

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
TRADE MARK REGISTRATION No. 2198572  
IN THE NAME OF JOSEPH YU**

**AND IN THE MATTER OF  
AN APPLICATION FOR A DECLARATION OF INVALIDITY No. 81086  
IN THE NAME OF LIAONING LIGHT INDUSTRIAL PRODUCTS IMPORT  
AND EXPORT CORPORATION**

**AND IN THE MATTER OF  
AN APPEAL TO THE APPOINTED PERSON  
AGAINST THE DECISION OF MR. M. FOLEY  
DATED 19 MARCH 2004**

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**DECISION**

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**Introduction**

1. The trade mark WALKERLAND was registered in the name of Walkerland International Limited (“WIL”) under number 2198572 on 29 October 1999 for use in relation to “safety footwear, protective garments and headgear” in Class 9 and “footwear, clothing, headgear” in Class 25.
2. The registration was applied for using the prescribed Form TM3 on 27 May 1999. WIL was stated to be the applicant for registration. The words “Applied & signed by J. Yu” were hand-written on the first and final pages of Form TM3, which was signed by Mr. Joseph Yu. WIL later assigned the registration to Mr. Yu. According to the Registry database, the effective date of the assignment was 6 March 2003. The recordal of the assignment was published in the Trade Marks Journal of 19 September 2003.
3. On 27 November 2002, Liaoning Light Industrial Products Import and Export Corporation, China (“LLIP”) applied to the Registrar for declarations of invalidity of registration number 2198572 under sections 47(1), 47(2)(b) and 60(3)(a) of the Trade Marks Act 1994 (“the TMA”). The grounds for invalidity, shortly stated, were:
  - (a) WALKERLAND was registered in breach of section 3(6) of the TMA in that the application was made in bad faith.
  - (b) There is earlier right in relation to which the condition set out in section 5(4)(a) is satisfied in that at the date of registration use of

WALKERLAND in the United Kingdom was liable to be prevented by LLIP under the law of passing off.

- (c) LLIP was the owner of the unregistered trade mark WALKERLAND in China. Mr. Yu acted as LLIP's agent in the United Kingdom. The application for registration of WALKERLAND was made by a person who was the agent or representative of a person who was the proprietor of the mark in a Convention country within the meaning of section 60(1) of the TMA and there was no justification for such action under section 60(5).
4. The matter came to be heard by the Hearing Officer, acting on behalf of the Registrar, on 9 December 2003 when both parties were represented by Counsel instructed by the parties' trade mark attorneys. LLIP made a timely request to cross-examine Mr. Yu, which was duly granted. Mr. Yu's representatives submitted a late request to cross-examine LLIP's main witness, Yan Shu Zhou, also known as David Zhou, twenty-four hours before the hearing. Mr. Yu's late request was denied. The Hearing Officer noted the requirement for any request for cross-examination to be made at least fourteen days before the hearing. Furthermore, due to previous Registry proceedings involving the registration in suit, the parties were aware of differences in both sets of evidence. The Registrar's refusal of Mr. Yu's request to cross-examine Mr. Zhou has not been challenged.
5. After a detailed review of the evidence and arguments, the Hearing Officer found in favour of LLIP under section 3(6) and section 5(4)(a) of the TMA (BL O/071/04). In the event, the Hearing Officer made no finding under section 60 of the TMA.
6. On 16 April 2004, Mr. Yu through his representatives filed notice of appeal to an Appointed Person under section 76 of the TMA. At the appeal hearing before me, Mr. Yu represented himself. However he asked me to take into account the grounds of appeal and the statement of case in support submitted on his behalf by his former representatives, which I have done. LLIP neither appeared nor was represented at the appeal hearing.

### **The facts**

7. The Hearing Officer dealt with the evidence at length including the oral evidence of Mr. Yu. Generally speaking he preferred Mr. Zhou's account of events surrounding the application for registration of WALKERLAND on 27 May 1999. The Hearing Officer made the following findings of fact.
8. WALKERLAND was first used in China by LLIP as a brand name for workmen's footwear from at least 1994. In his witness statement dated 19 March 2003, Mr. Zhou says that LLIP devised the mark WALKERLAND for its footwear around 1992/93. At the time, Mr. Zhou was employed as a business manager in LLIP's export department charged amongst other things with the promotion and sale of WALKERLAND footwear outside China. In 1994, Mr. Zhou was promoted to LLIP's sole authorised representative in the

United Kingdom and travelled there with a WALKERLAND boot (along with other products and samples) to take up that role. In the Hearing Officer's view, corroboration for these dates was provided by:

- (a) A certificate issued by the Chamber of Commerce of Jiutai City dated 23 May 2001 confirming that Jiaxin Leather Shoes Factory of Jiutai City, Jilin produced and processed WALKERLAND footwear for LLIP from 1994 to 1996 (exhibit YSZ3 to Mr. Zhou's witness statement of 19 March 2003).
  - (b) Two invoices included in exhibit YSZ3. The first is dated 24 January 1995 and concerns the export of WALKERLAND boots by LLIP to a Japanese company. The second invoice dated 11 May 1995 shows LLIP exporting WALKERLAND boots to an organisation in Korea.
  - (c) Certification dated 11 July 2000 by the Registrar of Companies for England and Wales that LLIP, a company incorporated in China, on 24 August 1994 filed the requisite documents for a foreign company establishing a place of business in Great Britain (YSZ2).
  - (d) A witness statement of Mr. Lionel Peter Knight, a shoe/boot retailer, dated 18 August 2003. Mr. Knight recalls a visit to his shop by Mr. Zhou on a cold-call basis in early – mid 1996 during which he was shown a sample boot by Mr. Zhou with WALKERLAND written on the sole. Although there is no written record of the meeting, Mr. Knight says it occurred several months before his first and only visit to the London Shoe Show at Novotel Hotel, Hammersmith, which took place in early 1997.
9. Mr. Zhou met Mr. Yu in Autumn 1994, first at the offices of Melcro Shoes Limited, shoe wholesalers based in Hackney and subsequently at Ador (UK) Limited, Mr. Yu's company, when Mr. Zhou showed Mr. Yu the WALKERLAND sample boot. Apparently, Mr. Yu expressed an interest in wholesaling the WALKERLAND boot but could not guarantee the volume supplies to retail outlets that LLIP desired. Nothing, therefore, came of the meeting except that Mr. Yu was aware that LLIP were actively looking to sell their WALKERLAND boots in the United Kingdom. There is some dispute as to the role of Mr. Derek Aldridge in these meetings. I shall return to the evidence concerning Mr. Aldridge later in my decision. Suffice it to say for present purposes that the Hearing Officer found such evidence unreliable.
10. The trading relationship between LLIP and Mr. Yu began in 1996 but the parties' evidence diverges as to how. Mr. Zhou says that LLIP had a cancelled order for WALKERLAND boots leaving them with 10,000 items to dispose of. Mr. Yu says that he requested LLIP to make him boot samples with the mark WALKERLAND written on them so that he could test market the boot in Europe, America and Canada (witness statement of Joseph Yu dated 30 April 2003). Mr. Yu disputes that WALKERLAND was in existence before his involvement and claims that he designed "the style for the Walkerland brand" with his designer Mr. Aldridge. He says that he was the buyer of the

footwear and instructed LLIP to make goods under the trade mark WALKERLAND. The Hearing Officer noted that Mr. Zhou's version of events was supported by a fax from Mr. Yu to LLIP dated 7 November 1996 (exhibits YSZ4/YSZ18) in which Mr. Yu writes:

“As ‘WALKERLAND’ is followed by ‘TM’, I don’t think it is a British brand because genuine British brands have ® at the end, not ‘TM’. If, upon clarification, it is not a British brand, please start the production immediately. This is because all the soles have already been made and therefore should not be wasted. Moreover, there is no need to put any plastic marks on the soles, as ‘WALKERLAND’ has already been imprinted there.”

As to Mr. Yu's assertion that WALKERLAND was not in existence before his involvement, the Hearing Officer found this conflicted with the certificate from the Juitai Chamber of Commerce, LLIP's own use in Japan and Korea and Mr. Yu's admission in oral evidence that WALKERLAND had been registered in the name of a third party in China in 1995.

11. The Hearing Officer gave detailed consideration to a letter from Derek Aldridge dated 4 April 2001, exhibited to Mr. Yu's witness statement of 30 April 2003 at JY1. The letter is headed “TO WHOM IT MAY CONCERN. RE: ‘WALKERLAND’ BRAND” and reads:

“I have been involved in the designing of Boots in the ‘Walkerland’ Brand since 1996. In 1997, myself and Joseph Yu designed more styles and further designed the logos and boxes for the ‘Walkerland’ Brand. Mr. Joseph Yu and I have been working together to design Boots in this name since 1996.

I could not find a lot of evidence but the most important one to prove the point is a computer disc showing one of the designs we produced in the ‘Walkerland’ name. Everybody can see that this is an old disc.

Liaoning Light was the supplier that produce the designs for myself and Joseph Yu at our instructions. Joseph Yu was the only person that inspired the Brand name and he went on for the search and registration of the brand name under his controlling companies.

We actually had given our ‘Walkerland’ designs to 3 factories and Liaoning was one of them.”

The Hearing Officer found the terms of the letter equivocal. He said:

“I am left to wonder whether this “loose” language is a deliberate attempt to insinuate without actually saying that Mr. Yu coined the WALKERLAND name, which from the evidence is clearly not the case, or whether Mr. Aldridge simply does not know. Whatever, I find this evidence to be singularly unreliable.”

There is a print out of the contents (as thought relevant to these proceedings) of the computer disc mentioned in Mr. Aldridge's letter (JY1). These show various stylistic representations of WALKERLAND with or without other material. Handwriting on two of the pages indicates that the date of the disc contents is 1997.

12. A number of invoices exhibited by Mr. Zhou at YSZ5 show an active trade between LLIP and Mr. Yu's company, Ador (UK) Limited in WALKERLAND boots during the years 1997 – 98. Some financial difficulties occurred between the two companies in 1998/99. A letter from LLIP to Mr. Zhou dated 26 November 1999 referring to outstanding payments in 1998 (YSZ12) appears to support Mr. Zhou's statement that Ador (UK) Limited had defaulted on payments to LLIP. The Hearing Officer noted that Mr. Yu did not deny any such default merely responding that there was no evidence to that effect.
13. By 1998 there was a profitable trade in the UK relating to WALKERLAND boots. A new company, WIL, was incorporated on 20 April 1999 to distribute WALKERLAND boots in the UK. Mr. Zhou claims that it was agreed that LLIP (through Mr. Zhou as LLIP's sole UK representative) should control WIL. Mr. Yu handled the arrangements for the setting up of WIL but denies that this was at the request of LLIP. In the event, 99% of the £100 shareholding was issued to Mr. Yu and the remaining £1 share was transferred to Mr. Yu's son, Simon Yue. An examination certificate dated 13 May 1999, together with a number of invoices for the period February – May 1999, relate to ITS Intertek Testing Services (Leicester) Ltd testing of WALKERLAND boots for compliance with EC safety standards. The certificate is issued to WIL as the "Authorised representative of Liaoning Light Industrial Products I/E" (YSZ7). The Hearing Officer was satisfied on the written (particularly WIL invoices and correspondence at YSZ10 and 11) and oral evidence that Mr. Zhou was firmly at the helm of WIL. On the other hand there was no evidence to show that Mr. Yu had anything to do with the management or running of WIL. Towards the end of 1999, Mr. Zhou became suspicious that all was not as he thought with WIL. In particular, he had been provided with no information/documentation relating to the set up of WIL. Mr. Zhou gives details of a meeting with Mr. Yu's accountants, which took place on 1 February 2000. He signed a form for appointment of himself as director of WIL and, in his own words, knowing no better, agreed to the accountant's suggestion that he and Mr. Yu should each hold 49% of the shares in WIL with the accountants holding the remaining 2%. It transpires that Mr. Zhou was indeed appointed director of WIL on 1 February 2000 but the shareholding remained Mr. Yu – 99 shares, Simon Yue – 1 share. The Hearing Officer observed that the Annual Return of WIL, to 5 April 2000 (YSZ14) provided partial corroboration of Mr. Zhou's description of the meeting with the accountants. Since Mr. Yu did not challenge Mr. Zhou's account of the meeting, the Hearing Officer presumed it was correct.
14. According to Mr. Zhou, LLIP instructed him to apply for UK registration of WALKERLAND. Mr. Zhou says Mr. Yu offered to attend to the formalities on his behalf and the application was filed naming WIL as the applicant on 27

May 1999. Mr. Yu refutes that he was acting on LLIP's behalf because at the time Mr. Yu owned WIL, which of course begs the question. The Hearing Officer said he was clear that when the application was made, Mr. Yu was fully aware that WALKERLAND belonged to LLIP.

15. In November 1999, Mr. Zhou became aware of a competing boot on the market being sold under the mark WALKLANDER. Mr. Zhou was about to visit China and asked Mr. Yu to look into this "infringement". When nothing happened, Mr. Zhou pursued his own enquiries and discovered that Mr. Yu had applied to register WALKLANDER for, inter alia, footwear on 29 September 1999. Further, in order to overcome a citation on relative grounds, Mr. Yu had provided the Registry with a letter of consent from WIL stating: "Until the time of writing Mr. Joseph Yu is the sole director of Walkerland International Limited". LLIP successfully opposed WALKLANDER on the ground that the application for registration was made in bad faith contrary to section 3(6) of the TMA (BL O/326/02).
16. The relationship between LLIP and Mr. Yu finally broke down in mid – late Summer 2000. It appears that WIL subsequently ceased trading.

### **The Hearing Officer's decision**

17. As to the meaning of "bad faith", the Hearing Officer adopted the well-known formulation of Lindsay J. in *Gromax Plasticulture Ltd v. Don & Low Nonwovens* [1999] RPC 367 at 379. The Hearing Officer's task was to consider whether, having regard to the evidence, Mr. Yu's filing of the application for WALKERLAND fell short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular field in question. LLIP's objection under section 3(6) had two strands. First, when the application for registration was made Mr. Yu knew that LLIP was the rightful owner of WALKERLAND and would not have consented to registration in the name of a company (WIL) that LLIP did not own/control. Second, at the time of the application, Mr. Yu purported to be acting in the best interests of LLIP and with LLIP's consent. Mr. Yu occupied a position of trust and responsibility in relation to LLIP, which meant that he should not put himself in a position where his own personal interests would conflict. Mr. Yu misled LLIP as to the nature, composition and ownership of WIL and, therefore, did not have LLIP's informed consent to the registration of WALKERLAND in the name of WIL.
18. The Hearing Officer held that LLIP's objection under section 3(6) was made out. He referred to the decision in *NEW CENTURY*, BL O/018/00 where the relevant facts were: "(a) Mr. Leith was aware that NEW CENTURY was the opponent's trade mark in the United States of America; (b) he knew that the opponent had started to trade in the United Kingdom under the trade mark, he was himself a customer; (c) he should have been aware that the opponent could be expected to expand that trade, if it had not already done so ...". Mr. Allan James, the Hearing Officer acting for the Registrar, held:

“It follows from that that if this application were successful he would be in a position to prevent the opponent from registering their mark in the United Kingdom, and possibly from using it here. In my view the application has been made in bad faith. It is difficult to see how a person who applies to register a mark in his own name which he has previously recognised as the property of a potential overseas principal can be said to be acting in accordance with acceptable standards of commercial behaviour. I do not believe that combining the mark with the applicant’s own name is any answer to that criticism.”

In the present case, the Hearing Officer concluded (at paragraph 89):

“Although there is no conclusive evidence relating to the setting up of Walkerland International Limited, the inference I get from the facts is that Mr. Zhou, on behalf of Liaoning, was as much part of the motivation for its incorporation as Mr. Yu, and certainly seems to have been more actively involved in its day to day operation. However, the company was set up under the ownership of Mr. Yu, and whether or not this was, as Mr. Yu claims, a legitimate business transaction I do not believe the same can be said of his filing of the application to register the trade mark WALKERLAND. The evidence leaves much to be desired, but taking the best view I can I believe that it establishes to a reasonable degree of certainty that Mr. Yu was aware that WALKERLAND was the opponent’s trade mark, that they had used it outside of the UK and were actively looking to establish a trade within the UK; his company was itself a customer. The parallels in this and the *New Century* case are plain to see, and [I] find that in making the application the registered proprietors, as they now stand also acted in bad faith, and the ground under section 3(6) succeeds.”

19. That was sufficient to dispose of the matter. But the Hearing Officer added that had he considered the objection under section 5(4)(a) he would have held that LLIP had established a reputation and goodwill in the United Kingdom, and that given the absolute identity in both the marks and the goods, damage would inevitably follow and that the ground under section 5(4)(a) stood established.

### **The appeal**

20. An appeal to the Appointed Person is by way of review. As the Court of Appeal explained in *REEF Trade Mark* [2003] RPC 101, this tribunal should be reluctant to interfere with a decision of Hearing Officer, especially where he has had the benefit of cross-examination, in the absence of a distinct material error of principle.

### **Section 3(6) TMA**

21. The grounds of appeal against the Hearing Officer’s decision under section 3(6) are listed under three heads: (i) WIL’s ownership of the mark; (ii) intended ownership of WIL; (iii) other matters relating to section 3(6).

22. It is argued under the first head that the Hearing Officer fell into error because he failed to take into account, sufficiently or at all, that the relevant question was whether the application for the mark by Walkerland International Limited was made in bad faith. I am clear in my mind that the Hearing Officer did appreciate that WALKERLAND was applied for in the name of WIL. I am equally clear that the Hearing Officer took note of the fact that Mr. Yu owned WIL and was in effect the true applicant. A claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application.
23. The grounds go on to allege that the Hearing Officer failed sufficiently to take into account that LLIP knew and consented to the formation of LLIP in order to market WALKERLAND boots in the United Kingdom and knew and consented to the mark being applied for in the name of WIL. To the contrary, the Hearing Officer gave detailed consideration to the evidence of both parties surrounding the formation of WIL and the application for registration of WALKERLAND but accepted LLIP's objection. Rather than error on the part of the Hearing Officer, the grounds reveal discontent with his decision.
24. Next, the Hearing Officer is criticised for citing the *New Century* case without affording Mr. Yu and his representatives a chance to make submissions about it. It is pointed out that the *New Century* case concerned a person who registered an overseas supplier's mark in his own name. Indeed, the Hearing Officer mentions those facts in his decision. The *New Century* case involved no new law and the decision was published well before the case in hand. The Hearing Officer used *New Century* as an example. *New Century* was not central to the Hearing Officer's decision and it would have made no difference to the outcome had Mr. Yu and his representatives been armed with it. The case served only to underline or emphasise the points that were addressed during the hearing. It is not material that the Hearing Officer omitted to invite submissions from the parties before including *New Century* in his decision (*Sheridan v. Stanley Cole (Wainfleet) Ltd* [2003] 4 All ER 1181, CA).
25. Finally under the first head it is said that WIL did not need LLIP's consent to the registration of WALKERLAND. Given WIL was owned by Mr. Yu and his son, this is true. But it does not avoid a finding of bad faith.
26. The second head of the grounds of appeal relates to the intended ownership of WIL. The Hearing Officer is criticised for not deciding the terms on which WIL could be said to hold property for LLIP, if at all. However, the question before the Hearing Officer was whether WALKERLAND was registered in breach of section 3(6) in that the application was made in bad faith. And it was that question the Hearing Officer addressed.
27. All but one of the remaining points under the second head amount to complaints that the Hearing Officer preferred one piece of evidence over another or failed to give sufficient weight to certain facts or evidence. I have considered them all carefully in the light of the papers before me but am unable to discern any error of principle on the part of the Hearing Officer. The one point relates to correspondence and invoices sent to the address of 12

Lytton Road, Barnet. The Hearing Officer notes that Mr. Zhou gives 12 Lytton Road as his domicile and also his business address. The grounds complain that the Hearing Officer erred by incorrectly appearing to associate correspondence sent to that address as meant for Mr. Zhou. The grounds go on to point out that Mr. Yu's company Ador (UK) Limited moved to 12 Lytton Road shortly before incorporation of WIL. Accordingly the Hearing Officer should not have given the impression that material sent to 12 Lytton Road was evidence that Mr. Zhou was in control of WIL. There is a sales confirmation at YSZ5 that is addressed to Ador (UK) Limited at 12 Lytton Road. The sales confirmation is dated 23 October 1998, i.e. before the incorporation of WIL. I agree that the Hearing Officer does not mention this in his decision. However I do not believe that this piece of information significantly affects his finding. The Hearing Officer took account of invoices and correspondence exhibited at YSZ10 and YSZ11 all of which was either addressed to, or sent by or to, WIL at 12 Lytton Road. The Hearing Officer says that the invoices at YSZ10 cannot definitely be attributed to Mr. Zhou because there is no transliteration of the signature, which is in Chinese characters. However he noted that the material at YSZ11, without exception, specially mentioned or related to Mr. Zhou. The Hearing Officer also took into account oral evidence of Mr. Yu and the certificate of testing issued by Intertek Testing (YSZ7, described at paragraph 13 above). Looking at such evidence in the round, the Hearing Officer concluded that Mr. Zhou "appears to have been firmly at the helm" of WIL. A Hearing Officer is not obliged to mention in his decision every piece of information submitted in evidence. I do not believe his failure to record that Ador (UK) Limited may have co-resided at 12 Lytton Road means that he fell into error.

28. The final set of grounds on section 3(6) similarly concern the weight attached by the Hearing Officer to certain evidence. Thus, for example, the Hearing Officer is criticised for placing too much weight on the "hearsay documents attached at YSZ3 to Mr. Zhou's witness statement". I presume this means the certificate issued by the Chamber of Commerce of Jutai City. The Hearing Officer carefully considered Mr. Yu's allegation in oral evidence that the document was forged because LLIP and the Chamber of Commerce are both connected to the Chinese Government. He noted that it was clear from YSZ17 that the Chamber's role includes the regulation of commercial activities in its area, covering the registration of companies and enterprises and the registration of enforcement of intellectual property rights including trade marks. But the Hearing Officer saw no reason to assume the certificate was false either in itself or in the information it gave. Similarly he did not accept Mr. Yu's "bald assertion" that the Japanese and Korean invoices at YSZ3 were forged. I do not believe the Hearing Officer can be faulted in his approach.
29. The other instances where the Hearing Officer is criticised for incorrect weighting concern the fax of 7 November 1996 at YSZ4/YSZ18 (see paragraph 10 above), a third party's registration of WALKERLAND in China and the absence of evidence of sales in the UK by LLIP other than to Mr. Yu's companies. All these matters were taken into account by the Hearing Officer and I am satisfied that these further criticisms are unjustified.

30. There follows under the third set of grounds a list of what can fairly be described as “kitchen sink” points. These include that the Hearing Officer failed to recite that the late request to cross-examine Mr. Zhou was refused, that the presumption of validity in section 72 of the TMA was apparently ignored, that LLIP’s name did not appear on the boots and that the Hearing Officer failed to take sufficient note of evidence in previous proceedings between the parties for rectification exhibited to the witness statement of James Setchell, dated 20 March 2003. I am unable to see substance in any of these points. The grounds further allege that the Hearing Officer placed too much weight on subsequent conduct/proceedings relating to the WALKLANDER mark, which occurred after the date of the application in suit. However, it has been established in this tribunal that matters occurring after the date of an application may assist in determining an applicant’s state of mind at the earlier date (*Ferrero SpA’s Trade Marks* [2004] RPC 583, *TESCO WE SELL FOR LESS*, BL O/256/04). The Hearing Officer cannot be said to have fallen into error in that regard.
31. At the oral hearing of the appeal, Mr. Yu was concerned that I should revisit the issue of the computer disc, the contents of which were exhibited by him together with the letter from Mr. Aldridge at JY1. I have complied with Mr. Yu’s request. But as mentioned earlier the contents solely comprise a number of stylistic designs incorporating the word WALKERLAND. Insofar as the disc can be dated, handwriting on the contents suggests that the designs were created in 1997. I am unable to see how the disc assists Mr. Yu’s case.

**Harrison v. Teton Valley Trading Co.**

32. Since the date on which the Hearing Officer’s decision was issued, there has been further judicial guidance on the test to be applied in determining bad faith for section 3(6). In *Harrison v. Teton Valley Trading Co.* [2004] EWCA Civ. 1028, the Court of Appeal held that test is a combined objective test and subjective test:

“The words “bad faith” suggest a mental state. Clearly when considering the question of whether an application to register is made in bad faith all the circumstances will be relevant. However the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as in bad faith by persons adopting proper standards.” (Aldous L.J. at paragraph 26)

The Court of Appeal confirmed that the standard is as set out by Lindsay J. in *Gromax*, above, namely that of acceptable commercial behaviour observed by reasonable and experienced persons in the particular commercial area being examined.

33. The Hearing Officer did not, of course, have the benefit of this further guidance on the test to be applied under section 3(6). Nevertheless, the Hearing Officer makes a clear finding that at the relevant time Mr. Yu was fully aware that LLIP were actively seeking to expand their trade in boots under their WALKERLAND mark in the United Kingdom. In all the

circumstances of the case, I believe that the Hearing Officer was right to conclude that the application for WALKERLAND was made in bad faith.

### **Conclusion**

34. In the result, the appeal fails. LLIP was not represented at the hearing and made no submissions on Mr. Yu's appeal. I therefore dismiss the appeal with no order as to costs.

Professor Ruth Annand, 9 December 2004

Mr. Joseph Yu appeared in person.

Liaoning Light Industrial Products Import & Export Corporation did not appear and was not represented.