

O-128-05

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 2249515
IN THE NAME OF PROLINE INTERNATIONAL LIMITED
TO REGISTER A TRADE MARK IN CLASS 25**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 90682 IN THE NAME OF
PROLINE TEXTILE S.A.S.**

Trade Marks Act 1994

**IN THE MATTER OF Application No. 2249515
in the name of Proline International Limited
to register a trade mark in Class 25**

And

**IN THE MATTER OF Opposition thereto
under No. 90682 in the name of Proline Textile S.A.S.**

Background

1. On 20 October 2000, Proline International Limited applied to register a trade mark in Class 25. The mark applied for is as follows:



2. The specification for which it is sought to be registered is as follows:

T-shirts, sweatshirts, tracksuits, jogging suits, shorts, caps, socks, sweaters, jeans, shirts, jackets and trousers.

3. On 11 June 2002, Proline Textile S.A.S. filed notice of opposition to the application, the grounds of opposition being as follows:

1. Under Section 5(2)(a) because the opponents are the owners of an earlier device mark that is identical to the mark applied for and is sought to be registered in respect of similar goods to those of the opponents=earlier mark.

2. Under Section 5(3) because the opponents are the owners of an earlier device mark that is identical to the mark applied for, and is sought to be registered in respect of goods that are similar, or in the alternative, dissimilar to those of the opponents=earlier mark, such that use of the mark applied for, without due cause, would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.

3. Under Section 5(4)(a) by virtue of the law of passing off.

4. Details of the earlier mark relied upon can be found as an annex to this decision.
5. The applicants filed a counterstatement in which they deny the grounds on which the opposition is based.
6. Both sides ask that an award of costs be made in their favour.
7. Both sides filed evidence in these proceedings. The matter came to be heard on 25 January 2005, when the opponents were represented by Mr Matthew Kime of Counsel, instructed by Chancery Trade Marks, their trade mark attorneys. The applicants were not represented.

Opponents= evidence

8. This consists of a Witness Statement and two Statutory Declarations. The Witness Statement is dated 28 November 2002 and comes from Veronique Staeffen, Agent of Cabinet Desbarres & Staeffen, 18 Avenue de l'Opéra, 75001 Paris. Ms Staeffen says that she works for Proline Textile S.A.S. who acquired rights from Lainiere de Picardie SA in 1985.

9. Ms Staeffen says that the trade mark PROLINE was chosen by Lainiere in mid 1993 and rapidly extended to all countries where the company had a commercial interest, saying that the UK was one of the first countries although does not give a date. She says that the mark was used within the textile and garment industries which have a high technical quality with respect to sport field of activity and technical garment. Ms Staeffen encloses examples of the PROLINE product as exhibits. Exhibit 1 consists of a range of product brochures showing the company to manufacture performance or technical textiles for use in the manufacture of clothing for use in adverse conditions or for providing protection, particularly in hazardous situations. The brochures depict the logo mark as registered and also uses PROLINE as a word on its own. None can be dated as originating from prior to the relevant date or can be certain to have been available in the UK. The exhibit includes a magazine dating from 1999 but is clearly not from the UK.

10. The first Statutory Declaration is dated 8 January 2003, and comes from Joan Lockhart, Managing Director of Derby Unitex Limited, a customer of the opponents. Ms Lockhart says that she has been involved in fabrics and their manufacture since 1993, and has been using and buying the specific interlining fabrics of Lainiere, and subsequently Proline Textile S.A.S. She goes on to list figures for the years 1993 to 2002, and although she does not say what they relate to, I would suspect that they are the value of goods purchased from the opponents. For the years prior to the relevant date these range from , 6,000 to , 18,000. Ms Lockhart says that her company uses the PROLINE fabric in the manufacture of clothing for the emergency services.

11. The second of the Statutory Declarations is dated 28 November 2002, and comes from Marc Devimes, since 1995 the Manager of the laminated fabrics department of Lainiere.

12. Mr Devimes says that the trade mark PROLINE has been used in the UK since 1992 in relation to all of the goods of the opponents=earlier mark relied upon in these proceedings. He sets out details of the UK sales of PROLINE goods from 1992 onwards, which for the years prior to the relevant date range from FF557,443,01 in 1992, to a peak of FF11,952,979 in 1999. Figures in , sterling have not been provided.

13. Mr Devimes introduces exhibits A1 to A3. Those parts of the exhibit that can be dated prior to the relevant date and be seen to have been available in the UK consists of:

Letter dated 26 October 1995, from Proline Textile S.A.S. to Dawson Fur Fabrics of Huddersfield, confirming the dispatch of an order for fabrics and the suitability of products for laminating.

Form relating to the provision of catering for a stand at the 1996 Fire International exhibition at the G Mex Centre in Manchester. The company address is the PROLINE Department at Lainiere.

Fax header sheet dated 5 October 1994, headed with the PROLINE logo, and relating to the dispatch of a fabric sample, although not specifically stated as PROLINE.

Letter dated 25 March 1994, which although not mentioning PROLINE has a sample swatch attached that bears the PROLINE logo.

14. The remainder of the Declaration consists of submissions on the substance of the proceedings. Whilst I do not consider it to be appropriate or necessary to summarise these, I will take them fully into account in my decision.

Applicants= evidence

15. This consists of three Witness Statements. The first is dated 8 August 2003, and comes from Margaret Jane Arnott, a trade mark attorney with Mathys & Squire, the applicants= representatives in these proceedings.

16. Ms Arnott gives details relating to the examination of the application by the Registrar, exhibiting a copy of the examination report as exhibit MJA1. Ms Arnott mentions that the application proceeded under the provisions of Section 7 on the basis of honest concurrent use, exhibit MJA2 being the letter confirming the acceptance of the application.

17. The second Witness Statement is dated 1 August 2003 and comes from Rudy P Rudran, European Finance Director and Company Secretary of Proline International Limited, a position he has held since 17 March 1995.

18. Much of Mr Rudran's Statement consists of submissions that I do not consider appropriate or necessary to summarise here. I will, however take them into account in my determination of this case. He refers to three exhibit; RPR1 which consists of a copy of a Witness Statement dated 2 November 2001 filed during the ex-parte examination of the application, and RPR2 and RPR3, which consist of registration certificates for PROLINE trade marks obtained by the applicants or associated companies in India.

19. In the Witness Statement forming exhibit RPR1, Mr Rudran gives details of his company's business and trade marks. He confirms that his company first used the trade mark PROLINE in the UK on 1 August 1995, the use having been in respect of T-shirts, sweatshirts, tracksuits, jogging suits, shorts, caps, socks, sweaters, jeans, shirts, jackets and trousers. He says that in the UK his company is the preferred supplier to the Arcadia Group who operate in excess of 700 retail outlets in the UK, some of which he names. Mr Rudran says that in 1995 his company was the apparel supplier to the British Olympic Association, the World Cup Football Association for the 1999 World Cup, and is a licensee for the England Cricket Board and Rugby World Cup Committee.

20. Mr Rudran gives details of his company's turnover for goods bearing the PROLINE mark in the years 1996-97 through to 2000-2001, which ranges from , 800,000 in 1996-1997, to a peak of , 2,450,000 in 2000-2001. He estimates that around , 100,000 has been spent promoting products bearing the mark. Exhibit RPR1 consists of a copy of a sew-in label bearing the British Olympic Association logo above the PROLINE logo that Mr Rudran says was used on approximately 70,000 garments supplied to the BOA, and a letter dated 11 September 1995 from the BOA to Proline International Limited confirming their appointment as a licensee. Mr Rudran says that a further 90,000 garments bearing the word PROLINE were supplied to the Football World Cup. He says that his company does not currently advertise in the UK, but that they do so in India, exhibit RPR2 consisting of copies of such advertisements.

21. Mr Rudran says that his company is part of a group that supplies T-shirts, trousers, shorts, jackets, etc, to various companies that have retail outlets in the UK. He states that the clothing is supplied directly from India, the orders being coordinated by his company which charges a handling fee. This clothing, and that supplied to the Arcadia group bears the particular retailers trade marks; they do not bear the PROLINE trade mark. Exhibit RPR3 consists of a collection of invoices for such goods, Mr Rudran highlighting that these have the stylised PROLINE trade mark logo.

22. The final Witness Statement is dated 1 August 2003, and comes from Rajiv Batra, Managing Director of Proline International Limited.

23. Mr Batra recounts the launch of PROLINE in India in 1983 in relation to leisurewear and sportswear, and to the expansion of the business into the UK in 1995. The remainder of the Statement consists of submissions on the substantive issues in this case. Whilst I do not consider it to be appropriate or necessary to summarise these submissions, I will take them fully into account in my determination of this case.

Opponents= evidence in reply

24. The first part of the evidence consists of a Statutory Declaration dated 31 October 2003, from Marc Devimes, President of Proline Textile S.A.S. Mr Devimes says that he has been involved in the textile industry for 7 years and was appointed Manager of the Laminated Fabrics Department of Lainiere de Picardie S.A. in January 1995, and to his present position on 24 November 2000.

25. Mr Devimes says that the trade mark PROLINE is used to market technical fabrics to garment manufacturers, mostly in the sportswear clothing and in uniforms for occupations such as the Police and Firefighters. Exhibit 1 consists of brochures for PROLINE, bearing the word on its own and in a logo form although none can be dated as originating prior to the relevant date. Exhibit 2 consists of details of the opponents=goods promoted in the West Midlands Fire & Rescue magazine in 1996. Exhibit 3 consists of details relating to sales to the Italian carabinieri in 1999. Mr Devimes says that his company is also associated with sportswear manufacturers, exhibits 4, 5 and 6 consisting of swings-tags, a sew-in label and various promotional materials showing the PROLINE logo being used in conjunction with the trade marks of some well known sportswear manufacturers, although none can be dated. Mr Devimes draws attention to the fact that the mark is directly associated with the clothing and not just the material.

26. Much of the remainder of Mr Devimes Declaration consists of submissions on the applicants=evidence, contrasting this with the facts relating to his own company=s use of PROLINE. Where this includes relevant facts, or refers to exhibits, I have incorporated this in my summary, otherwise I will take the submissions into account in my determination of this case.

27. Mr Devimes gives figures (in French francs and Euros) for his company=s advertising and promotional spend, although it is not clear that these relate solely to the UK. Exhibits 7 and 8 consists of a collection of photographs showing the opponents to have been present at various trade shows in the UK, endorsed as being taken in 1996, 1998 and 2000, and an article relating to a trade show in Germany. Exhibit 9 consists of an extract from the 1996 edition of the publication FIRE.

28. Mr Devimes mentions some of his company=s UK customers, amongst them being Sunderland of Scotland Limited, exhibit 10 consisting of that company=s 1999 and 2001-2002 brochures for golfing rainwear showing, inter alia, PROLINE products, and a print from the Sunderland company website listing amongst others, the PROLINE mark. He says that since 1992 his company has carried on a substantial business in the UK under the mark PROLINE for goods such as laminated fleeces for sportswear clothing, laminated flame-retardant fabrics, and laminated flame-retardant linings for Administrative@clothing.

29. The next Declaration is dated 28 January 2004, and comes from G Brian Longbottom, a Textile Agent and Consultant, who states that from 1994 to 2001 he acted as agent for Proline Textile S.A.S. covering the UK Northern Ireland and Eire. He says that during that period he supplied thousands of metres of PROLINE textiles to garment makers who use the PROLINE mark in the garments and on swing tags, and promotional materials for use by the garment maker.

30. The final Statutory Declaration is dated 9 March 2004, and comes from Richard Russell, formerly the Managing Director of Ballyclare Limited. Apart from confirming that his company purchased PROLINE fabrics from the opponents for use in the manufacture of clothing for firefighters, and exhibiting a further copy of the FIRE publication, Mr Russell's Declaration consists of no more than submissions on the substantive issues in this case. Whilst I do not consider it to be appropriate or necessary to summarise these submissions, I will take them fully into account in my determination of this case.

Opponents= further evidence

31. This consists of three Statutory Declarations and a Witness Statement. The first Declaration is dated 28 October 2003, and comes from John Walker, Sales Area Manager of Proline Textile S.A.S. in the UK and Ireland, a position he has held since 2001. Mr Walker recounts his previous work history, going on to make submissions on the substantive issues in this case. Whilst I do not consider it to be appropriate or necessary to summarise these submissions, I will take them fully into account in my determination of this case.

32. The next Statutory Declaration is dated 24 October 2003, and comes from Cornelis Schoondermark, Sales Director of Proline Textil S.A.S. Mr Schoondermark says that he has been involved in the textile industry since 1979, and has developed the PROLINE range of products, in particular, its laminated fabric to clients located in Europe and the UK since 1991. Mr Schoondermark mentions in particular Dawson Consumer Products Ltd, exhibit 1 being an order dating from 1994. Although there is no mention of PROLINE, Mr Schoondermark says that the PROLINE mark was used in association with the DUOFOLD name shown on the order, a fact supported by the product sheet shown as exhibit 2.

33. Mr Schoondermark mentions having established a substantial business in the UK, in particular, with Sunderland of Scotland Limited, exhibit 3 consisting of further copies of that company's 1999 and 2001-2002 brochures for golfing rainwear.

34. The next Statutory Declaration is dated 3 November 2003, and comes from Christian Paire, formerly the Managing Director of the Laminated Fabrics Department of Lanier de Picardie S.A., having been involved in the textile and industrial clothing industry since October 1995. Mr Paire says that he is the inventor of the patent related to PROLINE fabric and clothing, exhibit 1 being a copy of the same. Mr Paire gives his views on aspects of the case which although I have not summarised, I will take into account in my determination of this case.

35. The final part of the evidence consists of a Witness Statement dated 28 October 2003, from Veronique Staeffen. The Statement consists of submissions on the relative merits and substantive issues in this case. Whilst I do not consider it to be appropriate or necessary to summarise these submissions, I will take them fully into account in my determination of these proceedings. Exhibit 1 to the Statement consists of a list of the opponents= world wide trade mark registrations, inter alia, in the UK. Exhibit 2 consists of details of the opponents= registration for PRO-LINE in France. Exhibit 3 consists of details of the applicants= trade

Community Trade Mark application, which as Ms Staeffen points out has been withdrawn.

Exhibit 4 consists of correspondence relating to an application for PROLINE filed by the opponents in 1995.

DECISION

36. At the hearing Mr Kime confirmed that the opponents were not proceeding with the grounds under Section 5(2)(a) and Section 5(3). The opposition therefore stands under Section 5(4)(a) alone. That section reads as follows:

A5.-(4) 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, or
- (b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark.®

37. In order to determine the issue under Section 5(4)(a) of the Act, I shall adopt the guidance provided by the Appointed Person, Mr Geoffrey Hobbs Q.C in the *Wild Child* case [1998] 14 RPC 455. In that decision Mr Hobbs states that:

"A helpful summary of the elements of an action for passing off can be found in *Halsbury's Laws of England* (4th Edition) Vol 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v Borden Inc* [1990] RPC 341 and *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] A.C. 731 is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

- (1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the plaintiff; and
- (3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute a literal, extensive definition of 'passing off', and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House."

Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

- (1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the

question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.””

38. The date at which the matter must be judged is not entirely clear from Section 5(4)(a) of the Act. This provision is clearly intended to implement Article 4(4)(b) of Directive 89/104/EEC. It is now well settled that it is appropriate to look to the wording of the Directive in order to settle matters of doubt arising from the wording of equivalent provisions of the Act. The relevant date may therefore be either the date of the application for the mark in suit (although not later), or the date at which the acts first complained of commenced **B** as per the comments in *Cadbury Schweppes Pty Ltd v The Pub Squash Co Pty Ltd* [1981] RPC 429. In the counterstatement the Applicant=s claim to have first used their PROLINE mark continuously since 1 August 1995.

Goodwill

39. In his evidence Mr Devimes says that the trade mark PROLINE has been used in the UK since 1992. This is at odds with the date given by Ms Staeffen, who, in her evidence, says that the trade mark was chosen by Lainiere in mid 1993 and rapidly extended to all countries including the UK. In her evidence, Joan Lockhart, the Managing Director of Derby Unitex Limited, a customer of the opponents gives details of purchases of PROLINE textiles since 1993, which lends support to the date given by Ms Staeffen. Whilst it would be better if I did not encounter such inconsistencies, I do not consider that anything hangs on whether the date of first use is 1992 or 1993.

40. In his first Declaration Mr Devimes does not give details of the specific goods for which the mark has been used, but simply states that this has been in relation to all of the goods covered by the earlier mark relied upon by the opponents. This unfocussed approach to giving evidence is singularly unhelpful, particularly as the evidence goes nowhere near to showing use on the vast majority of the goods for which the mark is registered. In his second Declaration Mr Devimes is somewhat more specific, stating that the mark is used to market technical fabrics. These are made up into finished goods by garment manufacturers, mostly in the sportswear clothing and in uniforms for occupations such as the Police and Firefighters. Ms Staeffen says that the mark has been used within the textile and garment industries **A**which have a high technical quality with respect to sport field of activity and technical garment@. In her evidence Ms Lockhart refers to her company as having been a purchaser of PROLINE garment **A**interlining fabric.@ All of this shows that the opponents have used the mark in connection with a specialised textile that is made up into clothing by other manufacturers.

41. The majority of the evidence of use provided by the opponents consists of product brochures. These depict the logo mark as registered and also use of PROLINE as a word on its own. From their construction these seem to have been aimed at the UK market, but there is nothing that confirms this to be the case, nor that shows that they originate from prior to the relevant date. The evidence that can be dated and placed within the UK is thin to say the least, consisting primarily of correspondence sent in March and October 1994 relating to sample swatches of material. That said, these clearly show that the opponents were looking for, and conducting a business under the PROLINE logo mark. The evidence also includes an advertisement from the 1996 edition of the West Midlands Fire & Rescue magazine in which the opponents= textile goods are promoted, in one case in connection with clothing for firefighters made by Ballyclare

Special Products Ltd, and an Exhibition Newsletter for the Fire 1996 exhibition held in Manchester, which contains an article referring to the PROLINE barrier. The term Abarrier@ in the article is used to describe the nature and purpose of the fabric.

42. The turnover figures are given in French Francs rather than pounds sterling. As I have not been told the relevant exchange rates I am not in a position to accurately gauge their significance, but given that they range from half a million to over 11 million FFranca, they are certainly not de-minimis.

43. Taking all of the above into account, I have little difficulty in coming to the conclusion that at the date of first use claimed by the applicants, and undoubtedly at the date on which they made their application, the opponents had established a reputation and goodwill in the name PROLINE in relation to specialist or technical fabric for making into clothing. In the minds of the trade who use the fabric in the manufacture of clothing the reputation and goodwill will subsist in respect of the fabric. However, as I have stated below, the public at large who are the consumer of the finished clothing products will encounter the opponents mark being used in conjunction with that clothing and not as a material used in the manufacture. Whilst they may understand that the opponents=PROLINE mark is an indication of a feature of the fabric, the use with clothing will in my view create a link beyond that of the fabric to the clothing itself.

Misrepresentation

44. The mark that the applicants seek to register consists of the word PROLINE. Although represented in a fancy script and with the letter AO@ embellished with a simple device, it is nonetheless still going to be seen as the word. The opponents have shown that through use of their PROLINE logo they have become known by the word element which is not surprising given that in composite marks it is the words that speak. I see nothing, distinctive or otherwise, in either mark that I believe would serve to distinguish them; they are both PROLINE marks.

45. If there is any distinction that could be drawn it is the fact that the opponents=reputation and goodwill exists in a specialised textile, whereas the applicants seek to register and use the mark in relation to particular articles of clothing. My attention has been drawn to the fact that even though the opponents have not themselves traded in clothing under PROLINE, the mark has consistently been used alongside that of the manufacturer of clothing on swing tags, labels and the like. Evidence of this prior to the applicants= claimed date of first use can be found in Dawson=s use in relation to their DUOFOLD clothing (exhibit 2 to Schoondermark), and prior to the date of application, in Ballyclare=s use in connection with firefighters clothing and Sunderland of Scotland for golf clothing. Other examples that cannot be dated show the mark is promoted by sportswear traders such as Nike and Quicksilver. It seems to me that although the opponents= use has been in relation to the textile from which the garments are made, the prominent use and promotion of the PROLINE mark in relation to the clothing products will have established a close link between the textile and the clothing in the mind of the public. Some of this use has been on swing-tags and sew-in labels, the same manner in which the applicants will presumably use their mark. There is evidence that the applicants have used their mark alongside that of their customer, mirroring the mode of use of the opponents=mark in relation to clothing products.

Damage

46. On its face the evidence seems to indicate that the respective parties have been trading concurrently without any apparent problems. Mr Kime acknowledged that there is no evidence of actual confusion, but argues that this is because the opponents use the mark in relation to high value fabrics that have been incorporated into high-end and specialised clothing, whereas the applicants' use has been in relation to relatively very cheap clothing as part of merchandising for events to be held in foreign countries. Mr Kime may well be correct in his assessment of the reasons for the lack of confusion. In my mind it seems just as likely to be down to the fact that apart from the clothing supplied to official bodies such as the BOA, the applicants seem to have been involved in supplying clothing to others who would sell it under their own brand name. I do not see any evidence that the purchasing public have, as yet, been exposed to the applicants' mark, but I do not see anything that would prevent the applicants from selling their own clothes under the PROLINE name.

47. Mr Kime cites the potential for diversion of trade. Where there are two traders using the same or similar mark in common areas of activity, there must inevitably be a potential for a later entrant to gain some advantage by riding on an established reputation or goodwill. It must also be the case that the use of essentially the same mark by another trader will dilute the distinctiveness of the earlier mark. Mr Kime also says that the applicants' use would cause injury to the opponents' reputation should their goods be of poor quality. I do not see anything in the evidence that tells me the applicants produce goods from materials inferior in quality. As far as the end product is concerned, the opponents seem to be just as much at the mercy of the manufacturers that purchase the material from them as they may be at risk from the applicants' use. That said, the opponents' reputation and goodwill has been established in relation to a specialised and technical product founded on its quality and protective characteristics. In such circumstances the public will be influenced in their purchase by an expectation that the material used in the clothing possesses certain attributes, as much by its style or colour. Should the clothing not meet the performance expectations, the potential for damage to the goodwill and reputation of the opponents is clear to see.

48. The public, on seeing clothing bearing the name PROLINE would be liable to think that it came from, or was associated or had a connection with the opponents and would be led to believe that the goods were made from the opponents' fabrics, and in doing so would be deceived. In my view the opponents have established their case and the objection under Section 5(4)(a) succeeds.

49. The opposition having succeeded, I order the applicants to pay the opponents the sum of £1,550 as a contribution towards their costs. This sum to 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 5th day of May 2005

**Mike Foley
for the Registrar
the Comptroller-General**



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Trade Marks

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Trade Mark Details as at 05.05.2005

CASE DETAILS FOR TRADE MARK 1581256

Mark Text :

PROLINE

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Status: Revoked

Status Before Death: Registered

Progress Stopped: 20.07.2004

Class: 24

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Relevant Dates

Filing Date: 10.08.1994
Earliest Priority Date: 15.02.1994
Priority Country: France
Registration Date: 25.04.1997
Next Renewal Date: 15.02.2011

Publication in Trade Marks Journal

	Journal	Page	Publication Date
First Advert	6157	7	08.01.1997
Registration	6179		11.06.1997
Renewal	6370		14.03.2001
Assignment	6387		11.07.2001

List of goods and/or services

Class 24:

Adhesive fabric for application by heat fabric; fabric impervious to gases for aeronautical balloons; household fabric; bath linen (except clothing); hat linings of textiles in the piece; haircloth; lining of textile for boots and shoes; fabric for boots and shoes; table cloths (not of paper); table napkins of textile; table linen coasters; cotton fabrics; sleeping bags (sheeting); bed covers; bed blankets; bed clothes; bed linen; bedspreads; cheese cloth; covers for furniture; diapered linen; door curtains; elastic woven material; esparto fabric; fiberglass fabrics for textile use; filtering materials of textile; flags (not of paper); furniture covering of plastic; hemp fabric; moleskin (fabric); non woven textile fabrics; plastic material (substitute for fabrics); rayon fabric; silk fabrics for printing patterns; glass-cloth; woollen fabric; all included in Class 24; but not including textile piece goods for making up into clothing.

Names and Addresses

Proprietor: Proline Textile S.A.S
Buire-Courcelles, 802000 Peronne, France

Incorporated Country: France
Residence Country: France
Customer's Ref: SAS
Effective Assignment date: 02.01.2001
Assignment Date: 02.01.2001
ADP Number: 0805200001

Agent: Chancery Trade Marks
Chancery House, 40a Castle Street, Guildford, Surrey, GU1 3UQ

ADP Number: 0000539001

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Service: Chancery Trade Marks
Chancery House, 40a Castle Street, Guildford, Surrey, GU1 3UQ

ADP Number: 0000539001

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Other Particulars

Consent:
By consent No. 1317686 (5830,3972) and others.

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