

O-032-04

**TRADE MARKS ACT 1994  
IN THE MATTER OF REGISTRATION No 2199992  
IN THE NAME OF SMITH & PAUL ASSOCIATES LIMITED**

**AND**

**IN THE MATTER OF  
AN APPLICATION FOR A DECLARATION OF INVALIDITY  
UNDER NUMBER 81186 BY ANN MAURICE**

**Trade Marks Act 1994**  
**In the matter of registration No 2199992**  
**in the name of Smith & Paul Associates Limited**

**And**

**In the matter of an application for a declaration of invalidity**  
**under number 81186 by Ann Maurice**

**Background**

1. Trade mark number 2199992 for the mark HOUSE DOCTOR is registered in respect of the following services:

Interior and exterior house design, layout and decorating services; landscape gardening services; advisory services relating to the aforesaid.

2. On 20 February 2003, Ann Maurice filed an application for a declaration that the registration be declared invalid, the grounds, in summary being:

**Under Section 5(4)(a)** passing off;

**Under Section 3(6)** because the application had been made in bad faith.

3. The registered proprietors filed a counterstatement in which they deny the grounds on which the action is based.

4. Both sides ask that an award of costs be made in their favour.

5. Both sides filed evidence in these proceedings. The matter came to be heard on 11 November 2003, when the applicant for the declaration of invalidity was represented by Mr Bruce Marsh of Wilson Gunn McCaw, their trade mark attorneys. The registered proprietors were represented by Mr Pritchard of Counsel, instructed by Kennedys, their trade mark attorneys.

**Applicant's evidence**

6. This consists of a Witness Statement dated 15 May 2003, from Ann Maurice, the applicant for invalidity.

7. Ms Maurice says that in the Spring of 1998, she was employed by a television production company to be the host and expert for a pilot programme in which she was to provide advice to home owners on methods and means of improving their properties with a view to securing higher market values. The advice was to encompass interior and exterior design and layout,

decoration, hard and soft furnishings and gardening. Ms Maurice says that the pilot was commissioned by Channel 5 and the first series of seven half-hour programmes of HOUSE DOCTOR were broadcast from 22 August 1998 on a weekly basis, with exhibit AM1 showing that almost 1 million viewers regularly tuned in to the series. Ms Maurice says that a second series of twelve programmes was broadcast from 13 July 1999, but as this is after the relevant date, has no bearing on this case.

8. Ms Maurice says that the name HOUSE DOCTOR was coined by Daisy Goodwin, an employee of Talkback Productions, presumably the television production company, and that she (Ms Maurice) became known as the HOUSE DOCTOR. Exhibit AM2 consists of television reviews of the series, referring to HOUSE DOCTOR, THE HOUSE DOCTOR and THE HOUSE DOCTORS, in some cases clearly relating the title to Ms Maurice, albeit not always directly by name. Exhibit AM3 consists of what Ms Maurice describes as media and press materials detailing the second series broadcast from 19 July 1999. The top page bears the title "HOUSE DOCTOR TWELVE-PART SERIES TRANSMITTED WEEKLY FROM 13 JULY 1999- SERIES 2, NATIONAL, REGIONAL AND MAGAZINE PUBLICITY CAMPAIGN". That this exhibit relates to the second series places it after the relevant date, a fact borne out by the features that have a date; they are all July 1999 or later, although as Ms Maurice says, some mention the first series. One feature, an interview with co-presenter Tristram Payne refers to him with the title HOUSE DOCTOR.

9. Ms Maurice goes on to say that she has independently developed a website, [www.housedoctor.co.uk](http://www.housedoctor.co.uk), printouts from which are shown as exhibit AM7. Although referring to Ms Maurice in connection with HOUSE DOCTOR, the prints either cannot be dated, or clearly originate from well after the relevant date. Exhibit AM4 consists of prints taken on 2 September 2002 from two websites, including one managed by Doreen Smith (Managing Director of the registered proprietors), an interior designer of some 20 years and trading under the name INSTANT IMPRESSIONS/HOUSE DOCTOR. In her introduction Ms Smith acknowledges that she had been inspired by Anne Maurice House Doctor on Channel 5 and says "finally I put a name to the service I had been offering" clearly indicating the source of the name under which her business trades, and that this use commenced after the use by Channel 5/Ms Maurice.

10. Ms Maurice goes on to refer to exhibit AM5, which she says consist of "product support booklets" produced by Channel 5, prior to and during the first and second series, and distributed to the media and public prior to broadcast. The booklets give case studies and advice relating to the selling and buying of property, and although some refer to Ms Maurice as HOUSE DOCTOR, none can be dated as originating prior to the relevant date.

11. Ms Maurice refers to her filing of two trade mark applications for the marks ANN MAURICE HOUSE DOCTOR (2323248) and HOUSE DOCTOR (2323249), which were subsequently assigned to ANN MAURICE LIMITED, Ms Maurice being the Managing Director.

12. Exhibit AM6 consists of a letter, dated 27 August 2002, from Masons, the registered proprietors' legal representatives, notifying Ann Maurice Limited that their proposed launch of

HOUSE DOCTOR seminars would be an infringement of their clients' trade mark registration. The letter states that their clients were aware of the television programme and had written to Channel 5 expressing their concern about potential conflict, but that Channel 5 had responded saying that there would be no infringement, conflict or confusion because the television programme could be classed as entertainment.

### **Registered proprietors' evidence**

13. This consists of two Witness Statements. The first, dated 8 July 2003, and comes from Doreen Smith, Managing Director of Smith & Paul Associates Limited, the registered proprietors, a position she has held since 1992.

14. Ms Smith notes that the applicant/Ms Maurice only claim use of HOUSE DOCTOR in connection with the television entertainment service, which is not covered by, or a trade in the services covered by the registration that the applicant seeks to invalidate. But in any event, Ms Smith asserts that the applicant's use of HOUSE DOCTOR does not establish that they have any reputation or goodwill in the services covered by the registration.

15. Ms Smith goes on to refer to exhibit DS1, which consists of an article taken from The Herald published on 24 May 2003, and in particular, to Ms Maurice's statement that "the TV programme is different from real life", which Ms Smith takes as meaning that this shows consumers are likely to be well informed and knowledgeable, and able to distinguish between the provision of services as part of an entertainment television programme, and those provided in day-to-day trade. The article puts the statement attributed to Ms Maurice into context by going on to refer to the necessity for research into the potential of the property and viability of the characters, and what can be done within the time and budget of the programme, none of which would be factors in the provision of house-staging as a service. The feature refers to Ms Maurice as "having found success as TV's acid tonged, no-nonsense House Doctor" and also says "Six years as TV's HOUSE DOCTOR...quite literally made her a household name".

16. Exhibit DS2 consists of price quotations and invoices from Instant Impressions/House Doctor, the earliest dating from 16 January 1999. These refer to consultations, designing and fitting of household furnishings, furniture and decoration. Exhibit DS3 consists of a business plan dated March 1999, entitled HOUSE DOCTOR, showing Doreen Smith as the proprietor.

17. Exhibit DS4 consists of various items of company stationery, sample boards, promotional materials and brochures, etc, all bearing, inter alia, the name HOUSE DOCTOR. The name is shown as having copyright dating from 1999. Exhibit DS5 consists of a copy of a column that Ms Smith says she has been writing for the Homes section of The Herald since August 2001. Exhibit DS6 consists of further items from newspapers although all are either dated after the relevant date, or have no date.

18. The second Witness Statement is dated 9 July 2003 and comes from David Kennedy, a trade mark attorney with Kennedys, the registered proprietors' representatives in these proceedings.

19. Mr Kennedy makes the following comments on the Statement made by Ms Maurice:

- S the viewing figures shown at exhibit AM1 is entitled "End of series report: Weeks 28 - 42 1999" and thus appear to relate to a period, at least partially after the relevant date,
- S the newspaper articles shown as exhibit AM2 consist of extracts from TV listings pages and give little weight to the claim to a reputation,
- S Exhibit AM3 consists of material that post-dates the relevant date, and does not, as claimed, cast light back to the first series,
- S Exhibits AM4 to AM7 do not show use prior to the relevant date.

### **Applicant's evidence in reply**

20. This consists of a Witness Statement dated 12 August 2003 by Bruce Marsh, a partner in Wilson Gunn McCaw, the applicants' representatives in these proceedings.

21. At exhibit BM1, Mr Marsh gives details of the viewing figures for the first series of HOUSE DOCTOR, which range from 655,000 to a peak of around 1,000,000. Exhibit BM2 consists of an extract from the 3 July 1999 edition of The Mirror, showing Ms Maurice in association with the HOUSE DOCTOR television programme. Mr Marsh states that the booklets shown as exhibit AM5 were available from August 1998, and the internet prints shown as exhibit AM7 were available prior to 24 May 2002.

22. That concludes my review of the evidence insofar as it is relevant to these proceedings.

### **Decision**

23. Turning first to the ground under Section 5(4)(a). That section reads as follows:

**"5.-(4)** A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

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

24. Mr Geoffrey Hobbs QC sitting as the Appointed Person in the *Wild Child* case [1998] RPC 455 set out a summary of the elements of an action for passing off. The necessary elements are said to be as follows:

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

25. To the above I add the comments of Pumfrey J in the *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House, Gary Stringer (a partnership)* case, [2002] RPC 19, in which he said:

“There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the Registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirement of the objection itself are considerably more stringent than the enquiry under Section 11 of the 1938 Act (See *Smith Hayden (OVAX)* (1946) 63 RPC 97 as qualified by *BALI* [1969] RPC 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed at the relevant date. Once raised the applicant must rebut the prima facie case. Obviously he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of possibilities that passing off will occur.”

26. Ms Maurice says that the name HOUSE DOCTOR was coined in 1998 as the title for a television programme that advised home owners on ways of improving their properties with a view to obtaining a higher sales price. The first broadcast took place on 22 August 1998, and prior to the relevant date in these proceedings, consisted of a series of seven, half-hour long programmes, attracting at its best around 1 million viewers for an episode. The series was co-presented by Ms Maurice, who had been selected presumably because of her experience and expertise, inter alia, as an interior designer and “Home Stager” (a person that advises on the presentation of properties to achieve a sale) built up in the United States. Although referred to in the series by her given name, the credits in the promotional material list Ms Maurice as “HOUSE DOCTOR” and there is evidence that the name came to be used in the media as a reference attached to Ms Maurice. There is no other evidence of Ms Maurice having any commercial connection with the name in relation to the provision of any goods or services prior to the relevant date, so the only possible

source of goodwill that Ms Maurice can call in aid must come from her involvement with the series. In *Kean v McGiven* [1982] FSR 119, Ackner LJ stated:

“It is well-settled--and I do not need to refer to the text books; it is amply set out in the text books and in particular in Halsbury and in Clarke and Lindsell--that apart from statute there is no property in a name as such; and, in the absence of misrepresentation or some malicious motive, a man or woman has the right to use not only his own name but to adopt the name of another for himself or his property. This is so despite the fact that this can give annoyance and inconvenience, and there are decided cases dealing with the consequences which can occur when a house is given a particular name which is also the name of another house of a telegraphic address. However, if the particular name is used in connection with a business or a profession, it may achieve a right to prevent another person from using that name in a manner likely to cause confusion in the minds of members of the public. But the basis of a right of action in passing off is that the conduct of the defendant is such that the public may be led to believe that the goods which the defendant is offering or the services which he is offering are in fact the goods or services of the plaintiff. The property which is said to be injured in that situation is not the name or the description of the goods but the right to the goodwill of the business which results from the particular commercial activity. Therefore the courts do not in general interfere to protect a non-trader. I hasten to add that of course the word "trade" is widely interpreted and includes persons engaged in a professional, artistic or literary occupation.

Thus the action lies where there is a real possibility of damage to some business or trading activity. Therefore the plaintiff must establish that in some sense he is carrying on a business with which the trade or public will be led to associate the defendant's activities.”

27. The advice relating to interior design and home staging given in the television series was not, of itself, a commercial activity requiring the consumer to purchase the service. The consumer did not have to seek out the service or its provider; it was delivered to them as television viewers in their own home without any request or enquiry. The television company did not make available any goods or services for the participant or viewer (consumer) to buy. There is a programme support booklet produced for the first series, but as Mr Pritchard pointed out, there is an absence of detail by which to gauge its significance, but in any event, it is was no more than a vehicle to promote the television programme.

28. In my view, Channel 5's use of HOUSE DOCTOR as the name of a television programme shows use in connection with a commercial activity. The service may well have been paid for by advertisement revenue rather than directly by the viewer, but it was a service nonetheless. The first series ran over a seven week period, with upwards of 1 million viewers for an episode. Whilst this may not represent a particularly long period of use, or particularly significant viewing figures in comparison with other, more established programmes, it does indicate a sizeable contact with the public, and on the evidence before me, appears to have generated a reputation and goodwill. As

the recognised and best known presenter of the television programme, Ms Maurice would, I believe, have attracted if not all, at least a good proportion of that reputation and goodwill. Channel 5 itself credited Ms Maurice with the title HOUSE DOCTOR.

29. The mark registered and used by the registered proprietors is in all respects the same as the name of the television series, which is hardly surprising given the acknowledgement by Doreen Smith on her website (exhibit AM4) in which Ms Smith says:

“I have worked in design for 20 years and have moved house at least 8 times and renovated each property I saw the importance of staging. This helped me sell my property quickly and gain a very good profit. In early 1998 I was inspired by Anne Maurice House Doctor on Channel 5 and finally I put a name to the service I had been offering.”

30. This does not, of itself, mean that Ms Smith is guilty of passing off. In the decision in relation to *Harrods Ltd v Harrodian School Ltd* [1996] RPC 697 it was propounded that unless registered as a trade mark, no one has a monopoly in their brand name or get-up, however familiar these may be. The decision went on to say that the property which is protected by an action for passing off is not the opponents' proprietary right in the name or get-up which the applicants have misappropriated, but the goodwill and reputation of the business which is likely to be harmed by the applicants' misrepresentation.

31. Mr Pritchard put it to me that the use of HOUSE DOCTOR in connection with Ms Maurice is largely descriptive, being no different to saying “physics wizard, Albert Einstein, or star footballer, David Beckham”. I do not agree with this analogy. In both of these examples, the use is apt and not uncommon. HOUSE DOCTOR may well be composed of two ordinary English words, both with meanings that will be readily understood, and whilst there can be no argument that HOUSE has a direct reference to the nature of the services, the use of DOCTOR, not a term usually used in relation to inanimate objects, and the combination as a whole, does possess some novelty. As far as I am aware, and there is no evidence to the contrary, the combination HOUSE DOCTOR is not a term current in the usual language of the interior design industry, and until used as the name for the television series, were not in ordinary, everyday use. It may not be the most skilful or covert invention, but is no more than an allusion to the services for which it has been registered by the proprietors, and used and proposed to be used by the applicant.

32. Mr Marsh noted that the services covered by the registration are “not limited in application i.e. the services do not exclude services offered via the medium of television or via printed matter and as such must be deemed to embrace such”. In *Avnet Incorporated v. Isoact Ltd* [1998] FSR 16, Jacob J. stated:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

33. Mr Marsh may “technically” be right, but what he is doing is taking the provision of one service, interior design, and saying that this equates to the provision of interior design in whatever form it reaches the consumer, in this case, television broadcasting. This, in my view, is too broad an interpretation and exactly what Jacob J was cautioning against. It overlooks the fact that the core service of the television broadcasting is to transmit programmes that inform, educate or entertain, and is not the actual provision of the service that is the subject material, a position that Channel 5 appear to have adopted (para 2 of exhibit AM6) although that is, of course, only their view.

34. Even though I may consider the service covered by the registration, and that for which the applicant has a reputation or goodwill to be different in substance, this does not mean that the claim to passing off must fail. There is no rule that the applicant must be operating in the same field of activity as the registered proprietors for there to be a finding of passing off, but as is stated in Kerley’s Law of Trade Marks and Trade Names (13<sup>th</sup> Edition):

“..this does not mean that an examination of the fields of activity is irrelevant. The more remote the activities of the parties, the stronger the evidence needed to establish misrepresentation and the real likelihood of damage that are prerequisites of a right of action in passing off. Although this is a question of fact to be determined in the circumstances of the particular case, instances of decisions may be helpful and are given below.

35. If there is not a common field of activity, there is commonality in the respective fields; both are concerned with interior design and house-staging.

36. Ms Maurice had been introduced to the public as an interior designer and house-stager, and presented under the umbrella of the name HOUSE DOCTOR, a title that came to be associated with her. It seems likely to me that Ms Maurice’s role as the HOUSE DOCTOR on television would not only give her personally a certain celebrity status; but also a reputation as a person with some standing and authority in her profession, and as such, bring her custom from the consumer who would see some kudos in having such a person acting for their benefit.

37. Whether Ms Smith saw any illicit benefit to be gained by taking on the mantle of the title that Ms Maurice had already brought to the attention of the public, or saw it as a catchy name and innocently adopted it for use in connection with her own business is of little consequence. If there is misrepresentation that will lead the public to believe the services offered by Ms Smith (as the registered proprietor) are those of Ms Maurice, or are in some way connected, and as a consequence, Ms Maurice suffers some damage, it will not matter whether the misrepresentation was intentional. It is clear that Ms Smith was aware that HOUSE DOCTOR was a name associated with a fellow design professional. By her own admission she was herself inspired by Ms Maurice and when acknowledging this referred to her as “Anne Maurice House Doctor”. In the Harrods case Millett L.J. said at page 706:

"Deception is the gist of the tort of passing off, but it is not necessary for a plaintiff to establish that the defendant consciously intended to deceive the public if that is the probable result of his conduct. Nevertheless, the question why the defendant chose to adopt a

particular name or get up is always highly relevant. It is "a question which falls to be asked and answered": see *Sodastream Ltd. v. Thorn Cascade Co. Ltd.*[1982] R.P.C. 459 at page 466 per Kerr L.J. If it is shown that the defendant deliberately sought to take the benefit of the plaintiff's goodwill for himself, the court will not "be astute to say that he cannot succeed in doing that which he is straining every nerve to do": see *Slazenger & Sons v. Feltham & Co.* (1889) 6 R.P.C. 531 at page 538 per Lindley L.J."

38. On my assessment of the evidence, at the relevant date in these proceedings Ms Maurice possessed a reputation and goodwill established under the name HOUSE DOCTOR, the self-same mark registered by the proprietors. Although established through the medium of television entertainment, the subject matter of the programme was identical to the services for which that name was registered by the proprietors. The mark is used in the same manner by both the applicant and the registered proprietors; to allude to some aspect of home improvement. It seems likely to me that the viewers to whom the HOUSE DOCTOR programme was of interest would be the same as those who would be likely to use the services offered by the registered proprietors, or at least, I see no reason why they should be any different. The registered proprietors were aware of Ms Maurice's earlier association with the name, and by their own admission, that use is the source from which they took the name. The registered proprietors have already sought to restrain Ms Maurice from using the reputation and goodwill in HOUSE DOCTOR that she accrued through her involvement with the series (exhibit AM6). In these circumstances I find there to be a misrepresentation by the registered proprietors that is likely to lead to damage to the applicant's reputation and/or goodwill. The ground under Section 5(4)(a) succeeds accordingly.

39. Although my finding under Section 5(4)(a) mean that I do not need to go on to consider the ground under Section 3(6), for completeness I will go on to give my views on this ground. Section 3(6) of the act reads as follows:

“3.-(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

40. In the case of *Gromax Plasticulture v Don & Low Nonwovens Ltd* [1999] RPC 367, Lindsay J put the position in relation to an allegation of bad faith as follows:

: “I shall not attempt to define bad faith in this context. Plainly it includes dishonesty and, as I would hold, includes also some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined. Parliament has wisely not attempted to explain in detail what is or is not bad faith in this context; how far a dealing must so fall-short in order to amount to bad faith is a matter best left to be adjudged not by some paraphrase by the courts (which leads to the danger of the courts then construing not the Act but the paraphrase) but by reference to the words of the Act and upon a regard to all material surrounding circumstances.”

41. Mr. Simon Thorley Q.C., appearing as the Appointed Person in *R. v. Royal Enfield Trade Marks* [2002] R.P.C. 24, at paragraph 31 took the following view on an allegation that a party has

acted in bad faith:

“An allegation that a trade mark has been applied for in bad faith is a serious allegation. It is an allegation of a form of commercial fraud. A plea of fraud should not lightly be made (see Lord Denning M.R. in *Associated Leisure v. Associated Newspapers* [1970] 2 Q.B. 450 at 456) and if made should be distinctly alleged and distinctly proved. It is not permissible to leave fraud to be inferred from the facts (see *Davy v. Garrett* (1877-78) L.R. 7 Ch.D. 473 at 489). In my judgment precisely the same considerations apply to an allegation of lack of good faith made under section 3(6). It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference.”

42. The Statement of Case puts the ground in the following terms:

“By virtue of the immense publicity attached to the applicants’ use of her trade marks HOUSE DOCTOR and THE HOUSE DOCTOR between August 1998 and June 1999, it is submitted that the registered proprietors Smith & Paul Limited, must have been aware of the applicant’s trade mark usage.

It is therefore submitted that at the relevant date, the registered proprietors filed an application to register a trade mark they knew to be owned and used by another and for the same services as those provided by the applicant. The registered proprietors were not therefore the true owners of the mark the subject of registration 2199992 at the date of application for registration, and were not authorised by the applicant to apply for registration.”

43. So Ms Maurice’s case is quite clear. The mark was well known to be hers, the registered proprietors should have known it was hers and they should not have registered it as their own.

44. In the decision of Mr Geoffrey Hobbs QC sitting as the Appointed Person in the appeal against my decision in the *Smiley* logo trade mark case (BL No 0 /313/01), he cited with approval the comments:

“In my view the onus in such cases rests firmly with the opponents. If they are claiming that the trade mark is theirs and not the applicants’ they must establish that their mark was well known, in the United Kingdom, to the point that the applicant must have known it belonged to them, or would have known through some other circumstances, for example, a trade connection.”

45. On her website, an extract from which is shown as exhibit AM4, Ms Smith acknowledges that she came to adopt the name HOUSE DOCTOR for her business having been “inspired by Anne Maurice House Doctor on Channel 5”, so clearly the registered proprietors were aware that there was other use of the name. But simply knowing about another’s use does not make adopting and registering it as your trade mark an act of bad faith, for as stated in *Harrods Ltd v Harroddian School Ltd*, unless registered as a trade mark, no one has a monopoly in their brand name or get-

up, however familiar these may be.

46. Mr. Simon Thorley Q.C., in the *R. v. Royal Enfield Trade Marks* case took the view that “An allegation that a trade mark has been applied for in bad faith...is an allegation of a form of commercial fraud”. In *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378, Nicholls LJ described dishonesty as ‘..to be equated with conscious impropriety, going on to say:

“In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others’ property... ..The individual is expected to attain the standard which would be observed by an honest person placed in those circumstances. It is impossible to be more specific. Knox J captured the flavour of this, in a case with a commercial setting, when he referred to a person who is “guilty of commercially unacceptable conduct in the particular context involved”: see *Cowan de Groot Properties Ltd v Eagle Trust plc* [1992] 4 All ER 700 at 761. Acting in reckless disregard of others’ rights or possible rights can be a tell-tale sign of dishonesty. An honest person would have regard to the circumstances known to him, including the nature and importance of the proposed transaction, the nature and importance of his role, the ordinary course of business, the degree of doubt . . . . Ultimately, in most cases, an honest person should have little difficulty in knowing whether a proposed transaction, or his participation in it, would offend the normally accepted standards of honest conduct.”

47. The letter shown as exhibit AM6 states that prior to making the application to register HOUSE DOCTOR as a trade mark, the registered proprietors contacted Channel 5 “expressing concern about a possible conflict”. Although there is nothing from Channel 5 to confirm that an approach was made, I see no reason to doubt that it was, or that Channel 5’s response was anything other than as stated in the letter; they did not foresee a problem or conflict. Ms Maurice has clearly taken a different view to that of Channel 5, and no doubt considers that the registered proprietors should properly have consulted her also. With hindsight, this might have been prudent, but would have depended upon the proprietors realising that Ms Maurice, as a presenter on the programme, could have accrued rights to the name. Whatever, I do not feel that in not doing so the registered proprietors were in any way dishonest. They appear to have been open in their actions, and to have taken reasonable care prior to making the application. The ground under Section 3(6) is dismissed accordingly.

48. The application for invalidity having been successful, the applicant for a declaration of invalidity is entitled to an award of costs. I order the registered proprietors to pay the applicant the sum of £2,600 as a contribution towards her costs. This sum to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 2nd day of February 2004**

**Mike Foley**

**for the Registrar  
the Comptroller General**