

O-213-05

TRADE MARKS ACT 1994

IN THE MATTER OF CONSOLIDATED APPLICATION

Nos. 81421, 81422 & 81423

BY FLORAROMA

FOR REVOCATION OF TRADE MARK Nos. 1398682, 1398683 & 2053016

IN THE NAME OF S SCHWAB COMPANY INC

TRADE MARKS ACT 1994

IN THE MATTER OF Consolidated Application

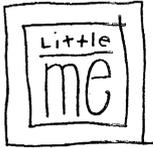
Nos. 81421, 81422 & 81423

by FLORAROMA for Revocation of Trade Mark Nos. 1398682,
1398683 & 2053016

in the name of S Schwab Company Inc

BACKGROUND

1. The following marks are registered in the name of S Schwab Company Inc.

Registration No.	Mark	Effective Date	Specification of Goods
1398682	LITTLE ME	6 September 1989	Class 24: Infants' bed and bath linens; all included in Class 24.
1398683	LITTLE ME	6 September 1989	Class 25: Childrens' clothing; infants clothing; sleepwear, shirts, pants, jumpsuits, coveralls, jackets, bunting suits, sweaters, creepers, hats, sweatsuits, bibs, dresses, booties, sunsuits, bathing suits, sacques, kimonos, robes, vests and leotards; all included in Class 25.
2053016		23 January 1996	Class 18: Diaper bags, stroller bags, organizers sold empty. Class 21: Insulated bottle holders. Class 28: Stuffed toys and crib toys.

2. By applications dated 16 September 2003, Floraroma applied for revocation of the registrations under Section 46(1)(a) of the Act on the grounds that within the period of five years following the date of completion of the registration procedures the marks have not been put to genuine use in the United Kingdom, by the proprietor, or with his consent, in relation to the goods for which they are registered, and there are no proper reasons for non-use.

3. The registered proprietor filed Counterstatements denying the grounds of revocation.

4. Both sides filed evidence and ask for an award of costs in their favour.

5. The parties do not require a hearing and are content for a decision to be made on the evidence filed.

REGISTERED PROPRIETOR’S EVIDENCE UNDER RULE 31(2)

6. This consists of witness statements by Hugh Woltzen dated 19 December 2003. Mr Woltzen is the Chief Financial Officer of S Schwab Company Inc, the registered proprietor company.

7. Mr Woltzen states that the registered proprietor has used the marks in suit continuously since at least 1989 in relation to the Class 24 and Class 25 goods, and since at least 1996 in relation to Class 28 goods.

8. To illustrate use in relation to the Class 24, Class 25 and Class 28 goods, Mr Woltzen attaches, at Exhibit 1 to his statements, sample invoices dated 28 August 2003.

9. Mr Woltzen concludes by stating that the trade mark is used in the stylised format appearing below:



APPLICANT’S EVIDENCE UNDER RULE 31(4)

10. This consists of witness statements by Shaun Nicholas Sherlock dated 15 June 2004. Mr Sherlock is a Trade Mark Assistant with Marks & Clerk, the applicant’s professional advisors in these proceedings.

11. Mr Sherlock explains that, on behalf, of the applicant, he instructed Ansel & Co to investigate the extent to which the mark LITTLE ME had been used, if at all, in the UK. A copy of the Investigator’s report, dated 29 August 2003, is attached as Exhibit SNS#1 to Mr Sherlock’s statements.

12. Mr Sherlock concludes that:

“The Investigator’s report found no instances of use of the mark LITTLE ME by S. Schwab Company Inc. in the United Kingdom. The report includes details of a telephone conversation with the Marketing Department of S. Schwab Company Inc and a Ms Bonnie Abrams, who gave her title as the Director of Marketing. In paragraph 5.3, of the attached report, she stated that LITTLE ME goods were “not currently sold in the United Kingdom through Department stores or a representative”. While Ms Abrams suggested that goods could be bought via an on-line shopping company called Babystyle, paragraph 5.6 gives details of a telephone call to Babystyle, in which the

Customer Care Representative stated that “the company does not deliver goods to the United Kingdom”.

13. Mr Sherlock goes on to submit that the witness statement and accompanying exhibit filed on behalf of the registered proprietor by Mr Woltzen, does not reveal any use of the marks in suit, adding that the earliest sample invoice is dated 28 August 2003, which is outside the relevant five years period which are as follows:

TRADE MARK REGISTRATION	RELEVANT FIVE YEAR PERIOD
1398682	22 November 1991 – 21 November 1996
1398683	6 December 1991 – 5 December 1996
2053016	27 September 1996 – 26 September 2001

14. Mr Sherlock states that the sample invoices do not refer to any goods bearing the mark LITTLE ME or to the nature of such goods. He adds that these invoices show that the goods were shipped to Carteret, New Jersey, USA, and not to the UK and that they do not contain any reference to the registered proprietor but appear to have been issued by a company called Little Me Childrenswear Co of Baltimore, USA.

15. Finally, Mr Sherlock points out that the registered proprietor has not provided details of financial turnover, the profit from sales under the mark, details of goods offered, expenditure or details relating to advertising and how the mark was placed on goods in the market place.

REGISTERED PROPRIETOR’S EVIDENCE UNDER RULE 31(6)

16. This comprises a witness statement by Trevor Yates dated 10 December 2004.

17. Mr Yates is the owner of Zeo America, Belfast, UK. He states that the S Schwab Company Inc (the registered proprietor) has supplied him with the following goods bearing the trade mark LITTLE ME and/or LITTLE ME & DEVICE (the stylised format):

- “Class 18: Diaper bags, stroller bags, organizers sold empty.
- Class 24: Infants’ bed and bath linen; all included in Class 24.
- Class 21: Insulated bottle holders.
- Class 25: Childrens’ clothing; infants clothing; sleepwear, shirts, pants, jumpsuits, coveralls, jackets, bunting suits, sweaters, creepers, hats, sweatsuits, bibs, dresses, booties, sunsuits, bathing suits, sacques, kimonos, robes, vests and leotards; all included in Class 25.
- Class 28: Stuffed toys and crib toys.”

18. Mr Yates states that S Schwab Company Inc has supplied him with goods bearing the marks since 2000 and he has sold goods bearing the marks since 14 February

2000. He adds that the trade marks have been used on “LITTLE ME” stock and ticketing labels as received from the proprietor and that the trade marks have also appeared on point of sale imagery and picture frames. Mr Yates attaches the following to his statement to demonstrate use of the LITTLE ME trade marks upon goods for sale in his stores:

- (i) a number of photographs, showing the goods with the trade mark displayed in his store, at Annex 2 to his statement;
- (ii) samples of children’s clothing, bibs, growers, hats, gloves, jackets, slippers, robes, bed and bath linen and stuffed/crib toys, showing the trade mark, at Annex 3 to his statement.

19. Mr Yates states that goods bearing the trade marks have been sold in the United Kingdom. He explains that he has retail outlets in Belfast and Lisburn (Northern Ireland) and adds that goods bearing the marks have been sold at both outlets. Mr Yates goes on to provide the following annual turnover figures for the sale of goods under the trade marks in the years preceding the application for revocation:

YEAR	TURNOVER	UNITS
1999	-	-
2000	£11,071	782
2001	£ 5,673	486
2002	-	-
2003	£ 4,397	382

20. Mr Yates explains that these figures are calculated at retail prices. He attaches at Annex 4 to his statement, a bundle which, he states, comprises of invoices relating to sales of goods bearing the trade marks in the United Kingdom.

APPLICANT’S EVIDENCE IN REPLY UNDER RULE 31(7)

21. This consists of a second witness statement by Shaun Nicholas Sherlock. It is dated 11 March 2005.

22. Mr Sherlock contends that the evidence of Mr Yates does not support use of the marks and states that there is no evidence that the registered proprietor has consented to use of the marks as Zeo America may have purchased goods bearing the mark in the USA, which does not demonstrate use, nor use with the proprietor’s consent. He goes on to say that many of the ticketing labels appear to have a portion of the ticket removed which may be to allow the original U.S. dollar price to be removed and a new price applied in pounds sterling.

23. Turning to the photographs exhibited with Mr Yates’ statement, Mr Sherlock states that the evidence is not dated but the material clearly falls outside the relevant periods (see paragraph 13 above), for Registration Numbers 1398682 and 1398683. With regard to the turnover figures supplied by Mr Yates, Mr Sherlock states that as these figures are not broken down into individual goods, it is not possible to establish whether the figures include the goods covered by Registration Number 2053016.

24. Mr Sherlock submits that the evidence does not include examples of the following goods:

- Class 18: “diaper bags, stroller bags, organizers sold empty”.
- Class 21: “insulated bottle holders”.
- Class 24: “infants bath linens”.
- Class 25: “shirts; coveralls; bunting suits; sweaters, dresses, sun suits, bathing suits, sacques, kimonos, vests and leotards”.

25. Mr Sherlock also contends that as any use has been in Northern Ireland, the marks should, at the very least, be partially revoked for England, Scotland and Wales.

26. Mr Sherlock concluded his evidence as follows:

- “(i) The Proprietor has not shown use of the mark during the relevant periods of 22/11/1991-21/11/1996 for Registration No B1398682 LITTLE ME; 6/12/1991-5/12/1996 for Registration No B1398683 LITTLE ME and 27/09/1996-29/09/2001 for Registration No 2353016 LITTLE ME (Device).
- (ii) The Proprietor has not provided evidence showing use of the mark on all the goods included in the specification of Registration Nos 1398682, 1398683 and 2353016.
- (iii) The use that has been demonstrated, if considered to be within the relevant period and with the consent of the Proprietor, would not support a trade mark specification broader than “... for sale in Northern Ireland”.

27. This concludes my summary of the evidence filed in this case. I turn now to the decision.

DECISION

28. Section 46 of the Act reads as follows:

“46.-(1) The registration of a trade mark may be revoked on any of the following grounds-

- (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

- (c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;
- (d) that in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made either to the registrar or to the court, except that -

- (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
- (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(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.

(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.”

29. In addition Section 100 of the Act is relevant. It reads:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

30. The applications for revocation are being pursued under Section 46(1)(a) of the Act and the relevant five year periods run from the date of the completion of the registration procedure. They are as follows:

- (i) Registration No 1398682 – 22 November 1991 to 21 November 1996;
- (ii) Registration No 1398683 – 6 December 1991 to 5 December 1996;
- (iii) Registration No 2053016 – 27 September 1996 to 26 September 2001.

31. No proper reasons for non-use have been advanced and the issue before me is whether there has been genuine use of the registered marks in relation to the goods for which they are registered bearing in mind the relevant periods.

32. Turning firstly to Registration Nos 1398682 and 1398683, the registered proprietor has claimed continuous use since 1989 and such use would fall within the relevant five year periods. The supporting evidence filed, consists of invoices relating to the year 2003, and Mr Yate’s witness statement in which he says that he was supplied with goods bearing the marks since the year 2000. Both relate to periods after the relevant date. However by virtue of Section 46(3) of the Act, this is not necessarily fatal as this sub section provides that if use commences or resumes after the relevant five years period but before the application for revocation was made the registration shall not be revoked under Section 46(1)(a), although use within a period of three months before the application for revocation was made shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application for revocation might be made.

33. In light of Section 46(3) I must consider whether the evidence filed demonstrates genuine use of the marks in relation to all three registrations.

34. The meaning of “genuine use” was considered by the European Court of Justice in Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] RPC 40, in particular paragraphs 35 to 39 and paragraph 43 of that discussion, which reads as follows:

“35. Next, as Ansul argued, the eighth recital in the preamble to the Directive states that trade marks “must actually be used or, if not used, be subject to revocation”. “Genuine use” therefore means actual use of the mark. That approach is confirmed, “*inter alia*” by the Dutch version of the Directive, which uses in the eighth recital the words “*werkelijk wordt gebruikt*”, and by other language versions such as the Spanish (“*uso efectivo*”), Italian (“*uso effettivo*”) and English (“genuine use”).

36. “Genuine use” must therefore be understood to denote use that is not merely token, serving solely to preserve the rights conferred by the mark.

Such use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin.

37. It follows that “genuine use” of the mark entails use of the mark on the market for the goods or services protected by that mark and not just internal use by the undertaking concerned. The protection the mark confers and the consequences of registering it in terms of enforceability *vis-à-vis* third parties cannot continue to operate if the mark loses its commercial *raison d’être*, which is to create or preserve an outlet for the goods or services that bear the sign of which it is composed, as distinct from the goods or services of other undertakings. Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns. Such use may be either by the trade mark proprietor or, as envisaged in Art. 10(3) of the Directive, by a third party with authority to use the mark.

38. Finally, when assessing whether there has been genuine use of the trade mark, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, in particular whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark.

39. Assessing the circumstances of the case may thus include giving consideration, *inter alia*, to the nature of the goods or service at issue, the characteristics of the market concerned and the scale and frequency of use of the mark. Use of the mark, need not, therefore, always be quantitatively significant for it to be deemed genuine, as that depends on the characteristics of the goods or service concerned on the corresponding market.

.....

43. In the light of the foregoing considerations the reply to the first question must be that Art. 12(1) of the Directive must be interpreted as meaning that there is “genuine use” of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. When assessing whether use of the trade mark is genuine, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark. The fact that a mark is not used for goods newly available on the market but for goods that were sold in the past does not mean that its

use is not genuine, if the proprietor makes actual use of the same mark for component parts that are integral to the make-up or structure of such goods, or for goods or services directly connected with the goods previously sold and intended to meet the needs of customers of those goods.”

35. I now turn to a consideration of the registered proprietor’s evidence filed to claim genuine use of the marks.

36. Firstly, I go to the invoices attached as Exhibit 1 to Mr Woltzen’s statement of 19 December 2003. These invoices are dated 28 August 2003 and show LITTLE ME in the “stylised format” towards the top centre of the invoice with LITTLE ME CHILDRENSWEAR CO, Baltimore USA as the remittance address. The goods which include blankets, prams, bibs, toys and baby clothing amount to around 380 items and are to be shipped to Zeo America Carteret, New Jersey, USA, and billed to Zeo America, Belfast, UK.

37. Next I consider Mr Yates’ statement of 10 December 2004 and the supporting evidence.

38. Mr Yates states that he has been supplied with goods by the registered proprietor since 2000 and has sold such goods since 14 February 2000. The turnover and unit sales stated by Mr Yates(see paragraph 19 of this decision) are light, considering the potential market for the goods. The supporting exhibits (see paragraph 18 of this decision) comprise undated photographs showing the marks LITTLE ME in the “stylised format” and the words LITTLE-ME on price labels on infant’s and children’s clothing (Annex 2), actual examples of baby clothing and a baby toys bearing the marks (Annex 3), and a bundle of invoices dated 26/27 September 2000, similar to the invoices submitted with Mr Woltzen’s statement but showing S Schwab Company Inc (the registered proprietor), LITTLE ME DIVISION, as the remittance address. The invoices are somewhat indistinct but it is possible to make out that they include items of baby clothing and blankets.

39. As pointed out by the representatives of the applicant, there is no indication of how the marks in suit have been promoted and the figures relating to turnover and unit sales are not broken down into the different types or categories of goods for which the registered proprietor claims use. However, while the evidence filed by the registered proprietor is certainly far from perfect, it seems to me that it demonstrates the supply and sale of goods under the marks in suit, albeit on a very modest scale and only in relation to a limited range of goods.

40. “Genuine use” need not be quantitatively significant. In ECJ Case C-259/02 *La Mer Technology Inc v Laboratoires Goemar SA* [2004] ETMR 47, paragraph 21, it was stated:

“Moreover, it is clear from para. [39] of *Ansul* that use of the mark may in some cases be sufficient to establish genuine use within the meaning of the Directive, even if that use is not quantitatively significant. Even minimal use can therefore be sufficient to qualify as genuine, on condition that it is deemed to be justified, in the economic sector concerned, for the purpose of preserving or creating market share for the goods or services protected by the mark.”

41. In the light of the evidence it seems to me that there is nothing fake or sham about the activities going to the use of the marks and I have no reason to believe or infer that the activities were undertaken with any ulterior motive going to the mere preservation of the registrations. The key question is whether the use is warranted to maintain or create share in the market for the goods protected by the marks.

42. The evidence demonstrates or at least suffices me to find that the registered proprietor sold goods under the marks to Zeo America, Belfast (the invoices attached as Annex 4 to Mr Yates' statement confirm), who in turn has sold goods through its outlets in Northern Ireland under the marks to the public.

43. While goods have been sold under the mark, it is my view that the evidence only demonstrates sales in relation to Infants' bed linen in Class 24, childrens' and infants' in Class 25; and stuffed toys and crib toys in Class 28. No use (sales, marketing or any other commercial exploitation), has been demonstrated in relation to the Class 18 and Class 21 goods of the applicant. Accordingly, the application for revocation must succeed in relation to the goods encompassed within Classes 18 and 21 of the Registration No 2053016.

44. I turn to the remaining goods in Classes 24, 25 and 28. The relevant goods are consumer items with a significant market. Nevertheless, it seems to me that in relation to childrens' and infants' clothing (including specific items of clothing which may be encompassed within such clothing), infants bed linen and stuffed toys and crib toys, the registered proprietor's use of the marks has been genuine in that it goes to maintain or create a share of the market, albeit a very small one.

45. In relation to "Infants' bath linen" within Class 24, there is no evidence to demonstrate any use of the marks in relation to such goods and it seems to me that such goods are a separate sub-set or category of goods from "bed linen", having very different functions. I am of the view that there has been no "genuine use" of the mark in relation to "Infants' bath linen" and that the application for revocation succeeds regarding these particular goods in Class 24.

46. Turning to the Class 25 specification, I have found that the mark has been used in relation to childrens' and infants' clothing. However, the Class 25 specification (registration No 1398683) contains additional goods and in this regard the applicant has listed goods on which it states the evidence does not include examples ie shirts; coveralls; bunting suits; sweaters; dresses; sunsuits; bathing suits, sacques, kimonos, vests and leotards.

47. The approach to be adopted in determining any appropriate restriction of specifications pursuant to a revocation is encapsulated in the following passage from the Court of Appeal's judgements in *Thompson Holidays Limited and Norwegian Cruise Lines Limited* [2003] RPC 32.

"29 I have no doubt that Pumfrey J. was correct to reject the approach advocated in the Premier Brands case. His reasoning in paras. [22] and [24] of his judgement is correct. Because of S. 10(2), fairness to the proprietor does not require a wide specification of goods or services nor the incentive to apply

to a general description of goods and services. As Mr Bloch pointed out, to continue to allow a wide specification can impinge unfairly upon the rights of the public. Take, for instance, a registration for “motor vehicles” only used by the proprietor for motor cars. The registration would provide a right against a user of the trade mark for motor bikes under S. 10(1). That might be understandable having regard to the similarity of goods. However, the vice of allowing such a wide specification becomes apparent when it is envisaged that the proprietor seeks to enforce his trade mark against use in relation to pedal cycles. His chances of success under S. 10(2) would be considerably increased if the specification of goods included both motor cars and motor bicycles. That would be unfair when the only use was in relation to motor cars. In my view the court is required in the words of Jacob J. to “dig deeper”. But the crucial question is-how deep?

30 Pumfrey J. was, I believe, correct that the starting point must be for the court to find as a fact what use has been made of the trade mark. The next task is to decide how the goods or services should be described. For example, if the trade mark has only been used in relation to a specific variety of apples, say Cox’s Orange Pippins, should the registration be for fruit, apples, eating applies, or Cox’s Orange Pippins?

31 Pumfrey J in Decon suggested that the court’s task was to arrive at a fair specification of goods having regard to the use made. I agree, but the court still has the difficult task of deciding what is fair. In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under S. 10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor had made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use.”

48. I have found that the registered proprietor has genuine use of its mark in relation to childrens’ and infants’ clothing and it is my view that the nature of the use justifies the retention of this relatively wide description of goods. I now go on to consider how the notional customer would view the remaining goods on which the applicant states the evidence does not show examples (see paragraph 46 above), and it seems to me that the specific goods listed by the applicant could be in the nature of childrens’ or infants’ clothing, or could equally be in the nature of adult clothing.

49. As childrens’ and infants’ clothing is a recognised category or subset of clothing with its own particular market and customer and as, the registered proprietor has genuine use of the mark only in relation to such goods it is my view that the Class 25 specification should be limited as to the nature of the goods so as to read as follows:

“Childrens’ clothing; infants clothing; sleepwear, shirts, pants, jumpsuits, coveralls, jackets, bunting suits, sweaters, creepers, hats, sweatsuits, bibs,

dresses, booties, sunsuits, bathing suits, sacques, kimonos, robes, vests and leotards; all being childrens' or infants' clothing; all included in Class 25."

50. The applicant for revocation also submits that as any use of the marks has been in Northern Ireland, the marks do not support a specification broader than "... for sale in Northern Ireland."

51. The United Kingdom Register is a national register and in relation to whether the mark has been put to genuine use in the UK, the issue is whether the mark has been in genuine use within the jurisdiction and not the extent or geographical spread of the use, although in a wider context such issues may be factored into the overall consideration of whether there has been genuine use.

52. I have found that, in relation to many of the goods encompassed within the specification of the marks in suit, there has been genuine use of the marks in the United Kingdom, albeit on a small scale. Genuine use need not be quantitatively significant (paragraph 40 of this decision refers) and it seems to me that it must follow that genuine use need not be widespread use. Section 46 makes no provision for limited geographical rights and I do not consider such a limitation appropriate.

CONCLUSION

53. The applications for revocation have been successful in part.

54. I order the following by virtue of Section 46(5) of the Act –

- (i) Registration No 1398682 is to be revoked in part by the removal of "infants' bath linens" and the specification of goodwill be limited to the following, upon which genuine use has been shown:-

"Infants' bed linens; all included in Class 24:"

- (ii) Registration No 1398683 is to be revoked in part by the addition of a limitation to the specification of goods, which (as amended) will now read:

"Childrens' clothing; infants clothing; sleepwear, shirts, pants, jumpsuits, coveralls, jackets, bunting suits, sweaters, creepers, hats, sweatsuits, bibs, dresses, booties, sunsuits, bathing suits, sacques, kimonos, robes, vests and leotards; all being childrens' or infants' clothing; all included in Class 25."

- (iii) Registration No. 2053016 is to be revoked in part by the removal of the Class 18 and 21 specifications of goods as no genuine use of the mark has been shown in relation to such goods.

55. As the applications for revocation have been successful in part, Section 46(1)(a) applies to those goods for which the revocation actions succeed and the rights of the proprietor shall be deemed to have ceased as from the date of the application for revocation in respect of those goods.

COSTS

56. The applicant for revocation has succeeded in its action, albeit to a limited degree, but nevertheless is entitled to a contribution towards its costs. I order the registered proprietor to pay the applicant for revocation the sum of £1000 which takes into account that no hearing took place on this case. This sum is 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 28th day of July 2005

**JOHN MACGILLIVRAY
For the Registrar
the Comptroller-General**