

O-294-06

TRADE MARKS ACT 1994

**IN THE MATTER OF AN INTERLOCUTORY HEARING
IN RESPECT OF REGISTRATION NO. 2152708
IN THE NAME OF BRANDS HOLDINGS LIMITED**

AND

**AN APPLICATION FOR REVOCATION
UNDER NO. 82302 THERETO
BY BSA COMPANY LIMITED**

TRADE MARKS ACT 1994

IN THE MATTER OF an Interlocutory hearing in respect of registration No. 2152708 in the name of Brands Holdings Limited and an application for revocation under No. 82302 thereto by BSA Company Limited

Background

1. Registration No. 2152708 for the trade mark BSA by R2 stands in the name of Brands Holdings Ltd. On 27 October 2005 an application for revocation of the registration was filed by BSA Company Ltd. In line with the provisions of rule 31(3), the registered proprietor was allowed until 4 February 2006 to file a Form TM8 and counter-statement along with evidence of use (or reasons for non-use) if it wished to oppose the application for revocation.

2. On 1 February 2006, Barlin Associates, on behalf of the registered proprietor filed a Form TM8 and counter-statement along with a witness statement. Following its receipt, the trade marks registry examined the documentation and subsequently wrote to the registered proprietor advising it of the preliminary view that it was minded to deem the opposition to the application for revocation as having been withdrawn. The letter, dated 6 February 2006, stated:

“The Registrar has considered the evidence filed and it is his preliminary view that it does not overcome the burden placed on the registered proprietor under the provisions of Section 100 of the Trade Marks Act 1994.

The evidence you have provided does not show evidence of use for the trade mark as registered on the goods for which it is registered, nor have you provided any dates of actual use within the periods of contention. The assertion within the Witness Statement, that the mark has been used within the periods stated is insufficient.

The Trade Marks Registry is minded to deem your clients opposition to the application for revocation as having been withdrawn on the basis that no defence has been filed. This is in accordance with Rule 31(3).”

3. The registered proprietor requested to be heard and a hearing was arranged to take place before me on 5 May 2006. In the meantime, the registered proprietor had filed a Form TM25 seeking to alter the trade mark from “BSA by R2” to “BSA”. By way of a letter dated 20 April 2006, the registered proprietor then requested postponement of the hearing to await the outcome of the request to amend the trade mark. The applicant indicated that it was not prepared at that stage to join the registered proprietor in seeking a postponement but indicated that further consideration would be given to the request if certain documentation was copied to them. The registrar declined to postpone the hearing.

4. On 3 May 2006, a letter was received by fax from Forrester Ketley & Co, representing the applicants in these proceedings. Attached to the letter was a copy of a letter from Barlin Associates dated 28 April 2006 indicating that the parties were in negotiations and to enable these to be settled, postponement of the hearing was jointly sought. Forrester Ketley's letter however indicated that if they did not withdraw the application for revocation within a period of two weeks, the hearing should be re-appointed.

5. The application was not withdrawn and a hearing was re-appointed to take place before me on 17 August 2006. By way of a letter dated 10 August, Barlin Associates requested postponement of the re-appointed hearing. The reasons for the request were said to be so that negotiations could be concluded between the parties and because Barlin Associates were due to move offices on Thursday 16 August (sic). Forrester Ketley indicated they did not consent to the request. The hearing went ahead.

Registered proprietor's evidence

6. This consists of a witness statement of Paul John Kelly dated 1 February 2006 and exhibit PJK/1. For reasons that will become apparent, I indicate here that four copies were filed with the registrar, two by fax followed by two original hard copies received through the post-in each case the witness statements and the exhibits are identical and the pages making up each of the hard copies are securely bound at the top left hand side.

Skeleton arguments

7. The applicant's skeleton arguments state:

“1. The Applicant concurs with the Registrar's preliminary opinion that the evidence of use filed by the Proprietor with its form TM8 and Counterstatement is not sufficient to constitute a proper defence to the application for revocation.

2. The evidence filed by the Proprietor consists exclusively of a witness statement made by Paul John Kelly, the Proprietor's Trade Mark Attorney, and photographs and drawings of garments and garment labels bearing the mark BSA. There is no evidence to demonstrate that these garments were offered for sale or that any sales of these garments took place. Moreover, even if it is accepted that these garments were offered for sale or sold, there is no evidence to demonstrate that this took place during the relevant periods.

3. In his witness statement Mr Kelly asserts that the material attached as the exhibits to his statement “relates to sales of product during the period claimed in the Application for Revocation”, yet no explanation is provided as to how Mr Kelly is a witness to this. As the Trade Mark Attorney of the Proprietor, it has to be assumed, in the absence of any evidence to the contrary, that Mr Kelly has no first hand knowledge of his client's activities in this regard.

4. The Hearing Officer's attention is drawn to the decision of Mr A (sic) Knight in the matter of CARTE BLEUE TRADE MARKS ([2002] RPC 31) in which Mr Knight states that:

“taking the Act and the Rules together, they seem to me to envisage that, when challenged there is an onus upon the registered proprietor at the outset to provide some evidence that the trade mark the subject of the application for revocation was in use during the relevant period. In that connection, in particular I note that the word “show” is used in section 100 which suggests in revocation proceedings evidence must be more than mere assertion that the trade mark in question has been used, but must be actual evidence which shows how the trade mark is used.”

5. This view has been reaffirmed in the decision of Mr Justice Kitchen in the matter of Almighty Marketing Limited v Milk Link Limited (“the MOO JUICE case”-[2006 EWHC 2584 (Ch)) in which it is stated that:

“the requirement laid down by rule 31(3) is not therefore satisfied by a proprietor who simply asserts, through a relevant witness, that the trade mark has been used. Such a bare assertion would provide no evidence as to the actual use made by the proprietor.”

and that:

“The purpose of the evidence under rule 31(3) is to establish that the proprietor has an arguable or viable defence to the attack mounted upon the registration and to provide the applicant for revocation with sufficient information to enable him to investigate the use of the mark upon which the proprietor proposes to rely.”

6. In the latter case the evidence of use was considered to be sufficient, but it is noteworthy that the evidence included a witness statement made by the original proprietor of the trade mark registration in question, and he was deemed to be “a person who is qualified to give evidence of use” as “he was the person responsible for using the Trade Mark at the relevant time”. No such statement has been filed in this case. Unlike the evidence filed in the MOO JUICE case, which, although brief, showed “when the mark was used, by whom it was used, how it was used and in relation to which product it was used”, the evidence in the present case provides absolutely no indication as to when the mark was used or by whom the mark was used.

7. The “evidence of use” filed in this case is no more than an assertion that the Mark has been used, is not sufficient to establish that the Proprietor has an arguable defence, and certainly does not provide the Applicant with sufficient information to investigate the claimed use. The Applicant therefore submits that the “evidence of use” filed by the Proprietor is not sufficient to satisfy the requirements of Section 100 of the Trade Marks Act 1994, and the Registrar should exercise her discretion and treat the Proprietor's opposition to the Application as having been withdrawn.

8. In the event that the Hearing Officer is minded to accept the evidence filed as demonstrating use within the relevant period, the Applicant asks the Hearing Officer to note that the evidence relates only to alleged use of the mark BSA, and not the registered mark BSA by R2. The Applicant reiterates the argument set out in paragraph 2 of its Statement of Grounds, that as the element “by R2” possesses distinctive character, and as the addition of these elements significantly alters the identity of the mark, use of the mark BSA is not “use in a form differing in elements which does not alter the distinctive character of the mark in the form in which it is registered”. Thus, any use of the mark BSA made by the proprietor within the relevant period does not fall within the scope of Section 46(2) of the Trade Marks Act 1994.

8. The Applicant reiterates its request for an award of costs in its favour.”

8. The registered proprietor’s skeleton arguments begin with a brief introduction and submissions on the dates of the relevant five year periods. They go on to say:

10. On the 27th March 2006, Messrs Barlin Associates, acting for Brands, filed a TM25 seeking the alteration of the Mark as registered pursuant to section 44(2). This application apparently has been overlooked by the registry. As a matter of logic, it must be that the mark that forms the subject of an application for revocation for non-use has a fixed and determinable form. That, by necessity, must mean that there should be no outstanding requests to alter that mark, because if any such alterations were allowed, then the proper examination of genuine use cannot be performed, and so render invalid any application for revocation for non-use.

11. Therefore, the present application for non-use ought to be stayed pending the final determination of the application for alteration so that the correct form of the Mark in question may be determined and a proper, valid, analysis of genuine use performed.

Genuine Use in the Relevant Periods

12. Contrary to the registry’s conclusion that no genuine use was evidenced in the relevant periods (because mere assertions are insufficient), in fact, the ultimate page of exhibit PJK1 was a copy of a letter from the former registered proprietor, Pan Worlds Brands Ltd, testifying to sales between 2001 and 2004. This is *prima facie* evidence that is sufficient to overcome the preliminary evidential hurdle that accompanies the filing of the TM8 and Counterstatement. To discount this evidence would require the register to hold that Mr Harvey Basger, the author of the relevant letter, was lying. At this preliminary stage, that is not a conclusion to which the registry can properly reach.

Use of an Acceptable Variant

13. The Mark as registered is BSA by R2. The Mark as used is BSA.

14. It is submitted that this is an acceptable variant as the “by R2” element was purely descriptive of the then registered proprietor. The assessment of whether or not a variant is acceptable is dependant upon the perception of the relevant

public. In this case, it would be wrong of the registry to impose its view on this issue without giving the registered proprietor an opportunity to adduce evidence on this matter. There clearly is a conflict of fact involved, and in such circumstances, it is wholly inappropriate to grant what in effect amounts to summary judgment. This is particularly so when one is depriving a party of a property right. Such a course of action should only be taken after a proper consideration of all the potentially relevant evidence. To do otherwise is contrary to the provisions of Article 1 of the Protocol to the Human Rights Act 1998.

15. Secondly, and in any event, variants as different from the appropriate registered mark as in the current situation have been held to be acceptable. For example, in the case O-072-62 (15th March 2006), it was opined *obiter dicta* that REMUS UOMO was an acceptable variant for REMUS:

“49. Given my findings above it is not strictly necessary for me to consider the other earlier marks relied on by the opponent however, in case I am found to be wrong, and for the benefit of any appellate tribunal, I go on to consider briefly the objection based on the opponent’s Community Trade Mark No. 260364. The mark is for the words REMUS UOMO in plain block capitals. For those, like myself, with some knowledge of Italian, the word UOMO would be recognized as meaning “man” and therefore non-distinctive for the goods as registered. Given, however, that the average British person is notorious for his poor grasp of foreign languages, to those without such knowledge the word is likely to be meaningless. I have already found that REMUS is a relatively well know name and, whilst I do not think the presence of the word UOMO in the mark as a whole would be overlooked, it would either be seen as nondistinctive for the goods in suit, or would not be easily be recognised or pronounced for those without specific knowledge of Italian. The earlier trade mark, when considered as a whole, is visually and aurally similar to the marks in suit. I consider there to be a likelihood of confusion between the respective marks.”

16. Similarly, in the present case, the variant BSA ought to be held as an acceptable variant to BSA by R2.

17. Finally, if the registry is still minded to hold that an acceptable variant has not be put to genuine use, then Brands hereby applies to amend its Counterstatement in the following terms, namely:

“2A. In the alternative, there are is a proper reason for not using genuinely the Mark as registered, namely that it would have been inappropriate for the first, and each subsequent, assignee to use a mark that contained the company name of the original applicant for the Mark.”

18. This amendment ought to be allowed, as any prejudice that might be suffered by the applicant (but none realistically would be suffered), could be compensated by a suitable award of costs.

Summary and Conclusion

19. First, this interlocutory hearing is premature, because all proceedings in the application for revocation for non-use ought to be stayed pending the final resolution of the application to alter the Mark in question.

20. Secondly, there is sufficient *prima facie* evidence of genuine use in the relevant periods to allow this matter to proceed to the evidential rounds.

21. Thirdly, there is use of an acceptable variant. If, however, the registry is still minded to find against Brands on this point, then it hereby applies to amend its Counterstatement in order to rely upon proper reasons for non-use, and so this matter ought to proceed to the evidential rounds.

22. Finally, Brands seeks a contribution towards its costs of this interlocutory hearing.”

The hearing

9. The hearing was to consider the registrar’s preliminary view that the evidence filed by the registered proprietor was insufficient to meet the requirements of Section 100 and rule 31(3) and that as a consequence, the opposition to the application for revocation should be deemed withdrawn. The registered proprietor was represented by Michael Edenborough of Counsel. No representative appeared for the applicant although an observer did attend. Written submissions were received from both parties.

Preliminary Issue

10. In his skeleton argument, Mr Edenborough had submitted that the hearing was premature and that the application for revocation should be stayed. Mr Edenborough submitted that the request to alter the trade mark, made by the filing of a TM25 received on 28 March 2006 had apparently been overlooked by the registry. He further submitted that the hearing should be postponed pending final determination of the application for alteration. I dealt with this as a preliminary issue.

11. I asked Mr Edenborough to address me on why he was of the opinion that the application to amend the trade mark had not been resolved. Following a brief discussion, it seemed to me that Mr Edenborough found himself in the somewhat unsatisfactory position of not having been provided with all relevant papers. This is because following receipt of the Form TM25, the registry issued a letter on 3 April 2006 refusing the request for amendment of the trade mark. In response to that letter, the registered proprietor filed further argument in support of its case by way of a letter dated 13 April 2006. Those submissions were considered and rejected in a further letter from the registry dated 19 April 2006, a letter which also indicated that if the registered proprietor wanted to continue with the request for amendment of the trade mark, it should request a hearing.

12. Despite some four months having elapsed since the issue of that letter, the registered proprietor had not requested to be heard nor had it given any other indication that it did not accept the registrar’s decision. Mr Edenborough indicated that he could not abandon the issue as he was without instruction on this point and had

no authority to do so. Neither could he provide any explanation of why the decision to refuse the application was not challenged. In all the circumstances, I indicated that I considered the matter to have been resolved and closed and I therefore declined to postpone the hearing.

13. Referring to paragraph 12 of his skeleton argument, Mr Edenborough then addressed me on the issue of whether the evidence filed by the registered proprietor was sufficient to meet the requirements of Section 100 and rule 31(3). He began to take me through the witness statement and exhibits. He referred me to what he said was a letter dated 12 January 2006. At this point, I interrupted his submissions as it was clear that Mr Edenborough had material in his possession which did not form part of the evidence filed with the registrar in these proceedings there being no such letter within the evidence in my possession, nor, it would seem from paragraph 2 of the applicant's skeleton argument, was it within that evidence copied to the applicant. After a short discussion on its actual composition, Mr Edenborough proceeded to address me on the evidence as filed. I will refer to this as required later in this statement of grounds.

14. Mr Edenborough submitted, correctly, that the evidence filed at this stage in the proceedings does not have to be the full and final defence of the case but instead had to be sufficient to show there to be an arguable case. He then took me to the witness statement of Mr Kelly and submitted that his evidence was firsthand hearsay evidence which was enough to be relied on as evidence of use and which met the requirement to allow the case to proceed to the full evidential stages.

15. Going on to the mark itself, Mr Edenborough submitted that a preliminary conclusion had been reached that deletion of "by R2" from the mark as registered was outside the parameters of Section 44 but that this conclusion had been reached without forming a view of how the public would view the mark and without getting evidence on the point. The registered proprietor maintained the view that the deletion was acceptable and this was a matter of fact not law. If not allowing matters to continue, the tribunal, he said, would have to be clear that the registered proprietor could not file any evidence, at a later stage, to support its case. The question of how the public would view the change was a fundamental issue of fact and that therefore section 46(2) came into play in these proceedings. He argued that I should not find against the registered proprietor at this stage on these grounds. Both the High Court and County Court would be slow to reach a conclusion at summary judgement stage, he said.

16. That essentially completed Mr Edenborough's submissions however there is one further issue which I mention for completeness. Mr Edenborough began to address me on the apparent request in his skeleton argument to amend the counter-statement. I interrupted his submissions and indicated that I was not going to consider any application for such an amendment. The applicant was not represented at the hearing but, having had sight of the registered proprietor's skeleton argument had indicated in a letter dated 15 August that this was an issue which did not fall for consideration at the instant hearing. Even if a request for amendment was an issue that I could have considered, I refused to deal with it on the basis that I did not consider an application to have been properly made. There is a clear and published practice on requests for such amendments, and a bare sentence in a skeleton argument prepared for a hearing on a separate issue did not comply with that practice.

17. Following the hearing, I issued a letter dated 18 August 2006. The letter stated:

“Having considered all the submissions made, my decision is to uphold the registrar’s preliminary view. I was not persuaded that the evidence, as filed, was sufficient to discharge the onus placed on the registered proprietor.

In his skeleton argument, Mr Edenborough had submitted that the hearing was premature and that the application for revocation should be stayed pending final resolution of the registered proprietor’s request to amend his mark. I do not agree. As I indicated at the hearing, the application to amend the mark had been considered and rejected (and indeed further considered and rejected, following the filing of further submissions by the registered proprietor’s attorneys) as long ago as April 2006. No challenge to that finding had been made in the ensuing four months. On that basis I considered the matter had been resolved and was closed.

Also by way of Mr Edenborough’s skeleton argument, the registered proprietor sought to amend its counter-statement. I indicated that there is a published practice on such applications. In my view the application to amend was not properly made as it did not comply with that published practice. That being the case, I refused to consider the application.

The consequence of my decision is, subject to any appeal, the registered proprietor’s opposition to the application will be deemed to have been withdrawn.”

Decision

18. These proceedings are subject to the provisions of rule 31 which applies to actions for revocation of a registration on the grounds of non-use. The rule states:

“**31.**(1) An application to the registrar for revocation of a trade mark under section 46, on the grounds set out in section 46(1)(a) or (b), shall be made on Form TM26(N) and be accompanied by a statement of the grounds on which the application is made.

(2) The registrar shall send a copy of Form TM26(N) and the statement of grounds on which the application is made to the proprietor.

(3) The proprietor shall, within three months of the date on which he was sent a copy of Form TM26(N) and the statement by the registrar, file a Form TM8, which shall include a counter-statement, and be accompanied by-

- (a) two copies of evidence of use of the mark; or
- (b) reasons for non-use of the mark,

otherwise the registrar may treat him as not opposing the application.

(4) The evidence of use of the mark shall –

(a) cover the period of non-use alleged by the applicant on Form TM26(N), or

(b) where the proprietor intends to rely on section 46(3), show that use of the mark commenced or resumed after the end of that period but before the application for revocation was made.

(5)

(6).....”

19. Section 100 is also relevant and states:

“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.”

20. The combined effect of section 100 and rule 31 is that it is a matter for the proprietor to file evidence of use of his mark (or proper reasons for non use) with a Form TM8 and counter-statement within the period allowed, if he wishes to defend his registration which has become subject to an application for revocation on the grounds of non-use.

21. In accordance with rule 31(3) the registered proprietor was allowed until 4 February 2006 to file a Form TM8, counter-statement and evidence of use (or reasons for non-use). The registered proprietor filed a Form TM8 together with a counter-statement in good time and denied that there had been no genuine use or that there were no proper reasons for non-use.

22. In his skeleton argument, Mr Edenborough made comments about the information on the application for revocation particularly in respect of a lack of precision in relation to the relevant periods and indicated that this meant that the application was fatally flawed. I do not think this to be the case.

23. The dates typed on the Form TM26(N) as filed have been subject to manuscript alteration - alterations which regrettably bear no indication of origin. However, from a review of the trade mark registry file it is clear to me that the alterations were made by a member of the registry staff. Neither is there a record of when the alterations were made as should have been the case nor is there any record that the alterations were made, as is likely, following discussions having taken place between the registry and the applicant. That said, it is clear from the applicant’s statement of grounds that it seeks revocation under both section 46(1)(a) and (b). It states it seeks revocation to take effect “from the date of completion of the registration procedure, i.e 28 July 2000”. In the alternative it seeks revocation “from a date 5 years after the completion of the registration procedure, i.e. 28 July 2005”.

24. The registration procedure was completed on 28 July 2000. The application for revocation was received on 27 October 2005. Under section 46(1)(a), the relevant five year period is therefore 29 July 2000 to 28 July 2005. 28 July 2005 is the date that has

been entered in manuscript on the Form TM26(N) as relating to section 46(1)(a) and is the date given by the applicant in its statement of grounds.

25. Also entered in manuscript on the Form TM26(N) is the date 24 October 2005. Assuming this is the date from which the applicant seeks revocation under section 46(1)(b), then the relevant period under this section is 24 October 2000 to 23 October 2005.

26. Also filed with the Form TM8 and counter-statement was a witness statement of Paul John Kelly. Mr Kelly's evidence is not extensive. He says he is a Trade Mark Attorney in the employ of the registered proprietor's trade mark agents and that the information he gives has been provided to him by the registered proprietor's predecessors. He makes no claim to use of the mark as registered, BSA by R2. Rather, he makes a claim under section 46(2) that the registered proprietor's predecessors have used the mark BSA which, he says, differs in elements that do not alter the distinctive character of that registered mark. He states that this mark has been used "in the United Kingdom in relation to a range of articles of clothing during the relevant periods".

27. Attached to Mr Kelly's witness statement is a single exhibit. The exhibit consists of 19 pages. These 19 pages can be broken down as follows:

Pages 1, 18 and 19-all are undated. They appear to show various swing tag labels. Each of them appear to bear the letters BSA, albeit that on page 18 the letters are shown in mirrored form.

Page10-undated. The page is headed "labelling" and appears to show 5 alternative labels. I cannot read what might appear on the fourth of these labels but the others show the letters BSA.

Pages 2,3, 4, 5, 6, 8 and 9. -all are undated. These appear to be design sheets showing the style of various casual tops. The garments are decorated with a variety of words and designs which include the letters BSA either on the chest or, in some cases, on tabs on the sleeve.

Page 7-undated. On headed paper bearing the registered proprietor's company name and address etc, this appears to show a set of 5 neck labels. The fourth is such a poor photocopy that I cannot make out whether anything appears on it but the others appear to bear the words "A NEW VISION".

Pages 11, 12, 13, 14 and 17- all undated. These appear to be photocopies of parts of various garments bearing neck labels. The label at 14 is unreadable but the others show the letters BSA, some with other matter.

Pages 15 and 16-these pages appear to contain photocopies but I cannot be certain of what.

28. Mr Kelly says in his witness statement, that the mark for which use is claimed is use of a mark which does not differ in its distinctive elements from the mark as registered. That claim is noted, however, in my opinion the issue for determination at

this stage is whether the registered proprietor has shown himself to have an arguable defence to the allegation of non-use of a mark: only if he is found to have discharged the obligation on him to show use of a mark does the question of whether that mark differs in elements which do not alter the distinctive character of the mark in the form in which it was registered fall to be determined.

29. I bear in mind the words of Mr Justice Kitchen in *Almighty Marketing Limited v Milk Link Limited (MOO JUICE)* [2006] RPC 18 where he said:

“To my mind the requirement laid down by rule 31(3) is not therefore satisfied by a proprietor who simply asserts, through a relevant witness, that the trade mark has been used. Such a bare assertion would provide no evidence as to the actual use made by the proprietor. The evidence must provide a sufficient explanation of how the mark has been used for the tribunal to conclude that the proprietor has an arguable defence to the application.”

30. He went on to say:

“The purpose of the evidence under rule 31(3) is to establish that the proprietor has an arguable or viable defence to the attack mounted upon the registration and to provide the applicant for revocation with sufficient information to enable him to investigate the use of the mark upon which the proprietor proposes to rely.”

31. Mr Kelly says that he has been given the information in his witness statement by the registered proprietor’s predecessors and says the mark has been used by them but he gives no details of who those predecessors are or may have been. He is the registered proprietor’s trade mark attorney but gives no indication of what, if any, connection he might have with those predecessors. He does not indicate that he has access to any of the current or previous companies’ books or records. There is no indication that he was or is in any way responsible for the use of the mark either in the relevant period or subsequently.

32. Whilst photocopies of certain labels are exhibited with the presumed intention to show the mark has been used, they fail to do so. There is no evidence which shows whether any use made was internal or external use. There is nothing to show when the mark might have been used and whether any such use was made on a single occasion, on an intermittent basis or throughout the relevant period. There is no evidence as to where, how or by whom the mark may have been used. There is no indication of any level of use. There is no corroborative evidence from third parties.

33. Taken as a whole, I was not satisfied that the registered proprietor had discharged the onus on it to show that it had an arguable defence to the allegation of non-use of the mark. Neither is there anything in the evidence that would provide the applicant for revocation with any information to enable him to investigate the use of the mark upon which the proprietor proposes to rely.

34. I therefore upheld the registrar's preliminary view to deem the opposition to the application for revocation to have been withdrawn.

Dated this 18 day of October 2006

**Ann Corbett
For the Registrar
The Comptroller-General**