) Lotus Cars under which Lotus Cars are holding over after the expiration of the contractual term of fourteen years from 25th March 1965 demised thereby.

Part V

Period and Termination

24. This Agreement shall continue for an initial period terminating on 31st December 1989. It may be terminated on not less than 12 months' notice to expire on 31st December 1999 or any subsequent 31st December provided that if the basic sponsorship is not agreed pursuant to Clause 17.2 above during September of any year then either Main Party may terminate this Agreement with effect from 31st December of that year at any time prior to that date.

25. Events causing termination

2.5.1 If:-

(a) either Main Party shall be in breach of any of its obligations hereunder (and if the breach is capable of remedy fail to remedy the same within 30 days of written notice from the other Main Party requiring it to remedy the same provided that if that is an unreasonably short period to remedy any particular breach the period allowed shall be 90 days) or

(b) any order shall be made or effective resolution passed or the equivalent action or proceedings taken under the laws of England for the winding up of GLCC or Team Lotus (as the case may be) or

(c) any distress or executions shall be levied or enforced upon or against any of the chattels of GLCC or Team Lotus wheresoever situate and shall not be paid out within five days, or

(d) either GLCC or Team Lotus shall cease or threaten to cease to carry on its business, or

(e) any person or company or group of persons and/or companies acting in concert which does or do not at the date hereof hold more than 5 per cent of the equity share capital of a Main Party shall acquire more than 50 per cent of the equity share capital of that Main Party, or

(f) either Main Party shall be guilty of conduct which shall be materially prejudicial to the interests of the

other Main Party hereto or to its good repute in its business

then the Main Party involved shall be in default under this Agreement and the other Main Party shall be entitled within 50 days of the time when such default came to its notice or should reasonably have been known by it to terminate this Agreement by notice in writing. Any such termination shall be without prejudice to any claim which any of the parties hereto may have in respect of any matter which shall have occurred at the date of termination or in respect of any obligations specified in this Agreement as continuing after termination.

25.2 Notwithstanding the provisions of Clause 25.1 above if any party shall be unable to fulfil its obligations under this Agreement by reason of disease strikes lock-outs labour disputes riots civil commotion war or fire flood earthquake or other act of God enemy or hostile government action inability to obtain materials or reasonable substitutes therefor import restrictions other conditions or events outside the reasonable control of the relevant party ("force majeure circumstances") any such

inability shall not operate so as to enable this Agreement to be terminated solely by reason of any such event (but this Clause 25.2 shall not affect the obligation of any Party to repay sums of money paid by way of sponsorship pursuant to Clause 17 hereof) unless such force majeure circumstances shall have continued for a period of more than 90 consecutive days or more than 180 days in any period of twelve months.

26. Consequences of Termination

On termination of this Agreement:-

- (a) Each party shall at its own cost return to the other parties all documents and other items belonging to the other parties in its possession or under its control at the date of termination.
- (b) Each party shall cease using or exercising any of the rights granted to it hereunder and shall cease to be bound by any obligations contained herein save under the provisions of any Clause which is specified elsewhere in this Agreement to continue after the date of termination of this Agreement.
- (c) Neither Main Party shall be under any obligation to make any payment to the other by way of compensation for general damage to the reputation standing and goodwill of the other caused by such termination or for loss of business resulting from such termination.

27. Arbitration

All disputes, controversies or differences which may arise between the parties out of or in relation to the interpretation or performance of this Agreement and any provisions hereof which continue after termination of this Agreement shall be settled by arbitration. If the parties are unable to agree respecting the time, place, method or rules of arbitration then such arbitration shall be heard in the City of London under a single arbitrator in accordance with the conciliation and arbitration rules of the Chartered Institute of Arbitrators then obtaining and the prevailing party or parties shall have

the right to enforce any arbitration decision without recourse to the Courts.

28. Severance

Should any part or provisions of this Agreement be held to be unenforceable or in conflict with the laws of England the validity of the remaining parts or provisions of this Agreement shall not be affected thereby.

29. No Representation

It is hereby acknowledged by the parties hereto that neither the signature of this Agreement by any of the parties nor the supply of any information or Know-how hereunder nor the grant of any formal licence in due course pursuant to any patent taken out under the provisions of Part II of this Agreement shall constitute any warranty or representation by the licensing or inventing party that any of the relevant Patents or Trade Marks do not constitute the infringement of the rights of any other person nor that the manufacture or sale of any item thereunder does not constitute any such infringement and save in the case of gross negligence or wilful default by either party in that respect each party shall bear its own costs and damages in relation to any action or suit against it for any such infringement.

30. Entire Agreement

30.1 This Agreement shall constitute the entire agreement and understanding between the parties hereto and all the parties hereto acknowledge that they are not entering into this Agreement on the basis of any terms conditions or representations other than those contained herein. The sub-headings to the various parts of this Agreement shall not be construed as part of the Agreement.

30.2 On this Agreement becoming unconditional the Agreement between GLCC and. Team Lotus dated 26th September 1968 will be terminated and neither GLCC or Team Lotus shall have any claim against the other in respect of the said Agreement.

31. Variation

No alteration to this Agreement shall be valid unless it is recorded in writing and signed by both Main Parties hereto or their duly authorised representatives.

32. Assignment and third parties

32.1 Save as provided in Clause 5 this Agreement is personal to the parties hereto who shall not charge or assign the benefit of or obligations on them imposed by this Agreement without the previous written consent of the other party.

32.2 If either of the Main Parties shall licence or appoint or permit (so far as it is entitled to do under this Agreement) a subsidiary, associated company or other person with whom that Main Party is not at arm's length to perform work or do business which, if done by that Main Party or done at arm's length, would result in payment or more payment becoming due from that Main Party to the other under this Agreement whether before or after termination of this Agreement then such payment shall be made by that Main Party to the other as if such work or business had been done by it or had been done at arm's length as the case may be.

33. Relationship

Nothing in this Agreement shall constitute either party the agent or partner of any other party hereto.

34. Notice

Any notice required or authorised to be given by any party hereto to the other may be served by telex or by prepaid first class letter post addressed in the case of a company to the registered office of that company and in the case of any individual to the address set out against that individual's name at the head of this Agreement or such other address as it shall have previously notified to all the parties hereunder as being in substitution therefor and any notice shall operate and deemed to have been duly served in the case of telex in due course of transmission and in the case of cost at the expiration of two days after the same shall have been properly posted according to the postal rules of England and proof that:

- (a) the telex in question was properly addressed and transmitted, or
- (b) that the letter was properly addressed and posted shall be sufficient evidence of service.

35. The Main Parties undertake to procure that the requisite details of this Agreement which are subject to registration under the Restrictive Trade Practices Act 1976 shall be delivered to the Office of Fair Trading within 7 days of the signing of this Agreement and in any event prior to any General Meeting of the shareholders of GLCC called to approve this Agreement.

AS WITNESS the hands of duly authorised representatives of the parties the day and year first before written.

FIRST SCHEDULE
(Team Lotus)

<u>COUNTRY</u>	<u>PATENT NO.</u>	<u>FILING DATE</u>	<u>SHORT TITLE</u>
Canada	1,149,841	26th November 1960	Ground Effect Vehicle
France	00 30 122 (EP)	26th November 1960	Ground Effect Vehicle
Germany, West	00 30 122 (EP)	26th November 1960	Ground Effect Vehicle
Italy	00 30 122 (EP)	26th November 1960	Ground Effect Vehicle
Spain	497,200	27th November 1930	Ground Effect Vehicle
Sweden	00 30 (EP)	12.226th November 1980	Ground Effect Vehicle

United Kingdom	00 30 13 (EP)	226th November 1980	Ground Effect Vehicle
United States of America	4,287,015	28th November 1980	Ground Effect Vehicle

PATENT APPLICATIONS

<u>COUNTRY</u>	<u>APPLICATION NO.</u>	<u>DATE OF APPLICATION</u>	<u>SHORT TITLE</u>
Ja ^p an	55-157332	27th November 1980	Ground Effect Vehicle
United Kingdom	79.41128	28th November 1979	Ground Effect Vehicle

SECOND SCHEDULE
(Group Lotus)

1

PATENTS

<u>COUNTRY</u>	<u>PATENT-NO</u>	<u>FILING DATE</u>	<u>SHORT TITLE</u>
Austria	01 14 757 (EP)	20th January 1984	Active Vehicle Suspension System
Belgium	01 14 757(EP)	20th January 1984	Active Vehicle Suspension System
France	01 14 757(EP)	20th January 1984	Active Vehicle Suspension System
Germany, West	01 14 757(EP)	20th January 1954	Active Vehicle Suspension System
Italy	01 14 757(EP)	20th January 1584	Active Vehicle Suspension System
Luxembourg,	01 14 757(EP)	20th January 1984	Active Vehicle Suspension System
Netherlands	01 14 757(EP)	20th January 1984	Active Vehicle Suspension System
Sweden	01 14 757(EP)	20th January 1984	Active Vehicle Suspension System
Switzerland	01 14 757(EP)	20th January 1984	Active Vehicle Suspension System
United Kingdom	01 14 757 (EP)	10th January 1984	Active Vehicle Suspension System

PATENT APPLICATIONS

<u>COUNTRY</u>	<u>APPLICATION NO.</u>	<u>DATE OF APPLICATION</u>	<u>SHORT TITLE</u>
Canada	446,061	26th January- 1984.	Active Vehicle Suspension System
Japan	PCT/GS84/00014	20th January 1984	Active Vehicle Suspension System
United Kingdom	83 01 741	21st January 1983	Active Vehicle Suspension System
United States of America	PCT/GB84/00014	20th January 1984	Active Vehicle Suspension System
United Kingdom	83.28 373	24th October .1983	Vehicle Wheel Suspension device
European patent application	84 307 288.5	24th October 1984	Vehicle wheel suspension device
(Nominated countries		Austria, Belgium, France, Germany (West), Italy, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom)	
Canada	(not yet known)	24th October 1984	Vehicle wheel suspension device
Japan	PCT/GB84/00358	23rd October 1984	Vehicle wheel suspension device
United States of America	PCT/GB84/00358	23rd October 1984	Vehicle wheel suspension device
United Kingdom	85.03.290	8th February 1985	Vehicle suspension Arrangements

THIRD SCHEDULE
(Technocraft)

PATENTS

<u>COUNTRY</u>	<u>PATENT NO.</u>	<u>DATE OF PATENT</u>	<u>SHORT TITLE</u>
Australia	473,896	30th March 1973	Vari Process
Ireland, (Republic of	38,994	29th March 1973	Vari Process
Italy	1,008,533	29th March 1973	Vari Process
Norway	142,288	27th March, 1973	Vari Process
United Kingdom	1,432,333	30th March 1972	Vari Process

UTILITY MODELS

<u>COUNTRY</u>	<u>UTILITY MODEL NUMBER</u>	<u>DATE OF UTILITY MODEL</u>	<u>SHORT TITLE</u>
<u>Japan</u>	UMI72261/80	30th March 1978	Vari Process

PATENT APPLICATIONS

<u>COUNTRY</u>	<u>APPLICATION NO.</u>	<u>DATE OF UTILITY MODEL</u>	<u>SHORT TITLE</u>
Netherlands	73.04463	1st April 1973	Vari Process

FOURTH SCHEDULE

UNITED KINGDOM

<u>TRADE MARK</u>	<u>REGISTRATION NO.</u>	<u>CLASS</u>	
TEAM LOTUS	891,302	6	Badges of common metal for vehicles
TEAM LOTUS	891,303	12	Land vehicles and component parts, included in class 12 of land Vehicles
TEAM LOTUS	891,304	16	Paper, paper articles and cardboard articles all included in class 16: cardboard, printed matter; periodical publication books; photographs instructional and teaching materials (other than apparatus) and decalcomanias, <u>but cancelled in respect of</u> handkerchiefs serviettes; cosmetics, or make-up removing materials; filters; wrapping and packaging materials; babies' napkins and bibs; table napkins; tablecloths; doilies; dressing table frills; toilet paper; towels and cloths, including rolls thereof; all composed wholly or pre-dominantly of paper, cellulose, wood pulp fibre or non-woven fibre or nonwoven tissues; plastic or cellulose film, bags of plastic or cellulose film, all for wrapping and for domestic purposes including for use in cooking, preserving and protecting food; and goods of the same description as all the aforesaid goods;

TEAM LOTUS	891,305	20	Badges and brooches, none being of precious metal or jewellery;
TEAM LOTUS	891,306	24	Flags (textiles), but not including flags made of silk
TEAM LOTUS	891,307	25	Neck-ties, overalls, -and boilersuits, all for men; none being of-silk- or of cotton
TEAM LOTUS	891,308	28	Pedal operated vehicles being playthings; toys, games, (other than ordinary playing cards), festival badges, toy ballons, sleighs included in class 28 and gloves for games.
TEAM LOTUS	914,577	26	Badges of textile material none being made of or containing silk.
Lotus device and "Club Team Lotus"	1,177,150	6	Key rings, key fobs and. tax disc holders, all made wholly or principally of common metal
Lotus device and "Club Team Lotus"	1,177,151	16	Windscreen stickers, lap recordal charts and time recording sheets, all included in Class 16, printed publications, stationery, greeting cards, calendars, photographs, photograph albums and drawings
Lotus device and "Club Team Lotus"	1,177,152	18	Umbrellas
Lotus device and "Club Team Lotus"	1,177,153	25	Articles of outer clothing, but not including footwear
<u>FRANCE</u>			
TEAM LOTUS	1,062,632		Motor cars, racing cars and Darts and accessories

therefor

FIFTH SCHEDULE

THIS ASSIGNMENT is made the day of BETWEEN GROUP LOTUS CAR COMPANIES PLC a company registered in England under No. 606189 and having its registered office at Norwich Norfolk NR14 8EZ ("the Vendor") of the one part and TEAM LOTUS INTERNATIONAL LIMITED a company registered in England under No. 1,225,833 and having its registered office at Norwich Norfolk ("the Purchaser") of the other part

WHEREAS:-

(A) By a Lease (hereinafter called "the Lease") dated 16th July 1976 and made between Terence Cubitt Sowden, Patrick Flinn Cubitt Sowden and Robert George Day of the one part and the Vendor (then known as Group Lotus Car Companies Limited) of the other part the property described in the Schedule hereto was demised to the Vendor for the term of fifteen years from 1st July 1974 at the initial yearly rent of £4,000 and subject to the performance and conditions therein contained.

(B) The Vendor has agreed with the Purchaser for the sale to it of the said property for all the residue now unexpired of the said term at the price of £80,000 payable as hereinafter mentioned.

(C) The consent of the Lessors to this Assignment has been duly obtained as required by the Lease.

NOW THIS DEED WITNESSETH as follows:

1. IN consideration of the sum of £20,000 paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) and of the covenant contained in Clause 2 hereof the Vendor as beneficial owner HEREBY ASSIGNS unto the Purchaser ALL THAT the property comprised in and demised by the Lease TO HOLD unto the Purchaser for all the residue now unexpired of the term created by the Lease subject henceforth to the payment of the rent reserved by and to the performance and observance of the covenants on the part of the Lessee and the conditions contained in the Lease and subject to the protected shorthold tenancy to Roger C. Scammell for a fixed period of one year from 1st September 1984 to 31st August 1985 and subject also to the two Licences dated 1st February 1982 granted in respect of Orchard House and Wood Cottage

2. THE Purchaser hereby covenants with the Vendor to pay the balance of the purchase price of the said property in the sum of £60,000 by 36 equal calendar monthly instalments commencing on the anniversary of the date hereof.

IN WITNESS whereof these presents have been duly executed the day and year first above written

THE SCHEDULE

ALL THOSE pieces of land situate in the Parish of Ketteringham in the County of Norfolk containing an area of 42.098 acres or thereabouts and comprising the Ordnance Survey Map Numbers set out in the First Schedule to the Lease ALL which said pieces of land are for the purpose of identification only shown on the plan annexed to the Lease and thereon edged: red TOGETHER WITH the mansion house known as "Ketteringham Hall" three cottages known as "Church Cottage" "Wood Cottage" and "The Gardener's Cottage" and all other outbuildings and erections and works erected thereon or on some part thereof AND TOGETHER also with the easements and rights set out or referred to in the

Second Schedule to the Lease but SUBJECT to the easements and rights set out or referred to in the Third Schedule to the Lease.

THE COMMON SEAL of GROUP
LOTUS CAR COMPANIES PLC was
hereunto affixed in the
presence of:-

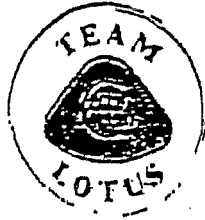
Director
Secretary

THE COMMON SEAL of TEAM
LOTUS INTERNATIONAL LIMITED
was hereunto affixed in the
presence of:-

Director

Secretary

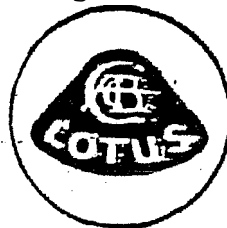
SIXTH SCHEDULE



(Monogram with and without "TEAM LOTUS")

SEVENTH SCHEDULE

(Old Lotus Logo with monogram)

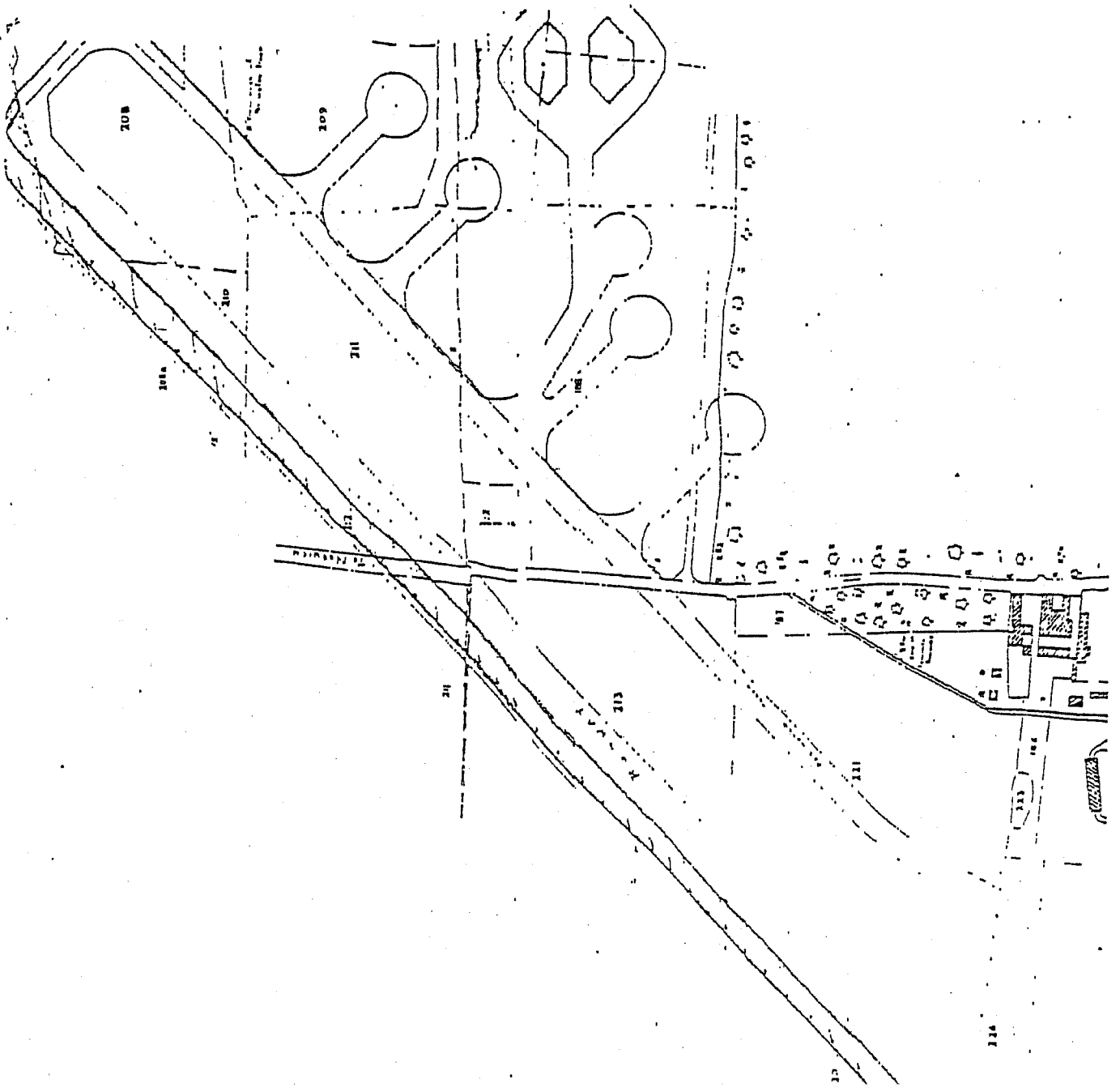


EIGHTH SCHEDULE
REGISTERED DESIGNS

<u>Country</u>	<u>Registration No.</u>	<u>Date</u>	<u>Title</u>
United Kingdom	984,427	3rd May 1978	Model Racing Car
France	124,216	16th July 1970	Model Racing Car
France	124,467	10th August 1970	Model Racing Car
France	129,070	16th July 1971	Model Racing Car
Japan	539,737	27th June 1980	Model Racing Car
United States of	260,913	22nd September 1981	Model Racing Car

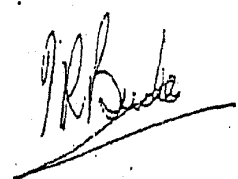
DESIGN APPLICATION

<u>Country</u>	<u>Application No.</u>	<u>Date of Application</u>	<u>Title</u>
Italy	12545 B/78	3rd May 1978	Model Racing Car

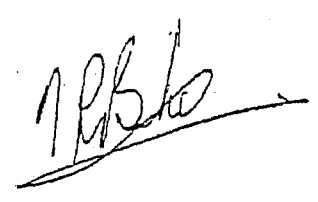


SIGNED by
for and on behalf of GROUP
LOTUS CAR COMPANIES PLC in
the presence of :-

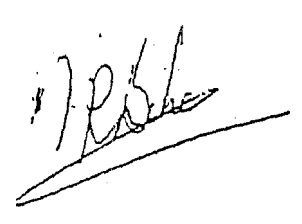
SIGNED by F. R. BUSHELL
for and on behalf of TEAM
LOTUS INTERNATIONAL PLC in
the presence of : -

A handwritten signature in black ink, appearing to read 'F. R. Bushell', written over a horizontal line.

SIGNED by F. R. BUSHELL
for and on behalf of
TECHNOCRAFT LIMITED in the
presence of : -

A handwritten signature in black ink, appearing to read 'F. R. Bushell', written over a horizontal line.

SIGNED by F. R. BUSHELL
for and on behalf of HETHEL
PROPERTIES LIMITED in the
presence of : -

A handwritten signature in black ink, appearing to read 'F. R. Bushell', written over a horizontal line.

