

O-024-13

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
UK TRADE MARK APPLICATION NUMBER 2589842  
BY COLLIER CAMPBELL LTD  
TO REGISTER THE TRADE MARK:**

**COLLIER CAMPBELL**

**AND OPPOSITION THERETO (NUMBER 102714)  
BY  
SARAH CAMPBELL AND THE ESTATE OF SUSAN COLLIER**

## **The background**

1) On 1 August 2011 Collier Campbell Ltd (~~the Applicant~~) applied to register the following trade mark for the following goods:

### **COLLIER CAMPBELL**

Class 16: Paper, cardboard and goods made from these materials; printed matter, stationery, printed publications; notepaper, notebooks, books for stationery purposes, pencils, pens, writing implements, greetings cards, gift cards, gift tags, gift wrapping paper, diaries, calendars, posters, postcards.

Class 18: Bags, hand bags, tote bags, travelling bags, purses, wallets, umbrellas.

Class 21: Household or kitchen utensils and containers; combs and sponges, brushes, articles for cleaning purposes; glassware, porcelain ware and earthenware; baskets for domestic use; dust bins, bottle openers, soap boxes, coasters, place mats, bread bins, butter dishes, baking utensils, crockery, egg cups, plates, dishes, platters, bowls, mugs, cups, teapots, saucers, cosmetic utensils, drinking vessels, ironing board covers, jugs, napkins rings, pepper mills, salt mills, powder compacts, tableware (other than knives forks and spoons), trays for domestic purposes, vases, wash bags.

Class 24: Textile and textile piece goods, not included in other classes; fabrics, material; bed and table covers; duvet covers; bed linen; table linen; bath linen; cushion covers, blankets, covers for furniture, curtains, handkerchiefs of textile, household linen, rugs, shower curtains, sleeping bags, wall hangings of textile.

Class 25: Articles of clothing, headwear, footwear; scarves.

The application was published in the Trade Marks Journal on 26 August 2011.

## **The Pleadings**

2) On 25 November 2011 opposition to the registration of the above application for all the goods sought to be registered was filed in the name of Ms Sarah Campbell and the estate of Ms Susan Collier (~~the Opponents~~). The opposition is based on grounds under sections 3(6) and 5(4)(a) of the Trade Marks Act 1994 (~~the Act~~), and can be summarised as follows:

Section 3(6) – With regard to the name COLLIER CAMPBELL goodwill vests in the business carried on under that name by Ms. Sarah

Campbell and Ms Susan Collier (and now her estate), and has done so since at least 1981. To the extent that Collier Campbell Ltd carried on that business, it was under licence from the Opponents, and therefore all goodwill vests in the Opponents. The Applicant is fully aware of the Opponents' rights and goodwill in the name COLLIER CAMPBELL and knows that its use of the name risks deceiving members of the public as to an association with the Opponents' business. Its application is therefore made in bad faith.

Section 5(4)(a) – Use of the name COLLIER CAMPBELL by the Applicant will lead members of the public to believe that the Applicant's products are those of the Opponents and/or that its business is in some way associated with theirs, contrary to the fact. This will cause damage to the Opponents, including loss of business, dilution of goodwill and reputation and a limitation on their ability to undertake quality control. The Opponents would therefore be entitled to make a claim against the Applicant for passing off. Accordingly, the application should not be registered.

3) The Applicant filed a counterstatement, denying the grounds of opposition. It can be summarised as follows:

Section 3(6) – The Applicant denies that the application has been filed in bad faith. All goodwill generated in connection with the name COLLIER CAMPBELL accrued to the business carried on under that name, and not to any individual designer, shareholder or director. All activity involving licensing and exploitation of the name was conducted by the Opponents while acting as directors and/or employees of the business. All exploitation of the name has been by the business legitimately acquired in good faith by the Applicant, and all contracts and licences are in the name of the business and not the individual Opponents. It is denied that the Applicant has used the name under licence from the Opponents.

Section 5(4)(a) – The Applicant denies that its use of the mark would constitute passing off, all commercial goodwill in the name COLLIER CAMPBELL having been generated by, and being owned by, the Applicant or its predecessor in title.

4) Both sides filed evidence. Neither party asked to be heard. The Applicant filed written submissions in lieu of a hearing. The Opponents did not. I therefore give this decision after a careful review of all the papers before me.

## The evidence

### The Opponent's evidence – witness statement of Ms Sarah Campbell

5) In a witness statement dated 10 April 2012 Ms Campbell made the following statements: She and her sister, Ms Susan Collier, worked together from the 1960s until Ms Collier's death in May 2011. From their early partnership, which was known by both their full names, they set up the formal business with the name Collier Campbell in 1980. The business and works (original paintings, designs and printed fabrics) became very well known, and Ms Campbell and her sister spent considerable time and effort working with major retail firms and wholesale businesses. They also had a London shop bearing the name Collier Campbell. The name is known worldwide, their fabrics being in the collections of the V&A Museum, London, the Whitworth in Manchester and the Cooper Hewitt in America. They are cited in very many publications on design, the latest being —V&A Pattern/Liberty & Co”, April 2012. In 1984 they received the Design Council Award and the Duke of Edinburgh's Designer Prize. They won industry awards in the USA and the Textile Institute's medal in the UK. The Collier Campbell name was used on products, promotional material and advertisements in their business and work, and in press articles and catalogues.

6) Ms Campbell further states that the Collier Campbell name and works have been licensed for use on a range of products. *“Through the succeeding time period”*, she says, she and her sister founded the following companies, all of which referenced the Collier Campbell name:

- Collier Campbell Ltd
- Collier Campbell Designs Ltd
- Collier Campbell London Ltd
- Collier Campbell Colours Ltd
- Collier Campbell Global Colours Ltd

Ms Campbell states that she believes the Applicant bought the assets of “Collier Campbell Global Ltd” [sic] in October 2010 from the liquidators. (Ms Campbell appears to have made a slight error in giving this company's name. The evidence submitted by the Applicant shows that the name of the company whose assets it acquired in October 2010 was —Collier Campbell Global Colours Ltd”. The acquisition is described in paragraphs 11 to 13 below).

7) Ms Campbell states that the relevant goodwill exists in the business carried out by herself and her sister prior to incorporating their first or any company. To the best of her knowledge and belief (having made reasonable enquiries), she says, she/they did not transfer or assign that goodwill to any person. To the extent that the Applicant carried on that business it was Ms Campbell's understanding, she says, that it was/would be under a licence from herself and her sister as long as they were involved in the business. Ms Campbell states that

she is not so involved in the Applicant's business; and, accordingly, that it is her belief that the Applicant does not have the right to use the Collier Campbell name, except to refer to the artistic works created by her and her sister as part of their business carried on under, or by reference to, the name Collier Campbell, or to the extent that such artistic works form part of the Collier Campbell archive and are licensed by the Opponents to the Applicant.

Ms Campbell's evidence consists solely of her witness statement, to which no exhibits are attached.

*The Applicant's evidence – witness statement of Ms Judith Barbara Lever*

8) In a witness statement dated 30 May 2012 Ms Lever states that she is the sole director and shareholder of the Applicant, having been the sole shareholder since 20 August 2010, when the company was incorporated at her instigation.

9) Ms Lever states that she regards herself as a competent and experienced company director and business woman who is familiar with the intricacies of buying and selling a business. As background she explains that she co-founded and then developed what she describes as the UK's leading specialist maternity wear business, selling it successfully in 2007. She states that from 1971-1983 she worked as a producer/director for Thames TV, making several award-winning documentaries and was co-winner in 1989 of the prestigious —Women Mean Business" award.

10) Ms Lever says that the awards referred to in Ms Campbell's witness statement were made to the business known as COLLIER CAMPBELL, and not to Ms Collier and Ms Campbell as individual designers, and that this is supported by an extract from the Design Council website (**Exhibit JBL02**), where the citation for the 1984 *Prince Phillip Designers Prize* describes the winner as COLLIER CAMPBELL and, according to Ms Lever, refers to licences granted —by the corporate entities to the likes of *Habitat*, M&S, and *Liberty*".

11) Ms Lever states that Ms Collier and Ms Campbell founded, and were directors of, a number of companies bearing the name Collier Campbell, or variations of it. These included, she says, the following companies, for which she provides details as follows:

**Collier Campbell Ltd – Exhibit JBL04** contains a copy document from Companies House showing the company was dissolved on 1 September 2009. Ms Lever says it was incorporated on 27 December 1979 and dissolved on 1 September 2009 pursuant to the Registrar of Companies striking the company from the register under Section 652 of the Companies Act 1985 as defunct (by which time, Ms Lever says, it was owned 100% by Collier Campbell Designs Ltd, less one share which was held jointly by Collier Campbell designs Ltd and Susan Collier).

**Collier Campbell Designs Ltd – Exhibit JBL04** contains a copy document from Companies House showing the company was dissolved on 25 August 2009. Ms Lever says it was incorporated on 19 August 1982 with ownership as follows: Ms Campbell (39.64%), Ms Collier (39.64%), Collier Campbell Executive Pension Scheme (19.75%) and Robert Jim Silver (0.97%). Ms Lever says the company was dissolved on 25 August 2009 pursuant to the Registrar of Companies striking the company from the register under Section 652 of the Companies Act 1985 as defunct.

**Collier Campbell London Limited** – Ms Lever states that this company was incorporated on 28 November 1996 and in administration by April 2008, Ms Campbell and Ms Collier each owning 50% of the company. **Exhibit JBL04** contains a letter of 7 April 2008 from the administrator to the creditors. However, I do not have the administrator’s proposals and report, only the one-page —statutory information” provided in the administration. This gives the —principal business activities” of the company as: —Textile Designers, Manufacturers, Wholesalers, Retailers and Agents”, and confirms that Ms Campbell and Ms Collier each owned 50 of the 100 ordinary £1 shares issued by the company.

**Collier Campbell Colours Ltd** – Ms Lever states this company was incorporated on 2 September 2003, Ms Campbell owning 26.9% of the company and Ms Collier 26.95%, the remaining issued share capital being held by various other individuals. The administrator’s report of April 2008 (in **Exhibit JBL03**) on Collier Campbell Colours Ltd confirms this, and describes the company’s principal activity as the creation of designs which it licensed to a manufacturer to produce for an initial payment and royalties thereafter – the manufacturer typically manufacturing products for retail sale through department stores and similar outlets. The report states that the company created new designs, and also purchased historical designs from Collier Campbell London Limited, which was also in administration. The report also records that on 14 April 2008 the administrator sold the assets of Collier Campbell Colours Ltd to Collier Campbell Global Colours Ltd for £35,000, of which £12,000 was apportioned to —intellectual property/goodwill”.

**Collier Campbell Global Colours Ltd (“CCGCL”)** – According to Ms Lever, CCGCL was incorporated on 26 February 2008, Ms Campbell and Ms Collier each owning 50% of the company. **Exhibit JBL04** contains a copy of the resolutions passed by the General Meeting on 20 October 2010 to wind the company up voluntarily and appoint liquidators. CCGCL’s assets were acquired from its liquidators by the Applicant in October 2010, as explained below.

12) Ms Lever explains the background to the incorporation of the Applicant as follows. In March 2010 she received a call from Susan Collier, a childhood friend with whom she had kept in touch, telling her that the COLLIER CAMPBELL business she ran with her sister, Sarah Campbell, was in financial difficulties, and asking her advice. Following an initial meeting and discussions, Ms Lever

concluded that the business was loss-making and needed capital investment and an injection of commercial acumen. She offered to give advice and possibly take a small shareholding in return for a small amount of money. However, it subsequently became clear that CCGCL was in imminent danger of becoming insolvent, and it was decided that the only way to save the COLLIER CAMPBELL business would be for GCGCL to be liquidated and for Ms Lever to buy the assets from the liquidator, then putting in her own money to keep the business viable while working to turn it around.

13) Accordingly, says Ms Lever, the Applicant was incorporated in August 2010, and in October 2010 it *–acquired CCGCL as a going concern, together with all the assets, stock, work in progress, debtors and all intellectual property of CCGCL including, but not limited to, all goodwill in the COLLIER CAMPBELL name”*. **Exhibit JBL05** contains a copy of an (undated) letter from Ms Lever to Mr Michael Collins of Michael C [sic] Collins & Co. (Ms Lever explains that Michael T Collins was the valuer instructed by the liquidator). The letter is as follows:

*Dear Mr Collins,*

*This is to confirm my offer to acquire the whole of the assets of Collier Campbell Global Colours Limited for the sum of £16,000 (Sixteen thousand pounds)*

*I confirm that I will arrange for this amount to be transferred to the provisional liquidator’s Client account pending the Creditors meeting to be held on 20<sup>th</sup> October.*

*For the avoidance of doubts the assets would include (but not be limited to) the following:*

*Fixed assets*

*Debtors*

*Work in progress*

*Stock*

*Intellectual property*

*Yours faithfully,*

*Judy Lever*

**Exhibit JBL05** also contains a purchase invoice, dated 20 October 2010 issued by Michael T Collins & Co to the Applicant. The relevant part is as follows:

*Purchase Invoice*

*Re: Collier Campbell Global Colours Ltd*

*Your written offer to purchase various unencumbered assets as detailed below for the sum of £16,000 subject to 17.5% VAT has been accepted.*

- 1) All fixed unencumbered assets to include office furniture  
Computers/working tables/ sewing machines/ etc (Non Landlords)*
- 2) Various unencumbered stock material/paper/trimmings etc*
- 3) work in progress if any*
- 4) All intellectual properties rights including web site etc (Royalties/  
Data base/client base/trade base etc*
- 5) All debtors (Un-confirmed).*

In paragraph 14 of her witness statement Ms Lever says that **Exhibit JBL05** also contains an invoice from CCGCL (acting by its liquidator) to Westbourne Brand Developments Ltd, but this document is missing from the exhibit.

14) Since acquiring the CCGCL business the Applicant has continued, as was intended, Ms Lever says, to trade under the COLLIER CAMPBELL name. **Exhibit JBL06** comprises photographs and leasing, rent and power invoices to demonstrate the taking over of the business as a going concern by the Applicant. The Applicant, says Ms Lever, re-employed all but one of the staff that had been employed by CCGCL and also took over the various licences to which CCGCL had been as party. She attaches **Exhibit JBL09** to show illustrations of items for sale under licence under the COLLIER CAMPBELL brand after the acquisition. **Exhibit JBL10** comprises copy correspondence and invoices intended to show how the Applicant continues to create, license and exploit designs and promote the COLLIER CAMPBELL business.

15) Ms Lever explains the position of Ms Collier and Ms Campbell after the acquisition of CCGCL's assets by the Applicant as follows: The sisters had drawn monthly salaries from CCGCL, and they agreed to remain as designers with the Applicant, with half their salaries being deferred until the business got back on its feet. Contracts of employment were drawn up but were never countersigned by them. Ms Collier was employed by the Applicant until she became ill with cancer, dying in May 2011. The Applicant paid her a monthly salary until March 2011. Ms Campbell worked for the Applicant from October 2010 to June 2011, receiving a monthly salary.

16) Ms Lever states that CCGCL and the earlier COLLIER CAMPBELL companies had employed other designers over the years, and not all the patterns used in the business had been created by Susan Collier and/or Sarah Campbell. However, she says, all of the designs were associated by the COLLIER CAMPBELL brand, whichever sister or whichever designer had originated them. She says she understands from persons who now work with the Applicant but who had worked with CCGCL and earlier companies that Ms Collier used to make a point of saying that every design was from —the Collier Campbell Studio” and would get upset if asked which person had created any particular design; and that, indeed, it was invariably the case that the designs were a collaborative effort by a number of people working in the studio, rather than the creation of an individual. This evidence is hearsay, and would have been more appropriately provided by witness statements from the persons who gave this information to Ms Lever. However, it was not challenged by the Opponents in any submissions or evidence in reply, so I do attach some weight to it. It is also consistent with evidence in **Exhibits JBL08** and **JBL10**, which do contain evidence of at least one other designer having been recruited and employed by the original Collier Campbell Ltd in 1993, and having remained with the business on its transfer to the Applicant. Evidence in **Exhibit JBL10** also suggests that, in at least one case, a client, though aware that the Ms Campbell was no longer working for the Applicant, regarded the Applicant as such as the provider of the services contracted for; I discuss this further in paragraph 23).

17) Ms Lever says that around the time she was contemplating buying the COLLIER CAMPBELL business Ms Collier and Ms Campbell had told her that, in their view, all copyrights in designs created from 2004 onwards were owned by CCGCL, although the copyrights in the earlier designs were owned by themselves or a pension fund. Ms Lever understood at the outset that it was being asserted that not all copyrights in the sisters’ designs were owned by CCGCL, and that the Applicant would need to buy these separately if it wished to exploit them.

18) Ms Lever observes that ownership in the designs is separate from the issues surrounding ownership of the COLLIER CAMPBELL name. She asserts that the business of exploiting the designs, whether they pre-dated or post-dated 2004, was carried out from 2008 exclusively by CCGCL and then by the Applicant. Accordingly, she argues, the relevant public associated the COLLIER CAMPBELL name with CCGCL and the earlier corporate vehicles through such companies trading by reference to the COLLIER CAMPBELL name. It was CCGCL, she says, which dealt with the works under those copyrights – which entered into licences and contracts for that exploitation and engaged employees to adapt some of the works and otherwise assist in their exploitation – and which thereby accumulated the goodwill associated with the name, notwithstanding that the ownership of the copyrights in so-called Collier Campbell designs was distributed between various persons. It is not clear on exactly what evidence Ms Lever bases her assertion that from 2008 the exploitation of designs was carried

out exclusively by CCGCL. However, this statement was not challenged by the Opponents in any submissions or evidence in reply. Ms. Lever has full access to the records of the Applicant, and these must include licensing agreements concluded by CCGCL and taken over by the Applicant. Ms Lever mentions three of these. However, only one such agreement is attached to her witness statement (as part of **Exhibit JBL10**). It is dated 20 November 2009 and purports to have been concluded between the partners of Roger La Borde and Collier Campbell Designs Ltd – a company which had already been dissolved on the 25 August 2009. I therefore think this must be a case of mistaken or inappropriate use of an old precedent.

19) Ms Lever states that, when negotiating the acquisition of the COLLIER CAMPBELL business and assets from CCGCL, she had numerous discussions with Ms Collier and Ms Campbell, from which she understood that these assets would include the COLLIER CAMPBELL name. Ms Collier and Ms Campbell knew, Ms Lever says, that the Applicant was to be incorporated under the name Collier Campbell Ltd. and that the name and goodwill were among the principal assets under the acquisition, but never made any suggestion that all the company was to acquire would be a licence to use the name.

20) Ms Lever states that after the acquisition Ms Collier and Ms Campbell were engaged by the company to work as designers, and that they and the Applicant then agreed in principle that the Applicant would buy the copyright in the earlier Collier Campbell works that had not been held by CCGCL. It seems that after Ms Collier's death her daughters (personally and as administrators of Ms Collier's estate) and Ms Campbell continued negotiations with the Applicant, and together entered into a non-binding Heads of Agreement dated 24 May 2011 (**Exhibit JBL12**). However, Ms Lever says that, despite this agreement in principle, Ms Campbell has not progressed the sale.

### **Conclusions from the Evidence**

21) I accept the information given in Ms Lever's witness statement concerning the establishment, ownership and cessation of the various Collier Campbell companies. It was not challenged by the Applicant in any submissions or evidence in reply. In 2008 both Collier Campbell London Ltd and Collier Campbell Colours Ltd were put into administration. I have no further information on the administration of Collier Campbell London Ltd, but the report of the Administrator of Collier Campbell Colours Ltd states that Collier Campbell Colours Ltd created new designs and also purchased historical designs from Collier Campbell London Ltd. It also records that the assets of Collier Campbell Colours Ltd, including "intellectual property/goodwill", were sold to CCGCL.

22) There is no evidence that either Collier Campbell Designs Ltd or the original Collier Campbell Ltd were still active at this time, and indeed they were dissolved on 25 August 2009 and 1 September 2009 respectively, having been struck off

the Companies Register, according to Ms Lever's evidence, as defunct. Clearly, neither the owners nor the creditors of either Collier Campbell Designs Ltd, in which Ms Collier and Ms Campbell each held nearly 40% of the shares, or of Collier Campbell Ltd, in which Ms Collier and Ms Campbell each held 50% of the shares, had considered liquidation or administration proceedings worthwhile. The inference would appear to be that they were content with whatever disposition of the companies' assets had been made prior to their dissolution. There is no evidence of any separate disposition of goodwill in either case, or that the owners or creditors of these companies were not content for CCGCL, as the sole surviving COLLIER CAMPBELL company, to carry on the COLLIER CAMPBELL business. Under these circumstances it seems reasonable to infer that there had been an assignment, rather than an abandonment, of goodwill by the dissolved companies to CCGCL (or possibly to Collier Campbell Colours Ltd, depending on when they ceased trading). In any event, in the period following its acquisition of the assets and goodwill of Collier Campbell Colours Ltd, CCGCL continued to do business by reference to the COLLIER CAMPBELL name, thereby generating further goodwill in addition to the goodwill which Collier Campbell Colours Ltd had generated from 2003 onwards.

23) I accept the Applicant's evidence that, following its acquisition of the assets of CCGCL, it continued to run the COLLIER CAMPBELL business from the premises which had been occupied by that business for the previous eight years, that it assumed responsibility for the rent, rates, utilities, photocopier contract, telephone, and insurance, and that it re-employed all but one of the staff that had been employed by CCGCL. Continuity can be seen in the case of Ms Gill Griffiths. **Exhibit JBL08** contains a letter in which Ms Griffiths is offered the position of designer with the original Collier Campbell Ltd in 1996. **Exhibit JBL10** contains emails exchanged in August and October 2011 between Ms Griffiths on behalf of the Applicant and the —Design Co-ordinator Gifting” of Marks & Spencer and the —Senior Buyer Bed and Bath” of House of Fraser respectively about work undertaken, or to be undertaken, for them by the Applicant. In an email of 13 October 2011 to Ms Griffiths, after discussing current work with the Applicant, the Senior Buyer Bed and Bath of House of Fraser adds: *“I received an e-mail from Sarah recently saying she was no longer working with you. Does that change anything or the way in which we work with you?”* I think it is significant that this is a question, not a statement. The client is aware that Ms Campbell is no longer working for the Applicant, but there is no indication that it is not content, for its part, to continue working with the Applicant. Rather, the client seems to be asking whether the Applicant sees Ms Campbell's departure as changing anything in its work with the client.

24) In her witness statement Ms Lever states that, during their employment by the Applicant following the Applicant's acquisition of the assets of CCGCL, Ms Collier was responsible for client contact, networking, attending meetings with licensees, planning new ranges, selection and approval of new designs and (alongside Ms Lever as Executive Chairman and the part time Managing Director

recruited by Ms Lever) negotiating contracts; Ms Campbell was responsible for selecting, painting and approving designs, and attending some meetings with licensees. All this demonstrates that pains were taken to establish continuity between the business of the Applicant and that formerly run by CCGCL. Ms Lever says that Ms Collier and Ms Campbell ~~“knew full well [the Applicant] was to be incorporated under the name Collier Campbell Limited”~~. In the circumstances of the Applicant’s establishment it is difficult to imagine they would have been unaware of it. In any case, it is clear that exploitation of the goodwill associated with the former business was of fundamental importance to the Applicant’s business strategy. It was clearly the intention of the parties at the time that the COLLIER CAMPBELL business formerly carried on by CCGCL was to be taken over and run as a going concern by the Applicant, using the goodwill associated with the COLLIER CAMPBELL name. None of this evidence has been specifically challenged by the Opponents through submissions or evidence in reply.

25) The nub of the Opponents’ argument in this case hinges on paragraph 12 of Ms. Campbell’s witness statement (the underlining is mine): ~~“The goodwill exists in the business carried out by my sister and me prior to incorporating our first or any company. To the best of my knowledge or belief (having made reasonable enquiries) I/we did not transfer or assign that goodwill to any person.”~~ In view of Ms Campbell’s role in the COLLIER CAMPBELL business which Ms Collier and she ran over the years, and the critical importance to the Opponents’ case of determining how the goodwill in that business was dealt with, it is surprising to find the statement in her second sentence above qualified by the tentative nature of the words I have underlined. It seems that in the early years of their association Ms Campbell and Ms Collier carried on their business in the form of a partnership. However, there is no evidence that the COLLIER CAMPBELL business was conducted by a partnership after the first COLLIER CAMPBELL company, the original Collier Campbell Limited, was established. This company was incorporated on 27 December 1979. Ms Campbell seems to be referring to the establishment of this company when she states in paragraph 2 of her witness statement: *“From our early partnership, which was known by both our full names, we set up the formal business with the name COLLIER CAMPBELL in 1980”*.

26) Ms Campbell’s statement in paragraph 8 of her witness statement on the Applicant’s acquisition of the assets of CCGCL is cursory and indefinite: ~~“I believe the Applicant bought the assets of Collier Campbell Global Ltd [sic] in October 2010 from the liquidators”~~. Ms Campbell gives no further evidence about the circumstances of this acquisition beyond the following statements in paragraphs 10 and 11 of her witness statement (the underlining is mine): ~~“The goodwill vests in the business carried on under and by reference to the Collier Campbell name. Insofar as the name Collier Campbell is concerned, the goodwill vests in the business carried on by myself and my sister (and now her estate) .... To the extent that the Applicant carried on that business it was my understanding that it was/would be under a license [sic] from me and my sister”~~

*for as long as we were involved in the business ...*” Given the circumstances discussed in paragraphs 23) and 24), I find this a surprisingly casual treatment of this key issue.

27) The precise nature of the business in which Ms Campbell submits that goodwill continues to be vested is not spelt out. If the suggestion is that some business was carried on by Ms Campbell and Ms Collier under the COLLIER CAMPBELL name independently of that which was conducted through CCGCL, there is no evidence of this. In view of Ms Collier’s and Ms Campbell’s role in originating and running the COLLIER CAMPBELL business over the years, it is not unnatural to find some loose, general references to their personal involvement. The Guardian obituary of Susan Collier quoted in **Exhibit JBL11**, for example, remarks that *“many readers would recognise their mother’s curtains, their aunt’s scarf and their wedding present sheets, but be unaware of the partnership of Collier and her sister Sarah Campbell, who created them”*. This must obviously be understood in context as a general reference to the artistic and business collaboration of the sisters, rather than to the legal form of their business. I think the same can be said of the citation for the 1984 *Prince Phillip Designers Prize* in **Exhibit JBL03**: *“Designs by sisters Susan Collier and Sarah Campbell sold well in Habitat, Liberty and M&S from the 70s to the 90s .... The sisters licensed most of their work ...”*. Moreover, **Exhibit JBL03** explicitly shows the Textile Institute Medal for Design as having been awarded in 1986 to *Collier Campbell Ltd*.

28) The evidence is that before 1980 the sisters carried on their business through a partnership conducted under both their full names. The exact ambit and range of the pre-1980 business is not completely clear from the evidence, but, from various general references in the evidence, it seems to have involved the exploitation (perhaps including licensing) of designs produced by Ms Collier’s and Ms Campbell’s collaboration. Goodwill in this business will have accrued to the partnership up to 1980. However, there is no evidence that after 1980 Ms Collier and Ms Campbell intended, or were understood by those they had dealings with, to conduct the COLLIER CAMPBELL business on the basis of personal liability in a partnership.

29) From 1980 onwards their business was successively conducted by reference to the name COLLIER CAMPBELL through various limited liability companies, all of which included COLLIER CAMPBELL in their names. Collier Campbell Ltd was the first of these. From 1980 onwards this company and its successors will have begun to generate its/their own independent goodwill in the COLLIER CAMPBELL name by reference to the business they conducted of creating, licensing and otherwise exploiting designs. It seems unlikely that any independent goodwill in the pre-1980 partnership would have survived the subsequent 30 years in which the COLLIER CAMPBELL business traded through the succession of COLLIER CAMPBELL companies. Moreover, Ms Campbell’s evidence suggests that it was not until the business started trading through

Collier Campbell Ltd that it began to operate under the name COLLIER CAMPBELL, the previous partnership having been conducted under Ms Collier's and Ms Campbell's full names.

30) In her witness statement Ms Lever described having been told by Ms Collier that the COLLIER CAMPBELL business which she ran with Ms Campbell was in financial difficulties, and having been asked for her advice. She continued, *"during subsequent meetings it became clear that CCGCL was in imminent danger of becoming insolvent and (once again) the sisters losing this source of income. There were court orders outstanding for money owed to individuals, creditors and HMRC. After urgent discussions with the sisters, accountants and solicitors it was decided that the only way to save the COLLIER CAMPBELL business would be for CCGCL to be liquidated, for me to buy the assets from the liquidator and for me then to put in my own money to keep the business viable while I worked to turn it around"*. This evidence was not specifically challenged by the Opponents in submissions or evidence in reply. The only reference made by Ms Campbell in her witness statement to the liquidation of CCGCL was her terse statement: *"I believe the Applicant bought the assets of Collier Campbell Global Ltd [sic] in October 2010 from the liquidators."* If the COLLIER CAMPBELL business had not been in financial difficulties, it is difficult to see what reason Ms Collier and Ms Campbell could have had for agreeing to the liquidation of CCGCL and the taking over of the COLLIER CAMPBELL business by the Applicant as described in paragraphs (23 and (24. Moreover, if the COLLIER CAMPBELL business had in some way been run independently of CCGCL by Ms Collier and Ms Campbell, the liquidation of CCGCL would not in itself have solved its financial difficulties.

31) It is true that neither the purchase invoice issued by Michael T Collins & Co to the Applicant, nor Ms Lever's offer letter, specifically mention goodwill. Both appear rather rough and ready documents. However, it was the liquidator's task to realize all the assets of CCGCL, including goodwill in its business. Goodwill cannot be transferred independently of the business to which it relates. As described in paragraphs 23) and 24), the Applicant did in fact take over the COLLIER CAMPBELL business as a going concern. Ms Lever's offer was to purchase —the whole of the assets of Collier Campbell Global Colours Limited for the sum of £16,000". The purchase invoice, addressed to the Applicant, refers to —~~various~~ unencumbered assets", but the assets it lists are characteristic of those acquired when a business is acquired as a going concern, and include *All intellectual properties [sic] rights including web site etc (Royalties/ Data base/client base/ trade base etc"*. I am satisfied that, when the Applicant acquired CCGCL's assets, those assets included at least the goodwill which CCGCL had itself generated through its conduct of business under the COLLIER CAMPBELL name, plus the goodwill it had acquired with the assets of Collier Campbell Colours Ltd.

## Section 5(4)a of the Act

32) The relevant part of section 5(4)a of the Act reads as follows:

*A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –  
(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade ...*

In their notice of opposition the Opponents give COLLIER CAMPBELL and SARAH CAMPBELL as the names on which they rely to establish passing off for the purposes of section 5(4)a of the Act. The material date at which this is to be judged is the date of application for the trade mark: There are three elements to consider in a claim for passing-off: 1) goodwill, 2) misrepresentation and 3) damage. In *Reckitt & Colman Products Ltd v Borden Inc* [1990] R.P.C.341, Lord Oliver summarised the position as follows:

—The law of passing off can be summarised in one short general proposition -- no man may pass off his goods as those of another. More specifically, it may be expressed in terms of the elements which the plaintiff in such an action has to prove in order to succeed. These are three in number. First he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying 'get-up' (whether it consists simply of a brand name or trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff ... Thirdly he must demonstrate that he suffers, or in a quia timet action that he is likely to suffer, damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

33) I have found that the goodwill generated in the name COLLIER CAMPBELL from 2004 by CCGCL and its predecessor, Collier Campbell Colours Ltd, was acquired by the Applicant in 2010, since when it has continued to generate goodwill in the name. As I have explained in paragraphs 22 and 29, on the evidence I consider it reasonable to infer that either goodwill which subsisted in other Collier Campbell companies was acquired by the surviving companies, or that it had been abandoned; and that the goodwill in the pre-1980 partnership

was exhausted with the passage of time. If that is the case, no goodwill to sustain an action for passing off remains with the Opponents.

34) In their statement of grounds the Opponents assert that ~~“Insofar as the name Collier Campbell is concerned, the goodwill vests in the business carried on by the individuals Sarah Campbell and Susan Collier (and now her estate), which business is now controlled by the Opponent”~~ (the ~~“Opponent”~~ being ~~“Sarah Campbell and the estate of Susan Collier”~~). However, there is no evidence of any business having been conducted by Ms Collier or Ms Campbell since 1980 independently of the various Collier Campbell companies, whether in partnership or as individuals, under the name COLLIER CAMPBELL or SARAH CAMPBELL. Perhaps the inference may be that at some time after ceasing to work for the Applicant Ms Campbell started, or intends to start, doing business on her own account, and invokes, for that purpose, historic goodwill generated by the partnership which she and Ms Collier conducted before 1980. But even if that historic goodwill had survived the intervening 30 years in which the COLLIER CAMPBELL business was conducted through a series of companies, the crucial fact is that the recent goodwill generated by the conduct of the COLLIER CAMPBELL business since at least 2003 now belongs to the Applicant.

35) Moreover, though the name COLLIER CAMPBELL incorporates the surnames of Ms Collier and Ms Campbell, there is no misrepresentation for the purposes of passing off. The position was explained as follows by Jacob LJ in *Newman Ltd. v Richard T Adlem* [2005] EWCA Civ 741:

25 Before going further, I should say a little more about the effect of an assignment of a business with goodwill. That this is normally permitted and regarded by the law as lawful and effective hardly needs stating, but it can involve an oddity. For customers of the assigned business will not normally know about its assignment—they are apt, at least in the first instance, to deal with the new owner as if there had been no assignment. Take an everyday example, the sale of a one-man solicitor's business. Suppose he is called Tom Brown, calls his practice by that name and retires, selling the practice and goodwill to a newcomer who continues to use the name. Old clients may return to consult the firm, or recommend the firm to others, without any knowledge of the assignment. All that is commonplace. Yet it can be said that customers are misled—that when they come into the office they find the new Mr Green instead of Mr Brown. The law allows that kind of ~~“deception”~~. I put the word in quotations because although the client or customer will be surprised, he has in fact gone to the business to which he intended to go.

26 There is an exception to the rule that an assignment of a business with goodwill vests the goodwill attaching to the name of the business in the assignee. That is where a ~~“business”~~ is purely personal. A barrister or conductor for instance, although he has business, does not have a

business he can assign, because the —customers” want him and none other. He cannot therefore assign goodwill (which I thought was a pity when I left the Bar) .....

27 Turning back to the general rule and the quirk that the public has to put up with the fact that businesses may be assigned with goodwill, Mr Wadlow in his book *The Law of Passing Off* (3rd edn, 2004, p.220) puts it thus:

—Against the world at large, the effect of an assignment of goodwill with the business to which it relates is to put the assignee in the position formerly enjoyed by the assignor, notwithstanding that the public may to some extent have associated the business assigned with the former owner personally.”

36) The business in this case was not purely personal. It was not the personal services of Ms Collier or Ms Campbell as individual designers which clients contracted for, but the services of the COLLIER CAMPBELL studio and business. The designs produced by the collaboration of Ms Collier and Ms Campbell, with contributions from others, will have led clients of the COLLIER CAMPBELL business to associate with that name a certain style of design, together with an ability to provide designs to meet their commercial requirements. The assets acquired by the Applicant include the copyright in an archive of designs produced by the Collier Campbell business from 2004 onwards; the Applicant has also retained the services of staff employed by the business before its acquisition by the Applicant, including a manager who had been with the business 16 years and the former studio manager, who had been with the COLLIER CAMPBELL business for 18 years, and who was re-engaged as a freelance designer; all this will no doubt be important in enabling the Applicant to meet the expectations of its clients. The notices of Ms Collier’s death in **Exhibit JBL11** suggest that it would have become known fairly quickly in the relevant professional circles among clients such as M&S and House of Fraser, but e-mail correspondence from later in the year does not show any effect on their relations with the Applicant. Similarly, there is no indication that House of Fraser was not content to continue working with the Applicant after it had received news of Ms Campbell’s departure. The evidence is that the general public, too, did not associate the Collier Campbell name specifically with Ms Collier and Ms Campbell as individual designers.

37) There is therefore no misrepresentation which could sustain an action for passing off to prevent use of the name COLLIER CAMPBELL by the Applicant. **Accordingly, the Opponent’s ground of opposition under section 5(4)a of the Act fails.**

### **Section 3(6) of the Act**

38) Section 3(6) of the Act reads as follows:

*A trade mark shall not be registered if or to the extent that the application is made in bad faith.*

39) The date at which I have to consider whether the application for the trade mark in suit was made in bad faith is the date of application for the mark (*Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 paragraph 35). Bad faith includes dishonesty and —some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examined” (*Gromax Plasticulture Limited v. Don and Low Nonwovens Ltd* [1999] RPC 367). It is necessary to apply what is known as the “combined test” (see the judgment of the Privy Council in *Barlow Clowes International Ltd (in liquidation) & Others v Eurotrust International Limited & Others*, [2005] UKPC 37 and the decision of the Appointed Person in *Ajit Weekly Trade Mark* [2006] RPC 25). This requires me to decide what the applicant knew at the time of making its applications and then, in the light of that knowledge, whether its behaviour fell short of acceptable commercial behaviour. Bad faith impugns the character of an individual or the collective character of a business; as such it is a serious allegation (See *Royal Enfield Trade Marks* [2002] RPC 24.). The more serious the allegation the more cogent must be the evidence to support it (*Re H (minors)* [1996] AC 563). However, the matter still has to be decided upon the balance of probabilities.

40) In their statement of grounds the Opponents asserted that, to the extent that the Applicant had carried on the COLLIER CAMPBELL business, this had been under licence from the Opponents, and that use of the name by the Applicant deceives members of the public as to an association with the Opponents’ business; this had been “*further communicated to the Applicant’s representatives on 24 August 2011 and at later dates*”. In her witness statement Ms Campbell says her understanding was that the licence was conditional on the involvement of Ms Collier and herself as long as they were involved in the business. Presumably the implication is that the alleged licence was terminated when Ms Campbell indicated to the Applicant her intention to discontinue her involvement in the Applicant’s business at some point before the application in suit was made.

41) I have already explained that I can see no basis for the Opponents’ assertion that the goodwill in the COLLIER CAMPBELL business was licensed to the Applicant. I find that that the Applicant’s use of the name COLLIER CAMPBELL is legitimately based on its acquisition of the goodwill generated in the business conducted under that name from at least 2003 onwards, which goodwill it acquired with its purchase of the assets of CCGCL. It is important to draw a distinction here between the personal professional reputations of Ms Collier and Ms Campbell as individual designers, and the goodwill in the business of providing, licensing and otherwise exploiting designs and printed fabrics which has been conducted under the name COLLIER CAMPBELL. As Jacob LJ explained in *Newman Ltd. v Richard T Adlem*, a certain amount of initial

confusion among clients is virtually inevitable when businesses first change hands, particularly those which have operated by reference to the names of their former owners. Old clients may return without any knowledge of the assignment, and it can be said that they are misled; but although they may be surprised to find the change of ownership, they have in fact gone to the business to which they intended to go.

42) I find that, acting on behalf of the Applicant as its sole director, Ms Lever applied for the trade mark in suit in the honest (and objectively justified) belief that the Applicant was entitled to make the application. In doing so, therefore, the Applicant has not fallen short of the standard of acceptable commercial behaviour so as to sustain an allegation of bad faith. **Accordingly, the Opponent's ground of opposition under section 3(6) of the Act fails.**

### **Costs**

43) The Applicant has been successful and is entitled to a contribution towards its costs. I hereby order Ms Sarah Campbell and the estate of Ms Susan Collier to pay Collier Campbell Limited the sum of £1,300. This sum is calculated as follows:

<i>Preparing a statement and considering the other side's statement</i>	£300
<i>Preparing evidence and considering the other side's evidence.</i>	£600
<i>Written submissions</i>	£400

44) The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful

**Dated this 16th day of January 2013**

**Martin Boyle**  
**For the Registrar,**  
**The Comptroller-General**