

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 9121 BY  
ISTRAD LIMITED FOR REVOCATION OF TRADE MARK  
NO 1237235 IN THE NAME OF J. FLORIS LIMITED**

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ISTRAD LIMITED FOR REVOCATION OF TRADE MARK  
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10 **DECISION**

Trade Mark No 1237235, FLORIS, is registered in Class 24 in respect of “towels (textile), face cloths, pillowcases, bed linen and bedcovers.”

15 The registration stands in the name of J. Floris Ltd.

By application dated 26 July 1996 Istrad Limited applied for this registration to be revoked on the grounds that it has not been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to all the goods for which it is registered. The applicants say that an uninterrupted period of five years has elapsed during which the trade mark has not been put to use. Furthermore they say there are no proper reasons for non-use. The applicants request that the registration be revoked in its entirety or in respect of those individual items within the specification on which use has not been demonstrated (they express this in terms of a number of alternative claims).

The registered proprietors filed a counterstatement and evidence denying the above grounds and saying that they had made use of the trade mark either in the form registered or in a form differing in elements which do not alter the distinctive character of the mark.

30 Both sides ask for an award of costs in their favour.

The matter came to be heard on 15 February 1999 when the applicants were represented by Mr M A Lynd of Edward Evans & Co, Trade Mark Attorneys and the registered proprietors by Mr J M Stacey of Baron & Warren, Trade Mark Attorneys.

### Registered proprietors' evidence (Rule 31(3))

40 The registered proprietors filed a Statutory Declaration dated 16 October 1996 by Christopher Robert Marsh, a Director of J. Floris Ltd, a position he has held for twenty years.

He says that the trade mark FLORIS was first used in the United Kingdom in 1730 by the Proprietor. The first outlet was No. 89 Jermyn Street. The founder of the Proprietor was Juan Famenias Floris and the eighth generation of his family still carry on the business. The main shop and Head Office is still at the same address but their goods are also sold by means of mail order and through outlets such as Harrods, Selfridges, Liberty, Peter Jones,

John Lewis Group, House of Fraser, Bentalls, together with numerous smaller retail outlets (over 300 in total).

5 The proprietors' goods range from perfumes, toilet waters, soaps, bath essences, bathroom luxuries, aftershaves, dusting and talcum powders, vaporisers, blends of potpourri and similar goods. The bathroom luxuries include face cloths, towels and bathrobes. He exhibits (CRM1) samples of the former two articles. He adds that bathrobes are currently out of stock but sales were made as recently as 1994 with a marketing strategy being currently developed to relaunch this product. Also exhibited (CRM2) is a brochure showing the proprietors' range of  
10 perfumes and toiletries, this being the proprietors' traditional business.

Mr Marsh says that, as regards bed linen and bed covers the proprietors are currently developing a marketing plan. The details are confidential but are part of a general strategy for franchising the FLORIS name at retail level.  
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Approximately 2,000 items of the current range of textile goods are sold at an approximate value of £6,500. Distribution of these goods is mainly limited to mail order and retail sales through the Jermyn Street shop. Two examples of shop invoices are at CRM3. Promotion of the goods is mainly through the use of public relations resulting in editorials in quality  
20 publications (examples are shown at CRM4). In addition Floris branded products are available in hotels as amenity items. Currently products are used at The Dorchester, The Berkeley, The Savoy, RAC Club, The Connaught and Browns.

Applicants' evidence (Rule 13(3))  
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The applicants filed a Statutory Declaration dated 11 May 1997 by Isaac Schapira who describes himself as an officer of Istrad Ltd. He firstly describes contacts between the parties in 1996 prior to the filing of the action which suggested that there had been little or no use of the mark in relation to Class 24 goods. He then makes a number of detailed comments on  
30 Mr Marsh's declaration and the contents thereof. In summary these are:

S no evidence of use has been shown in respect of bed linen and bed covers (and, by implication, pillow cases). The development of a marketing plan is  
35 insufficient to constitute use.

S the exhibit of a brochure at CRM2 shows only the proprietors' range of toiletries and in any case is undated (in fact the copy sent to the Registry bears a June 1994 date)

40 S Mr Marsh's statement as to the number and value of sales is vague as is the reference to "textile goods" which could include clothing

S only one of the invoices at CRM3 shows a date which is within the relevant period and in Mr Schapira's view shows de minimis use only. On the basis of  
45 such limited use (if accepted as such) he requests that the geographical extent of the registration be limited to the premises in Jermyn Street and Brook Street or alternatively London W1.

Registered proprietors' evidence (Rule 13(5))

Mr Marsh made a further Statutory Declaration dated 28 October 1997. He firstly makes a number of observations on Mr Schapira's position and criticises the failure to identify the individual within his firm with whom discussions concerning use of the mark took place. I do not propose to review these comments in detail but will deal with the underlying issue in my decision. He goes on to comment in detail on Mr Schapira's declaration. The main points to emerge are

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- 10           S       he refutes Mr Schapira's views on the relevance of marketing plans and exhibits (CRM1) a note prepared for his trade mark representative summarising the position
- 15           S       he says that reference to textile goods was intended to have its normally accepted meaning of goods other than clothing
- S       the sales figures given in his previous declaration represented annual sales. He denies that the use is token use
- 20           S       in response to the applicants' request for a geographical restriction he refers again to the fact that the goods are sold by mail order and says that the FLORIS brand has a cachet which goes beyond the narrow confines of London W1
- 25           S       he makes a number of comments in relation to the registered proprietors' use of the mark on what he considers to be closely linked goods such as towelling bath robes and refers again to his firm's brochure (CRM2).

30 Mr Marsh concludes with general observations on the motives behind the applicants' attack and the rights that the registered proprietors would have by virtue of their reputation. He considers that the applicants are seeking to capitalise on this reputation and suggests that it would be in the public interest to maintain the full breadth of the specification given what he describes as the close link between bathroom and bedroom textile goods.

35 Applicants' evidence in reply (Rule 13(6))

Mr Schapira filed a further Statutory Declaration dated 31 March 1998. Much of this declaration is taken up with further commentary on issues that seem to me to be of marginal relevance, namely the conversation between the applicants and an unnamed contact at the registered proprietors and the proprietors' use on goods in other classes. Insofar as the brochure contains pictures of face cloths and towels he takes the view that this does not mean that they are being offered for sale. Mr Schapira says that the proprietors' statements as to sales of goods does not clearly and unequivocally deal with the position in the relevant period. Finally he says he is advised that a simple assertion that products are available through mail order does not amount to substantive evidence particularly as there was no listing of any textile product in the proprietors' brochure.



(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

5 (b) if in any case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

10 (5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

15 (6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date."

20 It is clear from Section 46(3) that the commencement or resumption of use within the terms of the sub-section can be a defence against an action of this kind. As the evidence filed by the registered proprietors relates primarily, if not exclusively, to the period prior to the filing of the application for revocation the matter falls to be considered in relation to Section 46(1)(b).  
25 At the hearing Mr Stacey defended his clients' registration on two separate bases:-

30 S in respect of <towels (textile)' and <face cloths' it is said that the evidence demonstrates use of the mark or, in the alternative, if I were to consider the use shown to be insufficient I should exercise discretion in favour of the registered proprietor having regard to the surrounding circumstances of the case.

35 S so far as <pillowcases', <bed linen' and <bed covers' are concerned it is conceded that there has been no use but Mr Stacey referred me to the company's marketing plans which provided for extension of the brand into related product areas. It is suggested, therefore, that either this represents preparations for use for the purposes of Section 46(3) or a proper reason for non-use. In the alternative it is requested that I exercise discretion in the registered proprietors' favour. I will deal with this matter of discretion later in this decision.

40 I will deal firstly with the goods within the specification on which use has been claimed, that is to say, towels and face cloths. Submissions were made at the hearing in relation to both the genuineness of the use and the substantiality of the use. I was referred by both sides to passages from BON MATIN Trade Mark - the Registry decision is reported at 1988 RPC 553 and the High Court decision on appeal at 1989 RPC 537. The following passage from  
45 Mr Justice Whitford's decision seems to me to be particularly relevant:

5 "The main argument on the appeal centred around the question as to the extent to  
which one must consider the substantiality of the use. Various authorities can be cited,  
pointing in different directions. I suppose in the interest of Mr Morcom's clients  
perhaps one of the earliest and most favourable approaches is that which is to be found  
10 in Official Ruling 61 RPC which was concerned with the question of a despatch to the  
United Kingdom of a sample of the product to be sold under the registered trade which  
it was held might be regarded as a use of the trade mark in the United Kingdom. I was  
not taken to the Official Ruling as such but it is to be found referred to in a judgment  
which was given by Dr R G Atkinson, then acting for the Registrar in *VAC-U-FLEX*  
15 *Trade Mark* [1965] FSR 176. There is no doubt that Dr Atkinson did consider a  
number of earlier authorities. To my mind what plainly emerges from the authorities is  
this, and Mr Morcom did not attempt to shirk the point, the substantiality of the use is  
undoubtedly a relevant factor to be considered and at the end of the day one has got to  
consider every relevant factor. It must always be remembered that what one is  
20 directed to by section 26 of the Act is the question as to whether there has been bona  
fide use. Although the extent of the use is one factor which may be of significance,  
some of those factors may lead to the conclusion that although the use could not in the  
commercial sense be described as anything other than slight, nonetheless it may be  
appropriate to reach a conclusion, in the light of the circumstances as a whole, that the  
use ought to be regarded as bona fide."

25 This is of course a case that was decided under the old law where the requirement was for  
bona fide use. Nevertheless I think it is accepted that the word 'genuine' as used in section 46  
of the Trade Marks Act 1994 is not intended to have a material effect on practice in this area,  
other than to clarify the position by reflecting in the statute what the previous language had  
come to mean after decades of decided cases under the old law. In so doing it also follows the  
construction found in the trade marks Directive. Whilst substantiality of use was an issue in  
30 submissions before me I think it is important to remember that the Act refers merely to  
'genuine use'. I take the view, therefore, that substantiality is a factor to be considered within  
the overall test of genuineness and not a separate hurdle that a registered proprietor must  
overcome. In my view the above passage from *BON MATIN* supports this approach.

35 At the hearing Mr Lynd made a number of criticisms of the registered proprietors' evidence.  
These can be summarised as follows:-

- 35 S it is not clear whether towels and face cloths are being traded in as opposed to  
being adjuncts of the core perfumes and toiletries business.
- 40 S insofar as the brochures show these goods they are not listed or priced in the  
manner of the other (toiletry etc) goods.
- 45 S Mr Marsh's declarations do not state unequivocally what textile goods are  
covered by the sales figures and the information supplied is vague as to dates  
etc.
- S there is only one relevant invoice and that is for a sum which must be  
considered de minimis.

He also took the view that the slighter the use claimed the greater the onus on a party to fully establish their case. There is, I think, support for this view in NODOZ Trade Mark 1962 RPC 1 - see for instance the following passage from Mr Justice Wilberforce's decision at page 7 line 34 et seq:-

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"The respondents are relying upon one exclusive act of user, an isolated act, and there is nothing else which is alleged or set up for the whole of the 5 year period. It may well be, of course, that in a suitable case one single act of user of the trade mark may be sufficient; I am not saying for a moment that that is not so; but in a case where one single act is relied on it does seem to me that the single act ought to be established by, if not conclusive proof, at any rate overwhelmingly convincing proof. It seems to me that the fewer the acts relied on the more solidly ought they to be established ....."

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The evidence filed suggests to me that J Floris Ltd have a significant reputation in the perfumery and toiletry field. It is an old established firm which, in addition to its own retail outlets and mail order business, trades with a number of well known store groups and is a purveyor of goods to the Court of St James. What is less easy to determine from the evidence is the true extent and nature of the trade in goods outside what I will call their core business. The registered proprietors could in my view have been more forthcoming about their trade in textile goods. Even when challenged Mr Marsh's statements are something less than precise. He says in his first declaration that "the proprietor sells approximately 2000 items of its current range of textile goods at an approximate value of £6,500". Only in his second declaration does he add the further gloss that these are annual sales. In response to Mr Schapira's comment that 'textile goods' is broad enough to include not only goods in Class 24 but also textile goods falling into other classes, Mr Marsh says "if the items in question had related to clothing I would have referred to these as clothing. I believe that it is generally accepted that references to textiles relates to goods, other than clothing, made of textile materials". There is no clear statement that the textile goods referred to were in fact towels and face cloths. It is not without hesitation, therefore, that I infer that this was the case. I do so on the basis that the only other textile items referred to are bath robes which must be excluded by virtue of Mr Marsh's above statement (and the fact that they are said to be currently out of stock and last sold in 1994).

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The brochures exhibited by Mr Marsh at CRM2 (first declaration) and CRM3 (second declaration) are clearly dated within the relevant five year period. As Mr Lynd pointed out they are essentially directed towards the sale of perfumery and toiletry products. Towels and face cloths are shown but the applicants question whether this shows that the mark is being used on goods offered for sale. I understand the point being made but I think Mr Schapira goes too far in suggesting that because the brochures also show, for instance, items such as a tap, a necklace, a mirror, a locket etc which are presumably not being traded in, the same must also be true of the face cloths and towels. The other goods merely serve to place Floris's own products within appropriate settings. The face cloths and towels, on the other hand have the FLORIS mark prominently displayed. Whilst I accept that they do not appear to be priced in the brochures I do not think it is safe to conclude from this that they are not available for purchase. Rather it reinforces the fact that the brochures are essentially a promotional vehicle for the perfumery and toiletry ranges. The turnover figure quoted is also of course not large and emphasises that the sale of face cloths and towels is an ancillary line. Two copy invoices



have been supplied though only one of these falls within the relevant period. Mr Lynd took the view that on its own the sum involved was so slight as to be of almost negligible significance. Bearing in mind the comments in NODOZ referred to above the invoice on its own would struggle to carry the day for the registered proprietors. But I must, of course, consider the totality of the evidence.

Further guidance on the approach to be adopted in assessing whether genuine (bona fide) use has been established can be found in a number of the cases on Mr Stacey's list of authorities. In *Hermes Trade Mark* 1982 RPC 425 it was held that orders placed with component suppliers amounted to use of the mark in the course of trade sufficient to defend against an attack under Section 26(1)(b) of the Trade Marks Act 1938 even though goods were not actually offered for sale until after the relevant date in the proceedings. In *ELLE Trade Marks*, although the registered proprietors failed on other grounds to successfully defend their registration Mr Justice Lloyd held that:

"I take the point that there is no evidence of actual sales, but I think Mr Birss is right that the use of the mark in relation to goods which exist and are available does not fail to qualify for the purposes of section 46 by reason of the fact that during the relevant period it does not produce a single sale. I can well see it may not be easy if the April 1993 offer of soap is the only example of an offer of the goods within the relevant class to produce evidence of mail orders from the United Kingdom of that particular product.

It seems to me that the matter is fairly near the borderline, but on balance, if I had come to the opposite conclusion to that which I have on section 46(2). I would be prepared to hold that this was a genuine use within the United Kingdom of the mark in relation to a trade in goods within the relevant class, namely soap. That would still not avail the registered proprietor in relation to mark 998695 or in relation to the balance of the other registration apart from soap. As it is, however, I reject the registered proprietor's submission under section 46(2) and I therefore dismiss the appeal."

It will be apparent from the above extract that even though no sales had been made the use was still held to be genuine. Applying these principles to the facts of the case before me I regard the registered proprietors' evidence taken piece by piece as being open to criticism but the totality persuades me that there has been genuine use of the mark notwithstanding that the level of use is not great. Thus the final sentence in the extract from *BON MATIN* quoted earlier in this decision appears to be particularly apposite. As the registered proprietors have successfully defended their registration insofar as it covers towels (textile), face cloths' I do not need to consider the alternative arguments advanced by Mr Stacey. I note that in response to the proprietors' evidence the applicants suggested that a geographical limit might be appropriate. However there has been no formal request to amend the pleadings and given the nature of the opponents' business I cannot see that any limitation of the kind proposed would be appropriate.

The remaining items in the specification are 'pillowcases, bed linen and bed covers'. It is conceded by the registered proprietors that they have not used the mark in relation to these goods. There is however a defence available to them to the extent that they are able to

persuade me either that there are proper reasons for non-use or that preparations for commencement or resumption of use began before they were aware that the application might be made. I do not understand the proprietors to claim that there are proper reasons for non-use but they do say that they were making preparations for use. In his first declaration Mr Marsh says that 'as regards bed linen and bed covers the proprietor is currently developing a marketing plan'. This is said to be part of a general strategy plan for possible franchising of the FLORIS name at the retail level. He expands on this in his second declaration as follows:-

"Given that a market plan involves discussions with suppliers as well as possible outlets and business partners, the mark in relation to the goods covered by the registration in suit would have been put before an important section of the public. .... I hereby confirm that there have been ongoing discussions with third parties over the extension of the FLORIS brand. These discussions are of a highly sensitive commercial nature and I am not at liberty to divulge specific details especially given Mr Stacey's advice that all documents are open to public inspection. Divulging such information would give unfair competitive advantage to our competitors and could potentially damage existing business relationships. However, there is now shown to me Exhibit CRM1 containing a copy of a note I previously prepared for Mr Stacey and which I believe succinctly sets out the nature of the discussions and the thinking behind them."

The exhibit referred to above is a note on headed notepaper containing the following statement under the heading Marketing Plan:-

"While much of the future marketing strategy must remain confidential it is a fact that our Board of Directors have, for some considerable time, conducted discussions with third parties concerning the future wider market for the Floris brand.

Possible areas for development are Franchise Shops bearing the Floris name or shops within stores again branded "Floris".

It is probable that the "Floris" brand is better placed than many to be marketed to a far wider band of possible customers with a considerable increase in product ranges. The obvious areas for brand growth would be textile items and bathroom and bedroom accessories. Bed linen is an extremely obvious area for growth.

Our advisers, and possible investors, suggest a brand such as Floris is an ideal position to be design led into a wider product base. There are few companies with a name and reputation dating back to 1730.

There is no doubt the brand name is widely known and, with correct marketing, future potential brand growth is enormous."

Mr Lynd levelled a number of criticisms at this document and the registered proprietors' claims generally in relation to future marketing activities. He commented particularly on the absence of detail, the fact that the document is itself undated and does not set the plan within any clear time frame. It also appears to be directed at potential future areas of expansion

rather than being a settled marketing plan in respect of the goods at issue. These criticisms seem to me to be well founded. I note that discussions are said to have taken place with third parties 'for some considerable time' and that 'a considerable increase in product ranges' is planned. Unfortunately there is no concrete information to suggest that detailed planning and preparations have commenced. Nor of course has any evidence been filed to show that any marketing plans have come to fruition. Whilst I understand the registered proprietors' wish not to divulge confidential information I do not think that general statements of intent are sufficient to establish that preparations for use were underway. Accordingly the registered proprietors fail in this line of defence.

This brings me to the issue of whether the Registrar has an overriding discretionary power under Section 46 to preserve a registration notwithstanding that, as here, a registered proprietor has in other respects failed to successfully defend his registration (or part of the specification thereof). The point has arisen in a number of cases and Mr Stacey referred at the hearing to the conflicting views that had emerged in *INVERMONT* Trade Mark 1997 RPC 125 and *ZIPPO* Trade Mark (an as yet unreported Registry decision dated 1 October 1998 in relation to registration No 1259243 SRIS reference 0-190-98). The following extract from the later *ZIPPO* case summarises the position (by reference also to *INVERMONT* where necessary):

"Mr Purvis submitted that although section 46(5), when considered in isolation, does not give the Registrar discretion to maintain a mark on the register in respect of those goods or services in respect of which grounds for revocation exist, the provision is subject to the overarching discretion which the Registrar has by virtue of section 46(1). He argued that it would be a nonsense if there were discretion (by virtue of section 46(1)) to maintain a mark on the register which had not been used for any of the goods in the specification, but **no** discretion in a situation where the mark had not been used on ninety-five percent of the goods in the specification. I found this a persuasive argument. Nevertheless, I am not satisfied that it necessarily means that there is discretion in relation to section 46(5). The same argument could be used to show that the Registrar has no discretion under section 46(1).

The matter of discretion in relation to applications for revocation under section 46 was first considered by the Registrar in the *INVERMONT* case. Although the hearing officer in that case decided that the Registrar **did** have discretion under section 46, I am aware that he did not have the benefit of submissions from Counsel on the point. In particular, he was not addressed on the apparent anomaly that arises in connection with section 46(5) in reaching his decision in relation to discretion. Following Mr Purvis' submissions in these proceedings, I think it is necessary for the Registrar to take a fresh look at the position.

Section 46(5) is clearly derived from Article 13 of the trade marks Directive, which reads:

Where grounds for refusal of registration or for revocation or invalidity of a trade mark exist in respect of only some of the goods or services for which that

trade mark has been applied for or registered, refusal of registration or revocation or invalidity shall cover those goods or services only.

5 Article 13 stands alone, and is not subject to Article 12 which sets out the grounds on which a registration may be revoked. Thus Mr Purvis' argument that section 46(5) is subject to the overarching discretion of section 46(1) begins to look untenable in view of the independent legal basis for section 46(5) in Article 13 of the Directive.

10 Moreover, common wording is used in Article 13 to deal with revocation and invalidation. In the *INVERMONT* case, the hearing officer accepted that there was no discretion in relation to invalidation, but could not see any reason to infer that the same should apply to revocation. In my opinion, the common treatment of partial invalidation and partial revocation in Article 13 provides precisely such a reason. For these reasons I conclude that the Registrar does **not** have discretion under section 46  
15 to maintain a mark on the register when grounds for revocation have been established, whether in relation to all, or some, of the goods for which it is registered. Such an interpretation also avoids the nonsensical outcome to which Mr Purvis drew my attention at the hearing."

20 Mr Stacey sought to persuade me that, contrary to *ZIPPO*, I did have a residual discretionary power and should, therefore, consider his other arguments in favour of retention of his clients' registration for the unused goods. His submissions concentrated on the wording of Article 12 and the fifth, seventh, eighth and tenth recitals to the First Council Directive, 89/104/EEC. The thrust of his argument was that the purpose of the Directive was to approximate the laws  
25 of Member States but that within this overall objective the recitals acknowledged that Member States retained certain freedoms under their national laws.

It seems to me to be clear that it is central to the purpose of the Directive that, to take the wording from the seventh recital, "the conditions for obtaining and continuing to hold a  
30 registered trade mark are in general, identical in all Member States". To that end for instance the Directive sets out the mandatory and optional provisions that apply in relation to grounds for refusal or invalidity. In relation to revocation actions the eighth recital commences:

35 "Whereas in order to reduce the total number of trade marks registered and protected in the Community and, consequently, the number of conflicts which arise between them, it is essential to require that registered trade marks must actually be used or, if not used, be subject to revocation;"

The fifth recital, on the other hand, indicates that:

40 "Whereas Member States also remain free to fix the provisions of procedure concerning the registration, the revocation and the invalidity of trade marks acquired by registration;"

45 Section 46 of the Act implements Articles 10, 12 and 13 of the Directive.

Paragraph 1 of Article 10 indicates that in the event of non use and, absent proper reasons for non-use, “the trade mark shall be subject to the sanctions provided for in the Directive” (my emphasis). Article 12 then specifies that "a trade mark shall be liable to revocation" in these circumstances. Taking these provisions as a whole I do not regard the words "shall be liable to" as conferring an overriding discretion where in other respects the grounds for revocation have been made out. Rather it seems to me that the words convey the normal meaning of "capable of". The provision thus enables the taking of revocation action but does not in my view confer any additional overriding discretion.

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In this respect I note that Articles 3 and 4 which deal with grounds for refusal or invalidity also use the words "liable to be ....." in circumstances where I think it is well established that there is no discretionary power to override otherwise mandatory provisions. Reference was also made by Mr Stacey to certain other practices such as the treatment of prior rights (Paragraph 7.5.2 of Chapter 6 of the Work Manual) and honest concurrent use which he suggested were in the nature of discretionary acts and not specifically provided for in the Directive. I do not accept that this is the case. Rather it seems to me that such practices assist the Registry to come to a view on whether grounds for refusal exist but do not allow such grounds to be overridden where they are made out. In any case I do not think such analogies are necessarily helpful in determining the issue before me. It follows that I intend to follow the reasoning in ZIPPO and do not accept that I have an overriding discretionary power under Section 46 of the Act. There is, therefore, no other defence available to the registered proprietors.

In accordance with Section 46(5) of the Act the grounds for revocation have been established in respect of 'pillowcases, bed linen and bed covers' and will take effect in relation to those goods. The specification of goods will, therefore, be revoked with effect from 26 July 1996 in relation to goods other than "Towels (textile) and face cloths" which is the extent of the use established by the registered proprietors' evidence. Having regard to the outcome of the proceedings I decline to make an order as to costs.

Dated this 12 day of March 1999

M REYNOLDS  
For the Registrar  
the Comptroller-General