

TRADE MARKS ACT 1994

TRADE MARKS (INTERNATIONAL REGISTRATION) ORDER 1996

IN THE MATTER OF:

REQUESTS BY BASIC TRADEMARK SA

FOR PROTECTION IN THE UNITED KINGDOM

OF (1) INTERNATIONAL TRADE MARK No. 689374

IN CLASS 25

AND (2) INTERNATIONAL TRADE MARK No. 776058

IN CLASSES 3, 9, 14, 16, 18, 24 AND 28

DECISION

1. Article 6 quinquies, paragraph B3 of the Paris Convention of 20 March 1883 (as last revised at Stockholm on 14 July 1967) provides for refusal and invalidity of registration in relation to trade marks that are '*contrary to morality or public order*'. The corresponding rule at the Community level under Article 7(1)(f) of the Community Trade Mark Regulation and at the national level in the United Kingdom under Section 3(3)(a) of the Trade Marks Act 1994 (implementing Article 3(1)(f) of the Trade Marks Directive) is that trade marks shall not be registered if they are '*contrary to public policy or accepted principles of morality*'.

2. The objection relates to the intrinsic qualities of the mark concerned, not the personal qualities of the applicant for registration: Case T-224/01 Durferrit GmbH v.

OHIM (9 April 2003) paragraphs 67 to 71, 75 and 76. It has been observed that the legislation uses the expression ‘public policy’ for the purpose of referring to matters of the kind covered by the French legal term ‘ordre public’: Philips Electronics NV v. Remington Consumer Products [1998] RPC 283 at 310 per Jacob J. This is borne out by the use of the words ‘*contrary to ... public order*’ in the English text of Article 6 quinquies of the Paris Convention and the words ‘*qui sont contraires à l’ordre public*’ in the French language versions of Article 7(1)(f) of the Community Trade Mark Regulation and Article 3(1)(f) of the Trade Marks Directive.

3. Both as a matter of national law (see Section 3 of the Human Rights Act 1998) and on the basis that measures incompatible with observance of the European Convention on Human Rights are not acceptable under Community law (Case C-112/00 Schmidberger Internationale Transporte und Planzuge v Austria [2003] 2 CMLR 34, p.1043 at paragraphs 71 to 74) it is necessary to interpret and apply the prohibition in Section 3(3)(a) of the Act consistently with the provisions of the Convention (**‘ECHR’**).

4. Consistently with Article 10 ECHR it must be recognised that the right to freedom of expression (including commercial expression: Casado Coca v Spain (1994) 18 EHRR 1 paragraphs 33 to 37) is exercisable subject only to ‘*such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary*’.

5. Consistently with Article 14 ECHR it must be recognised that the aims and objectives of Article 10 are to be secured *‘without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’*

6. Section 3(3)(a) seeks to prohibit registration in cases where it would be legitimate for the *‘prevention of disorder’* or *‘protection of ... morals’* to regard use of the trade mark in question as objectionable in accordance with the criteria identified in Article 10 ECHR. It does so in terms which disclose no intention to prohibit registration in cases where use of the relevant trade mark would not be objectionable under Article 10 on either or both of those bases. The problem of anti-social branding is, in part, addressed under Section 3(3)(a) by accommodating the concept of *‘ordre public’* within the *‘prevention of disorder’* (in the French text of the Convention *‘à la defense de l’ordre’*) under Article 10. That makes it legitimate, for example, to treat the display of *‘any writing, sign or other visible representation which is threatening, abusive or insulting within the ... sight of a person likely to be caused harassment, alarm or distress thereby’* as objectionable: see Section 5(1)(b) of the Public Order Act 1986. However, the right to freedom of expression must always be taken into account without discrimination under Section 3(3)(a) and any real doubt as to the applicability of the objection must be resolved by upholding the right to freedom of expression, hence acceptability for registration.

7. The latter point serves to explain the emphasis in the case law on the degree of censure involved in an adverse finding under the current legislation.

8. Mr. Simon Thorley Q.C. sitting as the Appointed Person in Ghazilian's Application [2002] ETMR 631 upheld the decision of the Registrar of Trade Marks to refuse registration of the words **TINY PENIS** as a trade mark for use in relation to various articles of clothing in Class 25. In paragraph 20 of his decision, he said:

... it is only in cases where it is plain that an accepted principle of morality is being offended against that registration should be denied. Mere offence to a section of the public, in the sense that that section of the public would consider the mark distasteful is not enough.

He returned to this point in paragraph 30:

In my judgment the matter should be approached thus. Each case must be decided on its own facts. The dividing line is to be drawn between offence which amounts only to distaste and offence which would justifiably cause outrage or would be the subject of justifiable censure as being likely significantly to undermine current religious, family or social values. The outrage or censure must be amongst an identifiable section of the public and a higher degree of outrage or censure amongst a small section of the community will no doubt suffice just as lesser outrage or censure amongst a more widespread section of the public will also suffice.

I believe that Mr. Thorley's concern as to the justifiability of the anticipated reaction is an important factor in his reasoning. It allows for the possibility that the anticipated reaction might be an undue response to a legitimate exercise of the right to freedom of expression. It does so by maintaining the requirement for objectivity and non-discrimination on the part of the decision taker. Otherwise there would be a risk that the vociferousness of those with an axe to grind might illegitimately diminish the free speech rights of those whose views they oppose.

9. More recently in Case R 111/2002-4 Dick Lexic Limited's Application (25th March 2003) the Fourth Board of Appeal of the Community Trade Marks Office allowed an appeal from the Examination Division's decision to refuse registration of the words **DICK & FANNY** as a trade mark for use in relation to various goods in Classes 9, 16 and 25.

10. The members of the Board acknowledged that the trade mark consisted of English words that have, in coarse slang, a sexual connotation. They nonetheless considered that the words conveyed no offensive message that could justify the denial of registration on grounds either of public policy or accepted principles of morality:

7. The contested decision was based on the particular meaning of the words in English slang. Yet, as the appellant argues, the same words have another meaning when employed in less informal speech. Dick and Fanny are the diminutive forms of the English first names Richard and Frances (the latter being the feminine version of Francis), respectively. Thus, the words express different meanings depending on whether standard or informal language is used and the sexual connotation is only present in the latter.
8. The Board concedes that the liability of a word mark to the absolute grounds of Article 7(1)(f) CTMR must be assessed on the basis of any usage, not necessarily formal, that the public makes of a given language. Therefore, the meaning of a word in slang may, in principle, lead to an objection, even if in normal usage it does not have an unfavourable connotation.
9. However, the Board doubts that the mere fact that the two words have, alone or in combination with each other, a sexual connotation should be regarded as 'offensive' and that it justifies the rejection of the mark on account of public policy or accepted principles of morality. There are two reasons for this : firstly, these words merely designate things but they

do not transmit any message; secondly, the association of the two words does not necessarily reinforce the connotation of the mark.

10. As regards the first reason, the words admittedly designate, in a particularly inelegant (or tasteless) manner, anatomical parts that are rarely mentioned in ordinary speech – whether formal or informal. In principle, the mark does not proclaim an opinion, it contains no incitement, and conveys no insult. In the Board's opinion, in these circumstances, the mark should not be regarded as contrary to either public policy or accepted principles of morality. For this reason, the Board would agree with the appellant that the mark may, at most, raise a question of taste, but not one of public policy or morality.
11. As regards the second reason, the Board denies that the association of the two words reinforces the sexual connotation of the mark. There would be good arguments in support of the opposite view as well. As a combination of the diminutive form of forenames, the association of 'Dick' with 'Fanny' could, in fact, reduce that connotation and allude instead to a couple. This sort of combination of names, particularly in their diminutive form, is rather widespread even in an English-language context (Tom & Jerry, Bonnie & Clyde, to name just a few).
12. All in all, the Board considers that the mark has, in non-formal English usage, a rather smutty flavour but, since it does not convey any additional message and has a neutral meaning in formal English usage, it falls short of being contrary to public policy or accepted principles of morality.

11. I do not understand the Board to have decided that sexual connotations can never render a trade mark objectionable. Cruder verbalisations of the anatomical connotations of the words **DICK & FANNY** would surely have been open to objection, as would explicit pictorial representations. I think the proposition that the trade mark conveyed no 'additional message' was invoked for the purpose of emphasising the need for use of the

mark in issue to have a seriously troubling effect. The bracketing together of the words **DICK & FANNY, TOM & JERRY** and **BONNIE & CLYDE** appears to me to have been intended to emphasise that the mark in issue was not seriously offensive. Likewise the credit given for the absence of any transmission of opinion, incitement or insult.

12. In a comprehensive review of cases decided under the parallel provisions of federal trade mark law in the United States: Moral Intervention in the Trademark Arena: Barring the Registration of Scandalous and Immoral Trademarks (1993) 83 TMR 661 by Stephen R. Baird, it is noted at p.704 that the questioned trade marks could be divided into 7 categories: (1) those with a religious nexus; (2) those consisting of or comprising racial slurs or epithets; (3) those consisting of or comprising profane matter; (4) those consisting of or comprising vulgar matter; (5) those relating to sexuality; (6) those involving innuendo; (7) those suggesting or promoting illegal activity. As he says: *'Although the decisions in each category purport to interpret the same [legislative] terminology, there appears to be more than one standard applied, the choice of which appears to vary according to the category involved'*. That, to my mind, reflects the fact that each category relates to a different type of transgression and also that social, linguistic and cultural conditions are apt to make it easier for trade marks to be regarded as acceptable in some of those categories and more difficult in others.

13. Relatively few trade marks appear to have been excluded from registration as Community trade marks under Article 7(1)(f) CTMR. The list of instances at http://oami.eu.int/search/legaldocs/1a/EN_Refused_index.cfm indicates that objection was raised in the following cases: **CASTRO** (Application 2932986); **RASSISMUS** (German word for racism) (Application 2994499); **IPARRETARRAK REKORDS** (Iparretarrak

being the name of an organisation declared illegal in Spain in 1978) (Application 2677565); **OPIUM** (Application 2481935); **BOLLOCKS FAKOV** (Application 1672518); **SMS2TV** (Application 2334951); **FIDEL CASTRO** (Application 921155); **BILLCLINTON** (Application 956540); **JOHANNES PAUL II** (Application 958280); **FUCK OF THE YEAR** (Application 306399); **BOLLOX** (Application 499103); **BALLE** (German word for testicles) (Application 65839). These examples illustrate the difficulty (probably the impossibility) of formulating an all-purpose test for determining when the relevant prohibition is applicable.

14. In the present case the Registrar of Trade Marks has refused requests by Basic Trademark SA (**‘the Applicant’**) for protection in the United Kingdom under the provisions of the Madrid Protocol and the Trade Marks (International Registration) Order 1996 of the word mark:

JESUS

for use in relation to the following goods specified in International Registration No. 689374:

Class 25 clothing, footwear, headgear

and the following goods specified in International Registration No. 776058.

Class 3: Soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices.

Class 9: Optical apparatus and instruments, namely spectacles, eyeglasses, sunglasses and frames therefor, lenses; protective glasses, goggles, snow goggles, diving goggles; spectacle cases.

- Class 14: Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.
- Class 16: Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.
- Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- Class 24: Textiles and textile goods, not included in other classes: bed and table covers.
- Class 28: Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.'

15. The reasons for refusal were given in 2 decisions issued in parallel by Mr. A.J. Pike on behalf of the Registrar on 21st July 2003 (SRIS 0/210/03; SRIS 0/211/03). His assessment and conclusions were the same in each case:

- 10. No evidence has been placed before me regarding the significance of the word JESUS in the United Kingdom as a surname or as a forename. However, research conducted prior to the issue of the examination report on 19 April 2002 indicates that JESUS is a surname appearing 27 times in the London Telephone Directory. I am also aware that

JESUS is a popular forename in a number of countries, but I am not aware of it being in common use as a forename in the United Kingdom.

11. Although I accept that a number of residents of the United Kingdom will identify JESUS as an ordinary surname or forename I am of the view that they are in the minority. In fact I consider them to be in a small minority.

.....

15. Collins English Dictionary (5th Edition first published 2000) has the following extract within its primary definition of the word JESUS:

“n. Also called: Jesus Christ; Jesus of Nazareth; ?4b.c.-?29 a.d. founder of Christianity; born in Bethlehem and brought up in Nazareth as a Jew. He is believed by Christians to be the Son of God and to have been miraculously conceived by the Virgin Mary, wife of Joseph He is believed by Christians to have risen from his tomb after three days, appeared to his disciples several times, and ascended to Heaven after 40 days.”

16. Although there are a large number of different religious beliefs held and practised within the United Kingdom I am of the view that a substantial number of United Kingdom residents are Christians in that they believe in the teachings of the Christian faith. It is still a subject which is taught in schools throughout the United Kingdom and is worshipped in churches throughout the country. In my view this substantial number of United Kingdom residents would attribute only one meaning to the word JESUS and that is the one set out above i.e. JESUS CHRIST.

17. Given my finding that a substantial number of United Kingdom residents would not place surname, forename or any other significance on the word JESUS but would identify it as signifying JESUS CHRIST, the Son of God, I have to consider their reaction to the word when used as a trade mark in respect of the goods for which registration is sought. In doing this I must put aside any personal views that I may hold in relation to the mark applied for and consider the matter by assessing the position through

the eyes of right-thinking members of the public. What would be their reaction when encountering the word JESUS in use in advertising. In the Tiny Penis decision Simon Thorley Q.C. commented:

“I must contemplate the use of the words Tiny Penis in television advertisements going out before the general public, in advertising bill boards in public places, perhaps even on the side of the well known Clapham omnibus.”

18. Clearly there will be some members of the general public who will not be offended when encountering the word JESUS in use as a trade mark. However, I find it equally clear that many would find such use distasteful. However, the test to which I referred earlier in this decision makes it clear that mere distaste is insufficient. As Simon Thorley Q.C. put the question:

“Would they be outraged? Would they feel that the use should properly be the subject of censure?”

19. Having considered the matter through the eyes of the “right-thinking” member of the public I have concluded that use of the word JESUS as a trade mark, in the manner of described above, and in relation to the goods for which registration is sought, would cause greater offence than mere distaste to a significant section of the general public. That offence is caused by the fact that an accepted social and religious value is likely to be undermined to a significant extent. This value is the belief that the word JESUS is the name of JESUS CHRIST who is believed by Christians to be the Son of God and whose name should not be debased by use as a trade mark for the goods in question. I therefore conclude that the trade mark applied for is contrary to public policy or to accepted principles of morality and is therefore excluded from acceptance by Section 3(3)(a) of the Act.

16. The Applicant gave notice of appeal to an Appointed Person under Section 76 of the 1994 Act contending in substance:

- (1) that religious significance is not, of itself, sufficient to render a mark unregistrable under Section 3(3)(a);
- (2) that no legal, moral or ethical imperative prevented registration of the word **JESUS** as a trade mark for use in relation to goods of the kind specified by the Applicant;
- (3) that the word **JESUS** had been squeamishly excluded from registration in the United Kingdom in the exercise of a discretion that the Registrar could not legitimately claim to possess under the 1994 Act.

17. I was provided with information as to the status of International Registrations 689374 and 776058 which indicated that in most national registries in the European Union prior to enlargement in 2004, no official concern had been expressed as to the registrability of the word **JESUS** on public order or moral grounds under the common standard set by Article 3(1)(f) of the Trade Marks Directive.

18. My attention was also drawn to the following (among other) Community Trade Mark registrations which would appear to have been considered acceptable at the examination stage under the provisions of Article 7(1)(f) of the Community Trade Mark Regulation:

Trade Mark No. 280727

CHRIST

Date of filing: 27 June 1996

Date of registration: 17 November 1999

Goods:

Class 29

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables;

jellies, jams; eggs, milk and milk products; edible oils and fats; preserves.

Class 30

Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces [except salad dressings]; salad dressings, spices; ice; pre-cooked dishes; preserved foods; preserved sauerkraut; preserved cassoulet, preserved gherkins.

Seniority claimed from corresponding national registrations in Austria, Benelux France, Germany, Greece, Italy, Portugal and Spain.

Trade Mark No. 671446

JESUS 2000

Date of filing: 10 November 1997

Date of registration: 7 June 1999

Registration surrendered: 11 October 2001

Goods and services:

Class 16

Paper, printed matters, photographs, stationer office supplies, teaching and studying material, cards.

Class 18

Leather goods, travel bags, umbrellas, walking sticks.

Class 25

Clothes, shoes, head covers.

Class 28

Games and toys, sports and exercise equipment not included in other classes, Christmas tree ornaments.

Class 36

Insurance, financial affairs, monetary affairs.

Class 39
Transportation, travel arrangements.

No claim to seniority from any national registration.

19. For the reasons given in Zurich Private Banking T.M. (SRIS 0/210/04, 24th May 2004) I consider that the Registrar and this tribunal on appeal from the Registrar must determine whether the present applications do indeed satisfy the requirements for registration in the United Kingdom under the Trade Marks Act 1994 and not treat the position adopted by the Community Trade Marks Office or national registries in other Member States as binding with regard to the position to be adopted in this country. That said, I have found it all the more necessary to go into the correctness of the Hearing Officer's decision in view of the apparent willingness to permit registration of trade marks with religious significance elsewhere in the Community.

20. I agree with the proposition advanced on behalf of the Applicant to the effect that religious significance is not always or necessarily sufficient to render a mark unregistrable under Section 3(3)(a). However, branding which employs words or images of religious significance can quite easily have a seriously troubling effect on people whose religious beliefs it impinges upon and others who adhere to the view that religious beliefs should be treated with respect in a civilised society. In this connection I was referred to the Help Note on Religious Offence published by the Committee of Advertising Practice under the auspices of the Advertising Standards Authority in April 2003. I found the following observations to be particularly pertinent in the context of the exclusion from registration I am now considering:

Some aspects of religion are so sacred to believers that it is rarely going to be acceptable to use them in marketing without causing serious offence. For some, the linking of the central tenets or most sacred symbols and icons of a particular faith with unrelated commercial messages is likely to outrage believers and cause offence. To take an example from Christianity, marketers should be particularly careful when using images of the crucifixion, especially when that depiction could be construed as mocking. Although the ASA has not received many complaints, marketers should be aware that the dismissive or irreverent depiction of sacred symbols, such as spiritual figures or gods (eg Buddha, Vishnu or the Prophet Mohammed), sacred texts (eg the Koran), holy places, rituals or festivals, can all cause serious or widespread offence. The use of other aspects that are less central to the core of a religion eg many familiar stories from the Bible, which are part of the cultural 'furniture', are less likely to cause offence.

...

Although the general public tend to be forgiving of the use of Christian references, those with strong religious conviction from other faiths (eg Islam, Sikhism, Hinduism, Judaism and Buddhism) may not be quite so accepting of references to their religion. Marketers should treat the symbols, images or beliefs of all religions with care but should be particularly aware of the possibility of causing serious or widespread offence to those of minority faiths.

...

Although the degree to which marketers can safely use religious imagery and words will vary according to context, religion, etc., the nature of the product being marketed can influence whether the marketing communication will cause serious or widespread offence. Although marketers can still provoke complaints, least offence is likely to be generated when the approach is clearly relevant to the product and not disrespectful. Marketing communications that seem to exploit religious imagery for purely commercial purposes can be problematic but the most offence is likely to be felt when the product itself conflicts with the beliefs of that faith. For example, it is unlikely to be acceptable to use Catholic references to advertise birth control products, Hindu or Buddhist symbols to advertise meat products or for Muslim imagery to advertise alcohol. The gratuitous use of religious

signs and icons to advertise a product that neither relates to, nor conflicts with, the religion itself may be acceptable if the marketing communication is not seen to be unduly mocking religion or belittling the symbolic relevance of those icons.

These paragraphs help to explain why it is altogether too narrow a view of the matter to say, as the Applicant in the present case says, that trade marks cannot be regarded as objectionable under Section 3(3)(a) simply by virtue of the degree of religious significance they possess.

21. The Applicant rightly maintains that the Registrar has no discretion to grant or refuse registration. In accordance with the procedure laid down in Section 37 of the Act he must consider every application for registration on its own merits and decide whether it qualifies for acceptance, yes or no: Procter & Gamble Ltd's Application [1999] RPC 673 (CA) at 675 per Robert Walker LJ; Eurolamb T.M. [1997] RPC 279 at 288. The Applicant goes on to contend that the Registrar has departed from this principle by determining what is or is not '*contrary to public policy or accepted principles of morality*' on the basis of an approach that is too subjective to be anything other than discretionary in its operation and effect. In other words, it is contended that the Registrar overlooked or ignored the need to apply a test capable of providing an objective answer to the question which had to be determined under Section 3(3)(a).

22. I fully accept that '*In a democratic society subscribing to the rule of law, no determination that is arbitrary can ever be regarded as lawful*': Winterwerp v. Netherlands [1979] 2 EHRR 387, para 39. As I have already made clear, I also accept that the disciplined approach required by Article 10 ECHR is applicable to the determination of objections under Section 3(3)(a). In that connection - it is sufficient to

refer to the summary of the relevant criteria given in paragraph 79 of the Judgment of the ECJ in Schmidberger (above):

... it nevertheless follows from the express wording of para. 2 of Arts 10 and 11 of the Convention that freedom of expression and freedom of assembly are also subject to certain limitations justified by objectives in the public interest, in so far as those derogations are in accordance with the law, motivated by one or more of the legitimate aims under those provisions and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (emphasis added)

23. The fact that the determination which has to be made under Section 3(3)(a) calls for the exercise of judgment in an area where there may well be room for more than one view does not, of itself, render the decision taking process arbitrary, nor does the fact that the determination depends on the decision taker's assessment of the effect that use of the trade mark in question is liable to have upon other people. The requirement for use of the trade mark to be seriously troubling in terms of the public interest in the '*prevention of disorder*' or '*protection of morals*' under Article 10 ECHR provides, in my view, a proper basis for objective determination of the legal rights of persons applying for registration. Lack of objectivity in the decision taking process is a ground for appeal, not a reason for depriving the relevant prohibition of content and effect.

24. There is no basis for thinking that the decision in the present case was made arbitrarily or lacked objectivity. The sum and substance of the Applicant's complaint is that the Hearing Officer should not have concluded that the word **JESUS** was caught by the prohibition in Section 3(3)(a) in relation to goods of the kind specified in the requests for protection.

25. The power of a trade mark to produce a reaction inevitably varies according to the nature and intensity of the perceptions and recollections triggered by the relevant mark. **JESUS** is the ultimate Christian name. It commands the highest degree of reverence and respect among committed Christians. The view that their religious beliefs should be respected is, I am sure, deep-seated and widespread. The very idea that the name **JESUS** should be appropriated for general commercial use as a trade mark is, I am equally sure, anathema to believers and those who believe in the need to respect the religious sensibilities of others. Their reactions would no doubt vary in terms of the way in which they handled their thoughts and feelings. I think the common response among such people would be a mixture of anger and despair according to temperament.

26. It follows, in my view, that the Hearing Officer was right to conclude that use of the word **JESUS** as a trade mark would cause greater offence than mere distaste and do so to a significant section of the general public. The use of it as a trade mark should - to use the expression I have used several times already - be regarded as seriously troubling in terms of the public interest in the '*prevention of disorder*' and '*protection of morals*' under Article 10 ECHR. It is legitimate to apply the prohibition in Section 3(3)(a) of the 1994 Act to branding which is anti-social by reason of its ability to undermine an accepted social and religious value to a significant extent. That is the position here. There will be cases where the need to adopt a proportionate response to the problem of anti-social branding requires less than 100% rejection of the request for registration. This is not one of them. The power of the word **JESUS** to give rise to the relevant concern is not diminished by the nature of the goods in the different categories specified by the Applicant in the present case.

27. For the reasons I have given, I consider that the Applicant's right to freedom of expression can and should be taken to require moderation by refusal of registration on the basis of the prohibition against registration contained in Section 3(3)(a) of the 1994 Act. The Applicant's appeal will therefore be dismissed. In the absence of any reason to depart from the usual practice in appeals of this kind, the appeal will be dismissed with no order as to costs.

Geoffrey Hobbs Q.C.

18 January 2005

Mr. Rowland Buehrlen and Mr. Mark Schulman of Messrs Beck Greener appeared on behalf of the Applicant.

Mr. Allan James appeared on behalf of the Registrar of Trade Marks.