

**TRADE MARKS ACT 1938 (AS AMENDED)
AND TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 1559539
BY OSBORNE & LITTLE PLC
TO REGISTER A TRADE MARK IN CLASS 24**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER
NO 42641 BY THE ALCHEMY CARTA LIMITED**

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**IN THE MATTER OF Application No 1559539
by Osborne & Little Plc
to register a trade mark in Class 24**

and

**IN THE MATTER OF Opposition thereto under
No 42641 by The Alchemy Carta Limited**

DECISION

On 19 January 1994, Osborne & Little Plc, of 49 Temperley Road, London, SW12 8QE, applied under Section 17(1) of the Trade Marks Act 1938 to register the trade mark **ALCHEMY**. The application was made in Class 24 and after examination proceeded to advertisement for the specification of goods comprising:-

Textiles; fabrics; goods made wholly or principally of textiles; goods made wholly or principally of fabric; materials for soft furnishings; bed clothes, bed covers, bed linen, curtains, table covers, trimmings, textile blinds, curtain holders of textile materials, brocades; all included in Class 24; but not including any such goods for use in the manufacture of clothing

The application, numbered 1559539 was advertised for opposition purposes on 22 March 1995, and on 22 June 1995, The Alchemy Carta Limited filed notice of opposition to the application.

The grounds of opposition are in summary:-

- 1. Under Section 11** The opponents are the proprietors of three trade marks registered in respect of goods that are the same or similar to those set out in the application. The use of the trade mark applied for by the applicant in relation to the goods in respect of which the application is made is likely to deceive or cause confusion.
- 2. Under Section 12(1)** The mark the applicant is seeking to register is identical to the opponents' registered marks
- 3.** The opponents say that the mark applied for is not distinctive nor adapted to distinguish the applicants' goods although do not refer to a particular section of the Act.

The opponents' registrations referred to in the grounds of opposition are as follows:

No.	Mark	Class	Journal/Page	Specification
5 1392499	ALCHEMY	6	5946/7609	Badges, pendants, clasps, buckles, bracelets, arm bands, chains, chain links, keys, key rings, key chains, rivets, studs, hooks, pins, spurs, handcuffs, locks, padlocks, latches, knobs, letter boxes, door knobs, door handles, door panels, house numbers, plates, plaques, signs, ferrules, foot scrapers, knife handles, tool handles, boxes, chests, containers, caskets, busts, figurines, statuettes, model figures, weather vanes; all made of common metal; articles made from bronze; all included in Class 6
10 15 20 1238082	ALCHEMY	14	5604/295	Jewellery, imitation jewellery, and precious stones; precious metals and articles included in Class 1
25 30 35 1392502	ALCHEMY	25	5898/6546	Articles of outer clothing; footwear; tee shirts; articles of clothing made from leather or imitation leather; parts and fittings for all the aforesaid goods; all included in Class 25

The opponents ask the Registrar to exercise his discretion and refuse the application and that costs be awarded against the applicants.

40 The applicants filed a counterstatement in which they deny all grounds of opposition saying that there is no reason for the registrar to exercise his discretion to refuse the application, and ask that the opposition be dismissed and that costs be awarded in their favour.

45 Both sides have filed evidence in these proceedings and the matter came to be heard on 29 April 1999, when the applicants were represented by Mr Mitcheson of Counsel instructed by Castles, their trade mark attorneys, and the opponents by Mr Piers Ackland of Counsel, instructed by Lewis & Taylor, their trade mark attorneys.

By the time this matter came up for a decision, the Trade Marks Act 1938 had been repealed in accordance with Section 106(2) and Schedule 5 of the Trade Marks Act 1994. These proceedings having begun under the provisions of the 1938 Act must continue to be dealt with under that Act, in accordance with the transitional provisions set out in Paragraph 17 of Schedule 3 of the 1994 Act. Accordingly, all reference in this decision are references to the 1938 Act and the Trade Marks and Service Marks Rules 1986.

Opponents' evidence (Rule 49)

10 This consists of a Statutory Declaration dated 4 April 1996 made by Geoffrey Kayson, a Director of The Alchemy Carta Limited, a position he has held for eighteen years, having been associated with the company since its formation.

15 Mr Kayson begins saying that the company was incorporated in April 1980 under the name Ravencourt Design Limited, and through a number of name changes became The Alchemy Carta Limited in August 1989. He says that his company first used the ALCHEMY trade mark in early 1989 on items of jewellery, buckles, buttons and T-shirts. Mr Kayson makes particular reference to the NEC Spring Fair held in February 1984 and refers to exhibit GK1. This consists of a photocopy of a brochure for that event produced by Focal Point and containing entries relating to Ravencourt Design as an exhibitor of jewellery but does not mention ALCHEMY, and a photocopy of an invoice dated from 1984 for unspecified goods which includes an entry referring to ALCHEMY. Mr Kayson next refers to exhibit GK2 which consists of copies of catalogues and advertisements dating from 1984 to 1988 and relating to jewellery and a small number of other items such as key rings, T-shirts, buckles and buttons. The word ALCHEMY is clearly shown, usually in conjunction with the description "metal wear".

25 Mr Kayson refers to his company's change of name to The Alchemy Carta Limited which he says reflected the prominence it had acquired with its customers. He goes on to say that over the years his company has expanded the range of goods sold under the ALCHEMY mark to include belts, posters, toy figurines and items of household goods and giftware, and refers to exhibit GK3 which consists of an undated catalogue headed "ALCHEMY metal-wear" and relating to jewellery, T-shirts, and belts. Mr Kayson continues setting out year by year the goods added to the ALCHEMY range, saying that in 1991 his company formed a new business, Alchemy Pewter specifically for the manufacture of mainstream high quality giftware and household goods, and refers to exhibit GK4 which consists of copies of catalogues and price lists. A number are either undated or dated after the relevant date and cannot therefore be given much, if any weight. Those that can be taken into account bear the ALCHEMY name, usually with other matter, for example "ALCHEMY of England" (noted by ® as a trade mark), which, in addition to the goods covered in exhibit GK3 also include posters, postcards, leather jackets, waistcoats, shoulder holster wallet, skull-shaped ornament and candles, "Zippo" lighters, pewter tankards, goblets and mugs, pewter clock, sand timer, drinking flasks, spoon, bandanas, cloth patches for clothing, flag, temporary tattoos, small metal containers, figures, candle sconces and holders, hair sticks, pen tops, beads, cutlery, wine bottle coaster and stopper, mirrors, drinking glasses, vases and paper knives.

45 Mr Kayson continues saying that his company has licenced others to use the ALCHEMY mark in relation to goods outside of their own area of metal wear, and lists by year the goods for which licences have been granted. He goes on to say that in 1992 his company contracted

Merchandising Rights Agency Limited, a company located in the United States to control the licencing of his company's designs and the trade mark ALCHEMY although subsequently set up their own company to do so in 1996. Mr Kayson refers to the licences granted, details of which are set out in exhibit GK4A, showing that four had been agreed in the United Kingdom for a small number of specific goods, although no dates are given. He also refers to exhibit GK4B which is an extract from an American magazine "The Licencing Book" which contains a reference to ALCHEMY but as it is dated after the relevant date and the circulation is not known, no weight can be given to this exhibit. Mr Kayson says that his company has also been commissioned to design products for sale under the ALCHEMY name.

Mr Kayson next refers to his company's turnover under the trade mark, which he says is difficult to say with certainty, but estimates this to be no less than £17,000,000, and goes on to list the annual turnover from 1989 which for the years prior to the relevant date ranged between £1,000,000 and £1,800,000. He says that in addition, he estimates that his company has derived approximately £150,000 from licencing. He also estimates that between £750,000 and £1,000,000 has been spent by his company in advertising and promoting goods under the ALCHEMY name, and that between £500,000 and £750,000 has been spent by licensees. He says that part of this expenditure included the placement of advertisements in newspapers and magazines, and he gives the names of the publications in which they appear. He refers to exhibit GK5 which consists of copies of the relevant part of publications such as "Back Street Heroes", "Kerrang", "Metal Hammer" which contain advertisements for a range of mostly jewellery and T-shirts for sale under the ALCHEMY "metal-wear" mark and dating from before the relevant date. Other examples from publications such as "Tableware International", "Pewter Review" are dated after the relevant date and cannot be given any weight. The remainder of the exhibit consists of copies of advertisements similar to those that appeared in the publications and cover the same range of goods.

He goes on to set out general details of the events at which ALCHEMY goods have been shown, including a number of trade shows. Mr Kayson says that his company's products are supplied to over 2,000 independent stores and multiples in the United Kingdom, and sold through entertainment and leisure organisations. He returns to the licencing of the mark which he says at the end of 1990 included a licence granted for wall hangings, an example of which is shown at exhibit GK5A, and says that his company had been looking to expand further to include the type of goods contained within the application which he says would be a natural progression from their other goods such as tableware.

He says his company has promoted and expanded its range of products to represent a Gothic theme. He refers to exhibit GK6 which consists of a copy of a leaflet advertising the applicants' goods which Mr Kayson says "have a distinctly Gothic feel about them" (although there is no reference to Gothic in the leaflet) which Mr Kayson says will make confusion inevitable, or people will assume some connection with his company, and he gives one instance when he says this happened. He goes on to give his opinion on the likely consequences for his company should the application be registered. He concludes by referring to exhibit GK7 which consists of a Manchester United merchandise brochure which he says contains items such as soft furnishings, bedding, curtains and wall coverings not usually associated with football, which he says demonstrates that it is not unusual for the owner of a trade mark to be connected with goods outside of its own area of expertise.

Applicants' evidence

This consists of two Statutory Declarations. The first dated 3 December 1996 was made by Peter Soar who is a Director of the applicants' company, a position he has held for thirteen years.

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Mr Soar begins by referring to the trade mark application and the opposition filed against it. He says that his company started producing and selling the goods covered by the specification of the application in 1994, and refers to exhibit PS1, which is a copy of a promotional brochure from Spring 1994 produced by his company for their new collection of fabrics and wallpapers, including the ALCHEMY range, and is the same brochure referred to at exhibit GK6 in the opponents' evidence. Mr Soar goes on to set out his company's turnover under the trade mark ALCHEMY, all of which post date the relevant date. He continues saying that he has not encountered any instances of confusion between the goods of his company and those of the opponents sold under the ALCHEMY mark.

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Mr Soar next refers to the declaration filed by Geoffrey Kayson as part of the opponents' evidence. He comments on specific paragraphs from that declaration saying that none of the goods referred to are the same or similar to the products his company sells under the ALCHEMY trade mark, and gives his view on the significance of the turnover and advertising shown for the opponents. Mr Soar explains why, in his opinion, the goods of the opponents are aimed at a very different market to his company's goods, and to illustrate this refers to the various means used, and events attended by the two companies to promote their goods. He refers in particular to paragraph 15 in which he says Mr Kayson seems to admit that the goods are not similar, and comments on the intentions of the opponents to expand into the goods covered by the application.

25

Mr Soar continues referring to the statement by Mr Kayson that his company's goods sold under the ALCHEMY name are of a similar "Gothic" style to those of the opponents, and to the instance of confusion cited by Mr Kayson. Mr Soar disagrees that the goods represent a similar lifestyle and comments that no evidence of this confusion has been produced. He goes on to refer to his company's existing registration, number 1559540 which is registered in Class 27 for the same mark as now applied for, and that he was surprised that this had not been objected to by the opponents in view of Mr Kayson's comments on their intentions.

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Mr Soar goes on to comment on paragraph 18 of Mr Kayson's declaration in which he outlined the likely consequences for the opponents should the application being registered. Mr Soar gives his opinion on the extent of protection the opponents can claim from their registrations. He refers to exhibits PS2 and PS3 which consist of details of other ALCHEMY marks applied for or registered in the names of companies other than the opponents (some applied for after the relevant date), and a list of company names dated 11 June 1996 incorporating the word ALCHEMY.

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Mr Soar next goes to the declaration filed by Stephen Waine as part of the applicants' evidence, a summary of which is set out later in this decision. He comments on the investigations conducted by Mr Waine and gives his view on the findings.

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Mr Soar returns to the declaration by Mr Kayson, and to the comparison drawn between the opponents' business and that of Manchester United Football Club in paragraph 19. He draws a distinction between the size of the club and the opponents' business and gives reasons why he

believes such a comparison is not possible or appropriate. Mr Soar goes to the statement by Mr Kayson that allowing registration of the application would prevent the opponents from extending their product range, and refers to a number of trade marks registered for the word ALCHEMY which would prevent the opponents expanding their product range into areas which he says would be a natural evolution of the opponents' current product range. He concludes by giving his opinion on the consequences for the opponents should his company's application being registered.

The second declaration is dated 1 December 1996 and comes from Stephen Waine, an employee of Castles, the applicants' trade mark attorneys.

Mr Waine begins by referring to the Statutory Declaration executed by Geoffrey Kayson summarised earlier in this decision, and in particular to Mr Kayson's statements that the trade mark ALCHEMY is associated with the opponents who would suffer damage to their reputation if the applicants also used the mark. He says that he therefore carried out a search of the United Kingdom trade marks register to identify other ALCHEMY marks in the ownership of companies other than the opponents., the results of which are shown at exhibit SMW1, and are the same as shown at exhibit PS2 to Mr Soars' declaration. Mr Waine refers to the fact that a number of these are shown as registered and for a varied range of products, and that his investigations revealed that most of these marks are in use.

Mr Waine goes on to refer to a search he carried out of the United Kingdom Limited Companies Index, the results of which are shown at exhibit SNW2. This consists of a list dated 4 October 1996 detailing company names incorporating the word ALCHEMY, and copies of official documentation for these companies dating from 1995 and 1996. He continues giving a list of company names, and the area of trade in which these companies are involved which he says was either confirmed by the company itself or revealed by his investigations. Mr Waine says that the results of his investigations show that the name ALCHEMY is used for a wide range of goods and services, some of which could be areas into which the opponents may wish to extend their product range, and in one instance covered goods in which the opponents are already trading. He concludes by saying that in his opinion the investigations have shown that the application should not be refused.

Opponents' evidence in reply

This consists of a Statutory Declaration dated 22 January 1998 by Geoffrey Kayson, who also made the earlier declarations filed by the opponents.

Mr Kayson says he has read the declaration of Peter Soar filed as part of the applicants' evidence, and goes on to comment on the contents. He first refers to paragraph 5 and gives further details in response to Mr Soar's views on the similarity of the applicants' and the opponents' goods, and the reputation the opponents could claim from their turnover. He refers to exhibit 1 which consists of a copy of a German publication "Madchen" which contains an article on "Gothic Girls" and refers to ALCHEMY jewellery from the opponents. The magazine is dated 26 November 1997 which is after the relevant date and there is no indication that it was available in this jurisdiction, and consequently, cannot be given any weight.

Mr Kayson goes on to refer to paragraphs 6,7 and 8 of Mr Soars' declaration which challenges

the opponent's assertions that the respective goods would be aimed at the same type of customer and markets. He refers to exhibits 2 and 3 which consists of a copy of a magazine/catalogue called "International Male" dated "Holiday 1997" and a copy of a catalogue from Past Times, dated "Summer 1997", which Mr Kayson says illustrate that jewellery, furnishings etc are sold alongside each other, in the same markets and to the same type of customer.

He next says that his company make several products such as chess sets and cutlery which retail at between £250 and £500 each, which he says indicates that his company is already active in the same market as the applicants. He refers to exhibits 4A and 4B which consist of a copy of a publication called "The Gift Directory", dated Autumn 1997 and containing an advertisement for the opponents' "Gothic" jewellery, chess set and pewterware, and a catalogue "Gifts today, dated January 1998 and containing a feature on pewter goods including the opponents' "Spawn" cutlery. Mr Kayson gives his view on the persons likely to read these publications. He goes on to refer to exhibit 5 which is another copy of "Gifts today" dating from June 1997 and containing similar advertisement for pewterware as mentioned earlier.

Mr Kayson next refers to paragraph 8 of Mr Soars' declaration, refuting the claims that his company's products represents a lifestyle based upon a horror movie genre, saying that they would not look out of place on a dressing table of a person likely to buy the applicants' goods. He goes to paragraph 11 in which Mr Soar criticised the comparisons made by the opponents between their company and Manchester United Football Club which he says was made as an illustration of how product ranges expand. Mr Kayson next refers to paragraph 12 of Mr Soar's declaration in which he referred to the applicants' existing registration for ALCHEMY in Class 27 covering wallpaper, stating that his company considers each application on its merits and judge whether the goods are likely to conflict with his company's present or intended business activities. Mr Kayson finally refers to the declaration of Stephen Waine filed as part of the applicants' evidence, commenting on the results obtained in the search of the companies register, and to the conclusions drawn by Mr Waine.

No further evidence was filed by either party.

Decision

In the grounds of opposition the opponents stated that the mark applied for was not distinctive nor adapted to distinguish the applicants' goods although did not refer to a particular section of the Act. At the hearing Mr Ackland confirmed that this was a reference to Section 9 of the Act, but that this ground was not being pursued. I am therefore not required to give this ground further consideration and turn to consider the grounds under Sections 11 and 12 of the Act, which read as follows:-

11 It shall not be lawful to register as a service mark or part of a service mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

12.-(1) Subject to the provisions of subsection (2) of this section, no service mark shall be registered in respect of any services or description of services that is

identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of the same services, the same description of services, or goods or description of goods which are associated with those services or services of that description.

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The reference in Section 12(1) to a near resemblance is clarified by Section 68(2)(b) of the Act which states that references in the Act to a near resemblance of marks are references to a resemblance so near as to be likely to deceive or cause confusion.

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The established tests for objections under these provisions are set down in Smith Hayden and Company Ltd's application (Volume 1946 63 RPC 101) later adapted, in the case of Section 11, by Lord Upjohn in the BALI trade mark case 1969 RPC 496. Adapted to the matter in hand, these tests may be expressed as follows:-

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Under Section 11 Having regard to the opponents user of the mark ALCHEMY is the tribunal satisfied that the mark applied for ALCHEMY if used in a normal and fair manner in connection with any goods covered by the registration proposed will not be reasonably likely to cause deception and confusion amongst a substantial number of persons?

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Under Section 12(1) Assuming user by the opponents of their mark ALCHEMY in a normal and fair manner for any of the goods covered by the registrations of those marks, is the tribunal satisfied that there will be no reasonable likelihood of deception amongst a substantial number of persons if the applicants use their mark ALCHEMY normally and fairly in respect of any goods covered by their proposed registration?

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In determining the likelihood of confusion I can place no reliance upon the fact that there are other ALCHEMY marks sitting on the register, or that there are companies registered with the word ALCHEMY as part of their trading name. The fact that a mark is registered is not evidence that it is being used (see BECK KOLLER (1947) RPC 76), and the evidence filed in which it is claimed that there are companies trading in similar areas to the opponents and the applicants is too inconclusive in its facts to have any bearing on the outcome of these proceedings.

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With this in mind I propose to take the Section 12(1) ground first. The marks are identical so the matter falls to be decided by a comparison of the respective goods and for this purpose I have regard to the established tests for comparison, in particular, the criteria in the JELLINEK trade mark case (1946) RPC 59. Although decided under the 1994 Trade Marks Act, I also note the TREAT trade mark case (1996) RPC 9 in which Jacob J acknowledged the test for *similar* goods under the Directive was essentially the same as under the 1938 Trade Marks Act.

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As the application is in a different goods class to the opponents' registered marks, the best that the respective goods can be is of the same description. The applicants are seeking to register their mark in respect of textiles and a range of textile goods and taking all of the evidence into account I can see no conflict with the goods covered by the opponents' registrations in Classes 6 and 14 and do not propose to give these registrations any further consideration.

45

If any clash in the goods exists it is most likely to be in respect of the opponents' registration in Class 25. The application covers a range of specified textiles and textile goods which insofar as the clothing contained within the opponents' registration may be made from textile would be of the same physical nature. However, the specific goods mentioned in the applicants' specification, namely, "bed clothes, bed covers, bed linen, curtains, table covers, trimmings, textile blinds, curtain holders of textile materials, brocades" are clearly for a different purpose and from different trade channels and are not, in my view, goods of the same description.

The specification of the application also includes a number of general descriptions, such as "textiles", "fabrics", "goods made wholly or principally of textiles and goods made wholly or principally of fabric", which would cover goods for making up into clothing. Textile and clothing manufacture are closely allied industries and I am aware that certain clothing retailers, such as bespoke tailoring establishments, trade in clothing and clothing fabrics, although I have no evidence that this is the position with the clothing trade in general. But given this and my previous comments I come to the conclusion that textiles and fabrics for making into clothing would be considered goods of the same description as clothing.

However, the applicants have specifically excluded textiles for use in the manufacture of clothing from their list of goods. Mr Ackland submitted that this exclusion had no practical effect as textiles not specifically intended for clothing are still capable of being so used. That may well be the case, but I cannot accept this submission. Many goods are capable of being used for purposes other than for which they were intended or made and it would be nonsensical to have to consider goods made for different purposes as being of the same description simply because one is capable of being used as, or in place of the other. An exclusion has the effect of removing certain goods from the scope of a specification, and in this case the exclusion removes textile and fabric goods for use in the manufacture of the goods for which the opponents' mark is protected.

Textiles and fabrics for non-clothing purposes are manufactured with properties to reflect the circumstances and environment in which they are to be used, and generally would not be suitable for clothing use. In my view, textiles and fabrics for household goods are as different in nature to textiles and fabrics for clothing as toffee flavoured desert sauces are to toffee flavoured spreads. There can be no doubt that the respective goods are for different purposes and at best meet in the manufacturing end of the channels of trade. Consequently, I come to the view that the goods of the application are not of the same description, and that the ground founded under Section 12(1) fails accordingly.

I turn next to the grounds based on Section 11 of the Act.

The evidence shows that the opponents have mostly traded under the mark ALCHEMY METAL-WEAR, although they have occasionally used ALCHEMY on its own, or in conjunction with other matter, usually terms descriptive of the goods, eg, ALCHEMY LEATHER WEAR, ALCHEMY BATTLE DRESS. In all but a very few cases the marks are represented in a Gothic-style script. The applicants have applied to register ALCHEMY in plain block capitals, which from the evidence is exactly the form in which they use it. That the opponents have primarily traded under the mark ALCHEMY METAL WEAR reflects that their main area of business is centred in pewterware, and more specifically, jewellery. Over time this trade has expanded into other goods including a limited range of textile articles such as T-shirts, patches for clothing and

flags, although metal-wear and metal-ware appears to remain their core business.

5 The applicants argue that the opponent's choice of publications in which to advertise their goods indicates that they operate in a different market to the one in which they trade, and that the respective goods are aimed at different types of customers. I can see no reason why a reader of the magazines in which the opponents advertise would not read the magazines in which the applicants advertise. I do not claim to be representative of the public at large but can only say that I have read editions of the magazines in which both parties have advertised their goods.

10 The opponents place considerable reliance upon their use of their ALCHEMY mark in connection with an item described in their catalogue as "battle dress", a type of flag, which they say illustrates use on goods covered by the applicants' specification. They also say that by natural progression they would in time have moved into a trade in textile goods such as table cloths. The International Guide to The Classification of Goods and Services shows that flags are proper to
15 Class 24, the class in which the application falls, and insofar as it is a textile article would be covered by the terms "textiles; fabrics; goods made wholly or principally of textiles; goods made wholly or principally of fabric" contained within the applicants specification.

I am satisfied that the opponents have a significant reputation in their particular niche market for
20 metal-wear, and less so for pewter ware. However, there is little or no evidence to show use beyond these goods and it is not possible to determine the extent of their trade in non-metal goods from the information provided. The evidence does, however, establish that the opponents used the mark ALCHEMY in respect of "battle dress" or "flags" before the applicants commenced their trade under the mark, and while it is true to say that this item would be covered by the
25 specification of the application, there is not in my view any real commercial conflict, nor has there been any suggestion that there has been confusion in the marketplace although I must bear in mind what the applicants will notionally be able to do if the application is registered. Consequently, in my view, there is a case for restricting the applicants' specification so as to remove these particular goods and more accurately reflect the use the evidence shows them to have made of
30 the mark.

In conclusion, therefore, if the applicants file a Form TM21 within one month from the end of the appeal period to reduce their specification to:

35 "Materials for soft furnishings; bed clothes, bed covers, bed linen, curtains, table covers, trimmings, textile blinds, curtain holders of textile materials, brocades; all included in Class 24; but not including any such goods for use in the manufacture of clothing."

40 I will, in the event of no appeal, allow this application to proceed to registration. If the applicants fail to file a TM21 within one month from the end of the appeal period the application will be refused in its entirety.

5 The opponents have been essentially successful in these proceedings to the extent that if the application proceeds they will have to restrict their specification as suggested above. In the event that the application is amended and proceeds, I order the applicants to pay to the opponents the sum of £500. If the applicants do not amend their application it will be refused and the award of costs increased to £835.

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Dated this 4 Day of August 1999

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M Foley
15 **For the registrar**
The Comptroller-General