

**IN THE MATTER OF APPLICATION NO. 8779
BY HASBRO UK LIMITED
FOR A DECLARATION OF INVALIDITY
IN RESPECT OF TRADE MARK NO. 200288
IN THE NAME OF TOYMAX (HK) LIMITED**

5 **IN THE MATTER OF APPLICATION NO. 8779**
BY HASBRO UK LIMITED
FOR A DECLARATION OF INVALIDITY
IN RESPECT OF TRADE MARK NO. 2002288
IN THE NAME OF TOYMAX (HK) LIMITED

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DECISION

15 Hasbro UK Limited applied on 5 December 1995 for a Declaration of Invalidity under the provisions of Section 47 of the Trade Marks Act 1994 in respect of trade mark No. 2002288 in the name of Toymax (HK) Limited.

20 The applicant, under the provisions of Section 69 of the Act, sought an order for discovery in respect of documents and following an Interlocutory Hearing held on 20 May 1997, the proprietor was ordered;

25 Within three months of the hearing held on 20 May 1997, to determine the matter, provide to the applicant for the declaration of invalidity, or to their Agent, all of those documents in the custody, possession and control of Toymax (H K) Limited which relate to the decision taken to adopt the name ACTION HEROES for the United Kingdom market. The documents in question are those dated on or before the date of application for registration of No. 2002288.

30 Marks and Clerk, on behalf of the proprietor, subsequently sought and were granted an extension of time until 30 October 1997 in which to comply with the order. However, the proprietor failed to comply with the order by the due date and therefore the Registrar was asked by the applicant for the declaration of invalidity to exercise his powers as an official referee of the Supreme Court and order that the proprietors defence be struck out and judgement entered for the Applicant in this matter.

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As Section 69 of the Act confers on the Registrar the powers of an official referee of the Supreme Court as regards the matter of discovery and the production of documents, the Registrar had regard to Order 24 Rule 16(1) which states:

40 If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provisions of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provisions, to Rules 3(2) and
45 11(1) the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgement to be entered accordingly.

50 Accordingly, and after considering the oral submissions of the parties at an Interlocutory Hearing held on 17 December 1997, the Registrar decided that the defence to the application

5 for the Declaration of Invalidity should be struck out because of the failure on the part of the proprietor to comply with the order for discovery.

The proprietor was given the prescribed period in which to lodge an appeal against the oral decision given at the Interlocutory Hearing, either to the Appointed Person or to the Court.
10 No such appeal was lodged.

In the circumstances, I order that trade mark No. 2002288 standing in the name of Toymax (H K) Limited be declared invalid forthwith and, in accordance with Section 47(6), the registration shall be deemed never to have been made.

15 **Dated this 4 day of February 1998**

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M KNIGHT
For the Registrar
30 **The Comptroller General**