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TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION 3057981

OWNED BY BRADLEY JEAN-PIERRE

OF THE FOLLOWING TRADE MARK IN CLASS 30:

MONSOON TEA

AND

AN APPLICATION FOR INVALIDATION THEREOF (UNDER No. 501217)

BY CHRIS HOWARD

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BACKGROUND AND PLEADINGS

1. These proceedings concern trade mark registration 3057981 which is for the trade mark **MONSOON TEA**, covering “teas” in class 30. The mark is owned by Mr Bradley Jean-Pierre, who filed it on 2 June 2014; the mark was registered on 19 September 2014.

2. Invalidation of this registration is sought by Mr Chris Howard. He relies on four grounds, as follows:

- Under section 5(4)(a) of the Trade Marks Act 1994 (“the Act”) on the basis that Mr Howard has used the sign **MONSOON ESTATES** since 9 October 2009 in relation to various goods (including tea and coffee) and services. It is claimed that the use of Mr Jean-Pierre’s mark could be prevented under the law of passing-off as it would constitute a misrepresentation to the public that the goods sold under the mark are connected to Mr Howard.
- Under section 3(1)(d) of the Act because the term **MONSOON** is used in the trade to indicate that tea has been harvested during the monsoon season. Examples are given of Darjeeling and Nepal tea which, it is claimed, are sold under time of year identifiers such as: first flush, second flush, monsoon flush, autumnal flush and winter flush. A claim under this ground is predicated on the basis of the mark being customary in the current language or in the bona fide and established practices of the trade.
- Under section 3(1)(c) because **MONSOON TEA** is known to indicate a kind of tea harvested during the monsoon season in September. It is added that such tea brews a stronger and darker tea due to the increased moisture. It is further claimed that the mark also indicates geographical origin since there are a limited number of countries in which monsoon weather occurs. A claim under this ground is predicated on the mark being descriptive of the goods, or a characteristic of them.

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- Under section 3(1)(b) in that the consumer will interpret the two words in the mark to mean that the goods were harvested during the monsoon season or come from a geographic region known for its monsoons, or that the quality of the goods has been influenced by monsoon weather. A claim under this ground is predicated on the mark being devoid of any distinctive character.

3. In addition to the above, there was, initially, a further ground pleaded under section 3(6) of the Act, on the basis that Mr Jean-Pierre had no bona fide intention to use the mark and that it may have been chosen due to the similarity of it to Mr Howard's mark. The supporting reasons were that no commercial use of the registered mark had been made and that Mr Jean-Pierre must attach little personal value to it due to attempts to sell it to Mr Howard. However, following receipt of Mr Jean-Pierre's evidence, Mr Howard withdrew this ground. This, in my view, was a sensible thing to do as there is nothing in the evidence to suggest that Mr Jean-Pierre had any (pre-filing) knowledge of Mr Howard's use or that his mark was filed for any improper purpose.

4. Mr Jean-Pierre filed a counterstatement defending his registration. He states that he has been using his mark for the past few years, albeit on a small scale at local fairs etc. He notes that when MONSOON ESTATES registered its name, he opposed it and the IPO found in his favour, and awarded costs to him (which were not paid). He states that Mr Howard's solicitors advised him that Mr Howard was still able to sell tea under MONSOON ESTATES, and so he is disregarding the IPO's earlier decision. He wishes to see proof that Mr Howard has NOT sold any tea since February 2016 (the date of the earlier decision)¹. He states that he applied to register his mark long before MONSOON ESTATES and that he is being subjected to bullying tactics.

5. Both sides filed evidence. Neither side requested a hearing, although, Mr Howard did file written submissions in lieu. I will, of course, take all of the submissions and arguments into account which have been presented in the papers before me. Mr Howard has been represented in these proceedings by Pure Ideas Ltd. Mr Jean-Pierre has represented himself.

¹ This is not something required for me to determine any of the matters before the tribunal, so I say nothing more about this request.

THE IMPACT OF THE EARLIER DECISION

6. Mr Jean-Pierre has referred to an earlier decision of this tribunal, his point being that matters have already been concluded in his favour. It is, therefore, worthwhile considering what impact this decision has on the present proceedings. The decision was in the context of Mr Jean-Pierre opposing a trade mark application by Mr Howard for the words **MONSOON ESTATES**. Mr Jean-Pierre was relying on his **MONSOON TEA** mark (the subject of these proceedings) as the basis of his opposition under section 5(2)(b) of the Act. I note that in the earlier proceedings Mr Howard attempted to rely on his claimed earlier rights (claimed to arise on the basis of earlier user) as a defence. The hearing officer said this about it:

“5. The applicant filed a counterstatement on 27 May 2015. He denies the grounds on which the opposition is based and submits that he is the owner of prior rights in the UK.

6. TPN 4/2009 is titled “*Trade mark opposition and invalidation proceedings – defences.*” Under the heading “*The position with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the attacker’s mark*”, the following is stated:

“4. The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person, in *Ion Associates Ltd v Philip Stainton and Another*, BL O-211-09. Ms Carboni rejected the defence as being wrong in law.

5. Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker’s mark, or having used the trade mark before the attacker used or registered its mark, are wrong in law. **If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered**

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proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker's mark."

7. The applicant has not sought to cancel (or 'invalidate' to use the language of s.47 of the Act) the earlier trade mark on the basis of its claim to an earlier common law earlier right. Consequently, the opponent's trade mark must be regarded as a validly registered mark. In this situation the law requires priority to be determined according to the filing dates of the applications for registration. This means that the opponent's mark has priority and a likelihood of confusion between the marks based on their notional use throughout the UK will be enough to justify the refusal of the applicant's later filed trade mark.

and

"9. The applicant filed evidence in the form of a witness statement by Chris Howard. Eleven exhibits were attached to the statement which is dated 16 October 2015. The evidence is filed in support of the applicant's claim that he has prior rights in the UK. For the reasons given at paragraphs 6 and 7 above, the evidence is not relevant to the issue before me."

7. The upshot of the above was that the previous decision dealt with matters purely on a notional basis, i.e. simply ascertaining whether there was a likelihood of confusion if the two marks in question were to be used in trade (both in relation to tea). The hearing officer found that there was a likelihood of confusion. As Mr Jean-Pierre was the owner of the earlier trade mark, he succeeded. There was no assessment made, for the reasons given by the hearing officer, about the earlier (unregistered) rights claimed by Mr Howard. As was stated, if such a claim was to be made then Mr Howard needed to make an application for the invalidation of Mr Jean-Pierre's mark. This is what he has now done. That Mr Howard did not do so as part of the previous dispute does not prevent him from subsequently doing so. There is no specific time limit after which an application to invalidate a mark cannot be made. A claim can, potentially, be made at any time following registration, although, of course, whether a mark is invalid must be judged at the point in time when it was filed. There are circumstances where

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an application for invalidation must fail due to, for example, acquiescence, but this has not been claimed here.

8. Mr Howard is, therefore, fully able to make the claims that he has and to seek the invalidation of Mr Jean-Pierre's registration. I intend to fully consider the merits of Mr Howard's application for invalidation.

THE EVIDENCE

9. The evidence of both sides includes material about various exchanges between them, including in relation to the matter of costs arising from the earlier decision, and, also, the offer to sell the mark. There is little pertinence in relation to this evidence especially given that the section 3(6) ground has been withdrawn. In view of this, I will summarise the evidence with regard to the pertinent issues that remain. The main issues appear to be the business activities the parties have undertaken under their respective names and the significance of the word MONSOON/MONSOON TEA in the tea trade.

Mr Howard's business activities

10. A witness statement was filed in the present proceedings by Mr Anthony Williams, an Associate Patent Attorney at Pure Ideas. As part of this he exhibits at Exhibit 2 a witness statement from Mr Howard, dated 16 October 2015, that was filed in the earlier proceedings. Although filed in support of the earlier proceedings, I do not consider it necessary to devalue its weight on this basis. It has, essentially, been adopted into these proceedings and I will give it due weight.

11. Mr Howard states that he is an independent retailer, operating under the name MONSOON ESTATES and that he first used this name in the UK in 2009. He states that the first use was in relation to various forms of coffee, tea, loose leaf tea and cocoa/drinking chocolate and, also, in relation to coffee roasting/processing, coffee grinding, coffee blending, coffee brewing and coffee cold-brewing. Various exhibits are then referred to as follows:

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- Exhibit CH1 is an invoice from October 2009 concerning the purchase of the domain name monsoonestatescoffeeco.co.uk.
- Exhibit CH2 is a Whois print for the domain name monsoonestates.co.uk in Mr Howard's name. The domain name was registered on 8 February 2010.
- Exhibit CH3 contains two archive web prints. The first (from monsoonestates.co.uk) is dated 3 November 2011. There is information about various coffees being offered and, down the side of the page, links to various products which, although mainly coffee, there is one link for "leaf teas". The page is headed "Coffee Roasters Stratford upon Avon", underneath which are the words "Coffee from the Estates of the Monsoon belt". There is no prominent use of MOONSOON ESTATES, but I note that at the very bottom left of the page are the words Monsoon Estates Coffee Co. There is also a reference to a contact email for chris@monsoonestates.co.uk. The second print, from the same website, is dated 4 November 2011 and is the page relating to leaf tea, sold by the 100 grams.
- Exhibit CH4 contains two invoices which, amongst coffee, also includes tea. The first is from September 2010 and relates to 600 grams of tea in total, the second is from August 2011, again covering 600 grams. Both sales are to business customers. The invoice is headed MONSOON ESTATES COFFEE CO (in a stylised form of presentation) and the words MONSOON ESTATES also appear at the bottom of the invoice above the address details.
- Exhibit CH5 contains what are said to be booking confirmations for two festivals, one in 2013, the other in 2014. The first is addressed to Chris Howard, Monsoon Estates Coffee Co and relates to the Daylesford Summer Festival 2013. The required payment is £90. I note the text "Products to be sold: artisan coffee beans and Russian Caravan full leaf tea". The second is illegible, but I can make out the sum of £102.
- Exhibit CH6 consists of a certificate awarded to Monsoon Estates Coffee for being nominated in the 2015 Stratford-on-Avon Independent Shop Awards.

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- Exhibit CH7 consists of a number of certificates (four from 2014 and one from 2012) for certain coffees, awarded to Monsoon Estates Coffee Company by Great Taste.
- Exhibit CH8 consists of an article from the Guardian dated 16 November 2014 entitled “Christmas on a budget: the Skint Foodie’s six-week plan”. On the second page is a paragraph which begins with the words “My current favourite coffee bean is the Ethiopian Yirgacheffe. You can buy it online from Monsoon Estates for....”.
- Exhibit CH9 is a photograph of the packaging of branding applied to “products” which displays the words MONSOON ESTATES COFFEE CO in the same stylisation mentioned earlier. The content of the product depicted is not stated, it looks like a bag of coffee, but, in principle, tea could also be sold in such packaging.
- Exhibit CH10 is a photograph of a car with the words MONSOON ESTATES COFFEE COMPAY applied to it (MONSOON ESTATES is in larger text than the other two words). Mr Howard states that the car is for advertising purposes.
- Exhibit CH11 contains an article from a local newspaper called the Midweek Herald. It is dated 25 September 2012. The article is entitled “Couple use elephant to help blend award-winning coffee”. It is ostensibly about Mr Howard’s (and his wife’s) success with a new blend of coffee and an award they won in relation to it. There are references to their coffee roasting business. Towards the end of the article there is a reference to “the couple – whose business is called Monsoon Estates...”

12. Annual turnover for the class 30 goods [which, therefore, also includes coffee] is given as: £10k in 2010, £14.5k in 2011, £29.5k in 2012, £53.8k in 2013 and £87k in 2014. In terms of advertising, Mr Howard states that this is primarily through social media (which is free, beyond his own time) but he has also given talks to “local interest groups around the UK, business and charities”. Other costs, over the past 6 years, have been £2k on website development, £1k on business cards and local publications, and £500 on a joint promotion at the NEC. Mr Howard lists a large number of counties

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around the UK where he has had customers. He believes that MONSOON ESTATES is well known to the general public and to buyers of teas in the UK and is uniquely associated with him, distinguishing his teas from the teas of others.

13. Mr Jean-Pierre made submissions about Mr Howard's activities, noting, for example, that much of the trade is made under the name MONSOON ESTATES COFFEE CO not MONSOON ESTATES alone. I will, of course, bear his submissions in mind.

Mr Jean-Pierre's business activities

14. Mr Jean-Pierre submitted a witness statement and, also, various documents that consist essentially of submission. I intend to deal with this aspect of his evidence more swiftly than I have with Mr Howard's. This is because, and without wishing to dismiss the significance of Mr Jean-Pierre's evidence out of hand, it is clear that he has yet to trade under the name MONSOON TEA. Indeed, he states at paragraph 13 of his witness statement: "I am not selling my product, at this present time, as I am still in the phase of identifying which blends of tea and flavouring work well together".

15. I do note that when he coined the mark Mr Jean-Pierre was working for Monsoon, the clothing company, and he suggested to them that they launch a Monsoon tea. Whether his subsequent activities in filing the mark and domain names and undertaking a fact finding trip to St Lucia were connected with the Monsoon clothing company is not clear. However, what I can say is that there is nothing in the evidence to suggest that Mr Jean-Pierre was intending to misrepresent his products as those of Mr Howard.

16. Mr Jean-Pierre does say that he is at the stage of promoting MONSOON TEA at various events. He provides four feedback forms from members of the public which start with the text "Thank you for taking the time to try Monsoon Tea...". They are from 2011, 2014 and 2015. Also provided is a witness statement from Ms Victoria Thomas, who explains that she started fundraising for her son in 2011 and she held regular events such as craft fairs. She has known Mr Jean-Pierre since then and he has been a regular attendee seeking feedback from people who drunk his complimentary tea.

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He had a stall in May 2011, June 2011, August 2011, March 2012 and April 2012. A witness statement is also provided by a Mr N Thomson, a photographer who knows Mr Jean-Pierre, who received complimentary Monsoon Tea tea bags (and feedback forms) to pass on to clients in order to gain feedback.

The significance of the word **MONSOON** in the tea industry/trade

17. On behalf of Mr Howard, Mr Williams filed evidence about the significance of the word **MONSOON** in the tea industry. Of course, Mr Williams is not an expert in the field (or at least he does not say that he is), he is an associate patent attorney. However, he provides various extracts from pages on the Internet, as follows:

- Exhibit 11 – This consists of pages from bruetea.co.uk, which are headed **BRUU THE GOURMET TEA CLUB**. The extract is a “Glossary of Tea”. There are various alphabetical entries, including, under “M”: “**Monsoon teas**: These are teas that are harvested during the rain season which create a slightly stronger variety of tea”.
- Exhibit 12 – This consists of a page from thunderbolttea.com, which appears to be a Darjeeling tea supplier in India. Various information is provided in the website extract about “Darjeeling Flushes: Variour [sp] Darjeeling Tea Seasons & Differences”. The page includes four icons underneath which read: First Flush, Second Flush, Monsoon and Autumnal Flush. The article is about the differences in Darjeeling tea that arise from the different seasons in which it is harvested, something referred to as Darjeeling flushes. Information is given on each including:

“MONSOON TEAS (July to September) - The “Monsoon Darjeeling Flush” form the bulk of “breakfast blend” for it has more color and is much stronger in its brew and appearance....”.
- Exhibit 13 – This consists of an extract from the website chamong.com. On a page headed “Know your tea” it is explained that “**Monsoon tea**: Strong in

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taste, the tea has a sweet aroma that awakens the mind and refreshes the spirit”.

- Exhibit 14 – This consists of an extract from the website teasexporter.com. The name of this supplier is Pristine Teas and an indication on the page indicates that they charge in \$. In an area headed “Teas with seasons”, there is an entry for “Monsoon Tea Monsoon teas are made from August to October and these have a little stronger taste and certainly more colour as compared to the summer teas...”.
- Exhibit 15 – This consists of a print from the website theteashelf.com with the page depicting a product called ABALI ORGANIC MONSOON TEA (priced in \$). The accompanying explanation includes “FLUSH/SEASON – MONSOON”.
- Exhibit 16 – This consists of a print from the website evanorteas.com and relates to a product described as Monsoon Darjeeling Loose Leaf Tea, a product priced in \$. There is a reference in the text to “our Monsoon teas”.
- Exhibit 17 – This consists of a print from a website trading under the name Glenburn Tea Direct. One of its products (priced in \$) is Glenburn Darjeeling Monsoon. Accompanying text makes reference to “our monsoon harvest” and “our monsoon teas are..”.
- Exhibit 18 – This consists of a print from the website theteamakers.co.uk, their trading name being THE TEA MAKERS OF LONDON. The page depicts a product described as Assam FBOP 2ND FLUSH MANJUSHREE – NO 19. There is a reference in the accompanying text to the Assam region which “experiences high precipitation; during the monsoon period as much as 10 to inches”. The climate is said to contribute to the characteristics and qualities of Assam tea.
- Exhibit 19 – This consists of a print from the website chaplon.com. One of the teas listed on this website is Monsoon with an explanation that it is harvested during the monsoon season.
- Exhibit 20 – This consists of a print from the website what-cha.com, with the product listed being priced in £. The product depicted is Nepal Pearl Oolong

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Tea with accompanying text reading “produced during the Monsoon flush harvest” and, in a product characteristic list, it reads “**Harvest:** Monsoon Flush, August 2015”.

- Exhibit 21 – This consists of print from Wikipedia about Darjeeling tea. In a section about the varieties of this tea there is a reference to “**Monsoon** or **rains** teas is harvested in the monsoon (or rainy season)”.
- Exhibit 22 – This consists of a print from Wikipedia about Nepali tea. There is reference to the tea being characterised by four pronounced flushes, the First, Second, Monsoon and Autumn flushes. There is also information about the Monsoon Flush which reads “also referred to as the “Rainy tea” begins immediately after the second flush, that is around the last week of July...”.
- Exhibit 23 – This consists of a print from Wikipedia about Assam tea. It appears to contain the same (or very similar text) to the extract at Exhibit 18. It goes on to say that Assam tea is generally harvested twice, in a first flush and second flush, so not specifically in a monsoon flush.
- Exhibit 24 – This consists of a print from the Merriam-Webster dictionary for the word monsoon, definitions of which include a rainy season in southern Asia, rain that falls during that season and, a wind in the Indian ocean and southern Asia that brings heavy rain in summer.

18. Mr Jean-Pierre filed little factual evidence about the significance/use of MONSOON/MONSOON TEA in the trade. I will, though, take into account the submissions he has made about the grounds of invalidation under section 3(1). In this respect, what he has said is somewhat incongruous. As pointed out in Mr Howard’s submissions, in a witness statement dated 12 February 2017, in a paragraph preceding one in which he says that his mark does not fall foul of passing-off, it is stated:

“I, Bradley Jean-Pierre respectively submit that witness statement and submissions are evidence that “MONSOON TEA” is descriptive of the product

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that I am perfecting which is Tea, and is a mixture of teas and flavouring from various countries some of which have monsoons.”

19. Mr Howard’s submissions also highlight that the above re-iterates what was said in Mr Jean-Pierre’s (amended) counterstatement:

“Monsoon Tea does have a distinctive character as it is a mixture of various teas from around the world which have a monsoon seasons [sic], be they dry or wet.”

20. It may be, as noted in Mr Howard’s submissions, that Mr Jean-Pierre has misunderstood the relevance of the section 3(1) grounds. It may be that what Mr Jean-Pierre really meant was that it describes his product (or is a good name for his product), but not necessarily those of others. However, regardless of what he really meant, I do not consider that he necessarily accepts that the descriptiveness objection is made out, particularly as he went on to make a number of submissions about the section 3(1) grounds. In relation to section 3(1)(c), I note various points including that:

- Monsoons have two weather temperaments, dry and wet. The tea is either harvested before, or after, the rainy monsoon as it would be impossible to harvest in a rainy monsoon. Thus, it is not clear which monsoon season is being referred to (wet or dry).
- The consumer might or might not interpret the two words to indicate that the tea was harvested during a monsoon season, “but that would be quite a feat in itself [presumably the harvesting at this time].”
- Tea descriptions vary depending on where it is grown. He states that you can also have low, medium or high teas which relate to where the tea bush was grown.
- Monsoons are experienced worldwide and not just in the areas mentioned by Mr Howard.

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21. I also note that in a submission relating to the section 3(1)(d) ground he states:

- Darjeeling (India) and Nepal... the harvest period lasts from late March to early November and is broken up into 4 parts: First Flush: March to April, Second Flush: May to June, Monsoon Flush: July to August, Autumnal Flush October to November.

DECISION – SECTIONS 3(1)(b), (c) AND (d)

22. These provisions prevent, respectively, registration of trade marks which are “...devoid of any distinctive character”, “...consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services” or “consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade”.

23. Even if a mark falls foul of any of these provisions, there is a proviso to section 3(1) which means that a registration shall not be refused (or invalidated as per the proviso to section 47(1) of the Act) if the trade mark has acquired a distinctive character through use. However, as Mr Jean-Pierre has admitted that he has yet to trade, this is not pertinent. I must simply determine whether the trade mark is, *prima facie*, objectionable under either section 3(1)(b), (c) and/or (d).

24. It must be borne in mind that these grounds are independent and have differing general interests. It is possible, for example, for a mark not to fall foul of section 3(1)(c), but still be objectionable under section 3(1)(b) of the Act. In *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P, the Court of Justice of the European Union (“CJEU”) stated that:

“25. Thirdly, it is important to observe that each of the grounds for refusal to register listed in Article 7(1) of the regulation is independent of the others and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of

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them. The general interest to be taken into consideration when examining each of those grounds for refusal may or even must reflect different considerations according to the ground for refusal in question (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-0000, paragraphs 45 and 46).”

Section 3(1)(c) of the Act

25. I find it convenient to begin with the section 3(1)(c) pleading. This section of the Act is the equivalent of Article 7(1)(c) of the Community Trade Mark Regulation, the case-law of which was summarised by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch):

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94, see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C- 191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461, paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94. Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest

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underlying it (see, *inter alia*, *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44, paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley*, paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkuniei*, paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

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46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland*, paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that

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list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word ‘characteristic’ highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

26. I also note that in *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04, the CJEU held (my emphasis):

“24. In fact, to assess whether a national trade mark is devoid of distinctive character or is descriptive of the goods or services in respect of which its registration is sought, it is necessary to take into account the perception of the relevant parties, that is to say **in trade and or amongst average consumers of the said goods or services**, reasonably well-informed and reasonably observant and circumspect, in the territory in respect of which registration is applied for (see Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 29; Case C-363/99 *Koninklijke KPN Nederland*

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[2004] ECR I-1619, paragraph 77; and Case C-218/01 Henkel [2004] ECR I1725, paragraph 50).”

27. Whilst the evidence is not focused on periods of time before Mr Jean-Pierre filed his mark, there is nothing in the evidence which suggests that anything has changed. Having considered the evidence, I am prepared to accept that tea is, generally speaking, harvested at different times of the year. These harvests are often referred to as flushes, or at least the tea that is harvested may be identified with reference to a particular flush. Further, the point at which harvesting takes place may affect the characteristics/quality of the tea. It is not clear whether the harvest takes place during the flush period or simply follows it. As Mr Jean-Pierre states with reference to monsoons, it would be difficult to harvest during an actual monsoon.

28. I also accept, as Mr Jean-Pierre also appears to, that certain types of tea, particularly Darjeeling and Nepal tea, have a flush during the monsoon season of those regions. This is known as the monsoon flush. I also accept, as alluded to earlier, that the characteristics of the tea harvested during (or more likely following) the monsoon flush will have different characteristics to those of other flushes.

29. The question is how this impacts upon the descriptiveness objection raised under section 3(1)(c). Despite the evidence that has been filed, there is insufficient evidence to show that members of the tea buying general public in the UK will know much, if anything, about the various tea flushes, let alone the monsoon flush of particular teas. Of the website prints provided, only two are .co.uk websites and, of them, only one, bruutea.co.uk, mentions monsoon teas or flushes. The other actually depicts a second flush product with some accompanying text about the regions high level of precipitation and its monsoons, which are said to contribute to the characteristics of the tea. There is, though, one further print which at least prices products in £s and which also mentions Monsoon flush. Given the limited UK general public evidence, it is unlikely that the mark (without any background knowledge) will be perceived by the end consumer as a description of the particular flush or season in which the tea has been harvested. Mr Howard’s claim also includes some general assertions about descriptiveness of geographical origin. However, it is highly unlikely that a tea

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producer would wish to send a descriptive geographical origin message by using the word monsoon, simply because the area in which the tea is grown has a monsoon season. This is because the message would be too vague. If a geographical message was to be given then the geographical name of the area or country of produce would be given instead.

30. However, as highlighted in the case-law I referred to earlier, the position of the trade must also be considered. This is particularly relevant in a case such as this because tea is not a product normally grown in the UK and is something which will need to be imported and where trade intermediaries in the UK will likely be involved. Whilst I am conscious that much of the evidence provided by Mr Howard is not directly aimed at the UK, tea is an international business and intermediaries in trade will know and understand the intricacies of their trade. The evidence satisfies me that the trade in the UK will know about the monsoon flush of particular teas (Darjeeling and Nepali). The words “Monsoon flush” would clearly designate to them that the tea is the result of the monsoon flush harvest. I think the same would be true of “monsoon tea” which would be perceived as a description that the tea has been produced in the monsoon flush season. Whilst there may be other designations (such as low or high teas) that does not effect this finding. Nor do Mr Jean-Pierre’s points about dry and wet harvest (before or after the monsoon) change this because the term monsoon flush appears to be used without further distinguishing between dry or wet.

31. I come to the view that the trade will perceive the mark as a simple description and, further, it is a sign that needs to be kept free for descriptive use of others in the UK tea industry. **The objection under section 3(1)(c) succeeds.**

Other section 3(1) grounds

32. In terms of section 3(1)(b), this is the equivalent of article 7(1)(b) of the Regulation, the principles of which were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

“29..... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the

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purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively, Case C-447/02 P *KWS Saat v OHIM* [2004] ECR I-10107, paragraph 78; *Storck v OHIM*, paragraph 26; and *Audi v OHIM*, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P *Proctor & Gamble v OHIM* [2004] ECR I-5173, paragraph 36; Case C-64/02 P *OHIM v Erpo Möbelwerk* [2004] ECR I-10031, paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37)."

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33. I do not consider that this ground of opposition adds much to Mr Howard's case. This is because the claim is predicated on the mark lacking distinctiveness due to it being descriptive. Thus, this ground rests and falls with the ground under section 3(1)(c). I need say nothing further. Nor do I consider it necessary to make a formal finding under section 3(1)(d).

SECTION 5(4) – PASSING-OFF

34. Section 5(4)(a) of the Act reads:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

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

(b)...

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.”

35. Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165 provides the following analysis of the law of passing-off. The analysis is based on guidance given in the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731. It is (with footnotes omitted) as follows:

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

(1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

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(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

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

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

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

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot

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be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

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

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

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

37. Whether there has been passing-off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, discussed the matter of the relevant date in a passing-off case:

“43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

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‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’ ”

38. Mr Jean-Pierre filed his mark on 2 June 2014. This is the *prima facie* relevant date. I note that Mr Jean-Pierre has provided evidence showing that he came up with his business name earlier than this, and started some research, offering complimentary tea at a number of craft fairs in order to gain feedback. Whilst pre-filing use may sometimes help (for example, because concurrent goodwill may be in play and in which case it would be necessary to determine the relevant rights of the parties in that regard), Mr Jean-Pierre’s activities would have had to have been of such a nature to create a goodwill of his own. In my view, the nature and extremely small scale of his use would not have done so. Further, it is not even clear what was displayed on his stand at the craft shows to understand what cognisance, if any, the public will have taken of the name MONSOON TEAS, nor what impact the name would have had via the complimentary teas provided by his photographer associate. Although it is used on the feedback form, it is not particularly prominent. Given this, the only date at which the position is to be judged is 2 June 2014.

Goodwill

39. In *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL), the Court stated:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

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40. In *Hart v Relentless Records* [2003] FSR 36, Jacob J. (as he then was) stated that:

“62. In my view the law of passing off does not protect a goodwill of trivial extent. Before trade mark registration was introduced in 1875 there was a right of property created merely by putting a mark into use for a short while. It was an unregistered trade mark right. But the action for its infringement is now barred by s.2(2) of the Trade Marks Act 1994. The provision goes back to the very first registration Act of 1875, s.1. Prior to then you had a property right on which you could sue, once you had put the mark into use. Even then a little time was needed, see per Upjohn L.J. in *BALI Trade Mark* [1969] R.P.C. 472. The whole point of that case turned on the difference between what was needed to establish a common law trade mark and passing off claim. If a trivial goodwill is enough for the latter, then the difference between the two is vanishingly small. That cannot be the case. It is also noteworthy that before the relevant date of registration of the BALI mark (1938) the BALI mark had been used ‘but had not acquired any significant reputation’ (the trial judge's finding). Again that shows one is looking for more than a minimal reputation.”

41. However, a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing-off even though its reputation may be small. In *Stacey v 2020 Communications* [1991] FSR 49, Millett J. stated that:

“There is also evidence that Mr. Stacey has an established reputation, although it may be on a small scale, in the name, and that that reputation preceded that of the defendant. There is, therefore, a serious question to be tried, and I have to dispose of this motion on the basis of the balance of convenience.”

See also: *Stannard v Reay* [1967] FSR 140 (HC); *Teleworks v Telework Group* [2002] RPC 27 (HC); *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590 (COA)

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42. In terms of what is required to establish goodwill, I note that in *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of 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 requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 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.

28. 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 to 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 probabilities that passing off will occur.”

43. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the

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application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

44. Although Mr Howard's business had been ongoing for over three and a half years by the relevant date, the level of turnover is, it is fair to say, small. I accept it is growing, but it is still nothing other than what one would characterise as a small business. The degree to which it is known, despite the awards it has won, is likely to be low. The article in the Guardian does not assist because this was after the relevant date. Nevertheless, and as highlighted in the above case-law, the law of passing-off has the capacity to protect small businesses as well as large. In my view, the business itself would have had, at the relevant date, goodwill of more than a trivial level.

45. Mr Howard's business is associated primarily with coffee. He is a coffee roaster and the beans which he roasts are then sold to members of the public in branded (MONSOON ETSATES COFFEE CO) packaging. The question that arises is the degree to which his business is associated with the sale of tea. Whilst I accept that some has been sold (as per the invoices from 2010/2011) and that loose tea appeared on his website in 2011 (although the use of the sign relied upon was not prominent), there is no evidence of the breakdown between the sale of coffee and the sale of tea. Given the already low level of overall sales, sales which it is fair to infer mostly relate to coffee, means that the sale of tea may be on a miniscule scale. Further, the evidence relating to tea is a couple of years before the relevant date. That one of the craft fair invoices identified that tea may be sold, who knows what happened on the day. I conclude that the goodwill is associated with the roasting and sale of coffee, I cannot say that the goodwill is associated with tea to more than a trivial extent.

Misrepresentation

46. In *Neutrogena Corporation and Another v Golden Limited and Another*, 1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

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“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148 . The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175 ; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

“... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993) . It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

47. In the earlier decision between the parties the hearing officer found a likelihood of confusion between MONSOON TEA and MONSOON ESTATES in so far as tea and loose tea was concerned (those were the only goods which were opposed by Mr Jean-Pierre in those proceedings). This is highlighted by Mr Howard, together with a submission that a misrepresentation will occur given that MONSOON is the dominant part of the mark/sign. However, whilst I bear that decision in mind, I do not consider that it is of particular pertinence because I am looking at the law of passing-off which requires me to determine that a substantial number of people are likely to be deceived. Further, there are differences in the assessment given my finding that the goodwill of Mr Howard is in relation to coffee not tea and, also, the actual use of the mark by Mr Howard is principally, although I accept not exclusively, of MONSOON ESTATES COFFEE CO/COMPANY.

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48. Whilst there is some similarity between tea and coffee given that both are preparations for making hot drinks and that a competitive choice may be made between them, there is no evidence to show that it is common for coffee producers to branch out into tea (or vice versa). Whilst such evidence is not a pre-requisite, it introduces a potential factor against members of the public assuming that tea sold under the mark MONSOON TEAS is from the same (or has something to do) with the business that operates under the principal name of MONSOON ESTATES COFFEE CO/COMPANY. Further, the starting point on goodwill is low, even in relation to coffee, so the substantial number of deceived members of the public is more difficult to reach. Further, some people may see a suggestive meaning behind the use of the words MONSOON in the respective signs which means that they may assume a simple coincidental form of usage. All things considered, I am not persuaded that a substantial number of members of the public would assume that MONSOON TEAS is connected to Mr Howard's (coffee related) business. The ground under section 5(4)(a) of the Act is dismissed.

CONCLUSIONS

49. Although the section 5(4)(a) ground has failed, the application for invalidation succeeds under sections 3(1)(c) and (b) and Mr Jean-Pierre's mark is consequently held to be invalid and deemed never to have been made.

COSTS

50. Although Mr Howard has been successful, I bear in mind that i) he withdrew what I consider to be a very speculative section 3(6) ground (but not before Mr Jean-Pierre filed evidence against it) and ii) he lost the ground under section 5(4)(a). Therefore, whilst the application for invalidation has succeeded, I am only prepared to award him costs on the basis of the official fee of £200 and a contribution of £100 towards that part of the statement of case on which he succeeded. The other aspects of the case (and their costs) balance each other out.

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51. I order Mr Bradley Jean-Pierre to pay Mr Chris Howard the sum of £300 within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 10th day of October 2017

Oliver Morris

For the Registrar

The Comptroller-General