

TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No 2043866
TO REGISTER THE TRADE MARK
HIWATT
IN THE NAME OF RICHARD JOHN HARRISON
IN CLASS 9

AND IN THE MATTER OF OPPOSITION THERETO
UNDER No 46654
BY KABUSHIKI KAISHA FRENANDES

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IN THE MATTER OF APPLICATION No 2043866
by RICHARD JOHN HARRISON
5 TO REGISTER A TRADE MARK IN CLASS 9.

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10 **DECISION**

BACKGROUND

15 On 7 November 1995, Richard John Harrison of 51 Hall Gate, Doncaster, South Yorkshire, DN1 3PB applied under the Trade Marks Act 1994 for registration of the trade mark **HIWATT** in respect of the following goods:

20 Class 9: “ Amplifier and speaker boxes; electrical sound effects units; parts and fittings for all the aforesaid goods.”

On the 3 April 1997 Kabushiki Kaisha Fernandes filed notice of opposition to the application. The grounds of opposition are:

25 i) “The opponents are proprietors in the United Kingdom of Trade marks Number 1538643 HIWATT in Class 9 in respect of “amplifiers and speaker boxes for electrical guitars”. The application was filed in 15 June 1993 and the letter of refusal was issued on 17 May 1996. The mark has been used in the United Kingdom by the opponents or by their predecessors in title upon the goods of the specification and in promotional materials and advertising matter since the late
30 1960s.”

35 ii) “The goods in respect of which the application number 2043866 is made are ‘amplifiers and speaker boxes; electrical sound effects units; parts and fittings for all the aforesaid goods.’ Which are the same goods as those in respect of which the opponents’ trade mark is registered and used, and the mark the subject of the application is identical to the opponents’ trade mark. Registration of the mark applied for under 2043866 would therefore be contrary to Section 5(4)(a) of the Trade Marks Act 1994.”

40 iii) “Registration of the application would be contrary to Section 3(6) of the Trade Marks Act, 1994.”

45 iv) “The opponents put the applicants to strict proof that they are the proprietors of the Trade Mark and that they were so entitled to file the application and if no such proof is provided then the application should be refused as contrary to Section 3(6) of the Trade Marks Act 1994.”

5 The applicant subsequently filed a counterstatement denying all of the grounds of opposition. Both sides filed evidence in these proceedings and both ask for an award of costs. The matter came to be heard on 10 August 2000 when the applicant was represented by Mr Edenborough of Counsel instructed by Messrs Venner Shipley, and the opponent by Mr Blum of Gill Jennings and Every.

10 OPPONENT'S EVIDENCE

This consists of two statutory declarations. The first dated 21 November 1997, is by Mr Shigeki Saito, who is the President of Fernandes Co. Ltd, a position he has held for 28 years.

15 Mr Saito states that the opponent is the registered proprietor of the mark HIWATT in "many countries of the world". At exhibit one, Mr Saito claims there is a schedule of these registrations. However, exhibit one appears to be a list of the assignments between companies and individuals in the UK. The opponent's name does not appear on the document.

20 Mr Saito claims that "exhibits numbers 2 - 7 illustrate those registrations and assignments concerning the Trade Mark HIWATT in favour of my company". Exhibit two is in what appears to be Japanese with no translation. Exhibit three appears to be in German, again with no translation. Exhibit four is in French but has a section in English recording an assignment dated 2 December 1991 between The Trustee in Bankruptcy of Four Life Co., Ltd and Fernandes Co. Ltd for the French trademark Number 674997 HIWATT. It gives no details of what goods or services the mark is registered for. Exhibit five appears to be in Italian, again with no translation. Exhibit six is another document in what appears to be Japanese with no translation provided. Exhibit seven states that a German Trademark Registration Number 129761 HIWATT has been assigned from Four Life Co. Ltd to Fernandes Company Ltd, and is witnessed by a notary dated 20 January 1992.

30 Mr Saito states:

35 "My company has used the trade mark. My company commissioned Messrs Senia and Gibbs to produce amplifiers bearing the trade mark in the UK in 1993. Messrs Senia and Gibbs established Audio Brothers Ltd., a British company, in September 1993 to produce my company's amplifier bearing the trade mark, which is owned by my company. Audio Brothers Ltd. produced my company's amplifiers until December in 1995. Audio Brothers Ltd. was bound not to sell the amplifiers bearing the trade mark to any party other than my company as agreed between Audio Brothers and my company. Therefore we assert that it is my company which has produced these amplifiers bearing the trade mark in the UK through Audio Brothers Ltd since 1993 till the end of 1995, and have sold the amplifiers in Japan, US, France and Belgium. Thereafter, my company has produced amplifiers bearing HIWATT in the UK through Leech Manufacturing Ltd. in 1997. My company has failed to sell the amplifiers bearing the trade mark in the UK because the distributors of my company in the UK felt threatened by the presence and had reputation of Mr John Harrison and did not wish to deal with HIWATT amplifiers."

“The trade mark was first used upon amplifiers (the goods) between 1965 and 1970 by David Reeves in the UK, the goods were manufactured and sold by Hylight Electronics Ltd (Hylight) a British company founded by David Reeves. The goods were very successful and the mark became well known.”

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“In March 1981 David Reeves died and subsequently Hylight was wound up. The rights to the trade mark passed to Biacrown Limited but subsequently Biacrown ceased to have control of the trade mark and the goods in 1988 and on 4 September 1990 Biacrown Ltd was wound up. A new company called Biacrown Ltd was incorporated on 5 December 1995 but as far as I am aware this company is not the successor in business to the original Biacrown Ltd. Four Life Co. Ltd purchased all the rights to the trade mark from the original Biacrown Ltd in 1988. My company succeeded in title to all the rights to the trade mark in 1993 and immediately commenced the production of the amplifiers bearing the trade mark in the UK through Audio Brothers Ltd.”

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“The present applicant Richard John Harrison who was one of the Directors of the original Biacrown Ltd has no surviving rights or title to the trade mark HIWATT, for reasons explained in paragraph 5 above. The trade mark has not become distinctive of the goods of Richard John Harrison and the evidence of use filed by Mr Harrison to establish this is of doubtful reliability. There is now produced and shown to me marked exhibit number 8 the minutes of a meeting which took place on 16 May 1995 prior to commencement of the present proceedings, between Mr Harrison and me a representative of my company in Japan, together with a certified translation of the minutes into English. The minutes indicate that Mr Harrison recognises the ownership of the trade mark HIWATT by my company and that Mr Harrison raised the subject of false invoices concerning his use of the trade mark HIWATT in the UK in relation to his application to register the trade mark.”

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Exhibit eight consists of four sheets of paper with what appear to be contemporaneous notes in Japanese. The translation of each sheet shows that the contents are not what would normally be recognised as minutes but are indeed brief notes consisting of part sentences. The only reference to false invoices reads “Can false invoices be created at any time?”. It is not clear who said this, what the context was and what, if any, reply was given.

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The second statutory declaration, dated 21 November 1997, is by Mr Hiroshi Itoh, a president of Meister Technology Co. Ltd, of Toyo, Koto-ku, Tokyo. Mr Itoh states that he is a business consultant, and that he “co-ordinated and consulted on the negotiations regarding the business co-operation between Fernandes and Mr Richard John Harrison (hereinafter referred to as Mr Harrison) and the transfer to Mr Harrison of part of all the rights relating to HIWATT that Fernandes owned.”

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Mr Itoh states that at a music exhibition in Germany in 1995 Mr Harrison made contact with the person responsible for the HIWATT project within Fernandes. The approach was not rebuffed as Mr Itoh claims that the opponent had just commenced the direct management of the HIWATT business in Europe and were searching for a business partner.

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As a result of the contact Mr Itoh states that he drafted a proposal which outlined the transfer of part of the rights in HIWATT. A copy of this is said to be provided at exhibit two. However, the document is headed up as an agreement and is dated 19 May 1995, whereas the original was said to have been sent on 28 April 1995. This document also post dates the meeting on 16 May 1995 which was to discuss its contents. It states that the opponent would transfer part of the rights in Hiwatt to Mr Harrison in return for his co-operation. It states that the opponent does not acknowledge or confirm Mr Harrison's claim to previous rights in HIWATT. The document outlines the part each party was to play and also gave details of how Mr Harrison was to benefit. Mr Harrison would not own any of the rights to the HIWATT name but would be entitled to 20% of the profit if the HIWATT name were sold on and could use the title director, and if the project was successful, a salary.

Mr Itoh states that as a result of the April proposal, Mr Harrison visited Japan on 16 May 1995. Mr Itoh claims that a six-hour meeting was held on this date between Mr Harrison, three representatives of the opponent, Mr Itoh and a translator. Mr Itoh claims that the discussion centred around the proposal that Mr Itoh had drafted earlier in the year (exhibit two). Mr Itoh made notes during this meeting and these are produced at exhibit one. This consists of brief notes in the form of unfinished sentences and unclear references, as would be expected of a contemporaneous note.

Although Mr Itoh refers to exhibit 3 as a typed summary entitled "Concerning the Items of Agreement with Mr Richard Harrison" the content of exhibit 3 is, in fact, a draft agreement between the applicant and the opponent. It is not signed or dated and there is nothing to suggest that it was ever completed.

A brief history of the mark is then provided by Mr Itoh. He states:

"Fernandes was assigned in 1991 all the world-wide rights of HIWATT from the previous owner, Four Life Co. Ltd who had been assigned in 1988 all the world-wide rights of HIWATT from Biacrown Ltd, a British company. Biacrown Ltd was wound up soon after selling HIWATT to Four Life Co. Ltd. At the time Fernandes held the above meeting in May 1995 with Mr Harrison, Fernandes was the registered proprietor of the trade mark HIWATT in Japan, USA, Germany and France and had the title of applicant in Italy. Fernandes had already filed an application for registration in the United Kingdom in 1993, because the origin of HIWATT is in the UK. In 1994 the Patent Office in the UK reported in its examination report to the agent of Fernandes that the word HIWATT was descriptive of and non-distinctive for goods powered by high wattage, and the mark could not be a registered trade mark unless it had become distinctive through use."

Mr Itoh claims that at the May 1995 meeting this report was discussed with Mr Harrison. Mr Itoh claims that Mr Harrison stated that it was his "non co-operation" that was preventing its registration. It appears that the opponent's own application was facing objections and it was perceived that the mark could not be registered without proof of user in the UK. It is alleged that Mr Harrison said he could provide this supported by forged invoices. When he found out about the application to register HIWATT in Mr Harrison's name, Mr Itoh states:

"I examined Mr Harrison's file history and discovered the strange sales figures in his

5 statutory declaration. Mr Harrison was originally running shops which were dealing in
music instruments and amplifiers in the UK and he did not manufacture them. It is
impossible for the figures of the turnover during 1989 to 1995 in Mr Harrison's statutory
10 declaration to be true. Our doubts regarding Mr Harrison proved to be true. In the
meeting on 16 May 1995 Mr Harrison could not prove the use of the mark HIWATT
without forging evidence. The maximum number of products which Mr Harrison could
have manufactured would be only a few per year. If Mr Harrison added together the
number of used and repaired amplifiers he sold, the turnover would still be far lower than
15 the figure in his statutory declaration. Mr Harrison has not submitted any proof such as
sales slips and receipts for payment for advertisement, and it is impossible for him to do
so honestly. Mr Harrison submitted only advertisements. However, the advertisements do
not show that Mr Harrison manufactured the amplifier bearing the mark HIWATT. Some
of them are advertisements of Hylight Electronics Limited in the 1970's and others are
advertisements for Mr Harrison's shop. They do not indicate that Mr Harrison had been
the brand holder for a long time. "

20 APPLICANT'S EVIDENCE

This consists of six statutory declarations. The first, dated 5 June 1998, is by Richard John
Harrison. Mr Harrison provides a potted history of why he claims to be the rightful proprietor of
the mark in suit.

25 "I first became involved with the trade mark by virtue of my friendship with Mr David
Reeves, who first started to use the trade mark in the early 1960's. David Reeves died in
1981. At this time, Mary Clifford, James Sheridan and Martin Clinch inherited the
company but changed the trading name to Biacrown Ltd. They manufactured under this
30 name for two years until in 1983 they decided to sell their interests in the company to
myself and the partners of my business Blue Suede Music Ltd. Therefore, Blue Suede
Music Ltd became the owners of Biacrown Ltd and also the trade mark of the original
company Hiwatt Equipment Ltd. I was a director of both Biacrown Ltd and Blue Suede
Music Ltd. Biacrown Ltd traded under the trade mark for some considerable time, but
35 due to financial difficulties, it was decided at the suggestion of Mr Eric Dixon, that in
order to safeguard the trade mark, it would be transferred to a non-trading company,
Gaborr Limited and that ownership would be split equally between Eric Dixon, Martin
Clinch, James Sheridan and myself. Mr Clinch was given a small shareholding and a
retainer. In due course, Mr Dixon insisted that a further transfer of the trade mark was
40 implemented and, in hind sight, it is clear that Mr Dixon's intention was to deprive the
existing directors of any claim to ownership of the trade mark HIWATT, without the
knowledge or consent of the other directors. Mr Dixon subsequently moved to the United
States and it is my belief that, at that stage, he may have commenced using the Trade
Mark as his own in the United States and subsequently, attempted to assign rights to the
45 trade mark to a Japanese company called Four Life Co. Ltd. I have never accepted that
any party other than myself has rights to the trade mark, but I have never had the financial
resources to dispute ownership through the courts in the various overseas jurisdictions
where ownership of the mark has been asserted by these other parties."

5 “It is my belief that any assignment by Eric Dixon is invalid, since he was at no stage entitled to assign the rights to the trade mark. I have never seen and do not believe that there exists any document which legally transfers the trade mark to the opponents. I have stated above that any action to transfer the trade mark taken by Mr Eric Dixon would have been contrary to the wishes of the other directors of Biacrown Ltd.”

Mr Harrison claims that the opponent’s declarations show two dates for the acquisition of rights to the mark in suit, 1991 according to Mr Itoh and 1993 in the declaration by Mr Saito.

10 Mr Harrison agrees that he held discussion with the opponent but disputes their version of events. In particular he specifically denies that he came to an agreement with the opponents in the form set out in Mr Itoh’s evidence. He states that exhibit 3 to Mr Itoh’s evidence is merely a draft and he never conceded that the opponent owned the mark. Regarding the allegations of his offer to supply forged documents Mr Harrison states “I deny that I ever said this”. He claims he merely offered to assign the benefit of his goodwill in the mark in the UK which would enable the opponents application achieve Registration.

20 He also provides at exhibit RJH2 a copy of the statutory declaration dated 13 December 1995 which set out details of sales and advertising and was part of the original application process. Mr Harrison states that having reviewed the figures he believes them to be correct. He states that the sales figure of approximately £15,000 relates only to 65 units for the year, and they were manufacturing 1-2 units a week. Mr Harrison also states that the reason why the opponent’s agents in the UK, Audio Brothers Ltd and Leech Manufacturing Limited, did not produce or sell items under the HIWATT mark in the UK is because they “respect my claims to ownership in the United Kingdom”.

Mr Harrison states:

30 “I believe that by virtue of my involvement and ownership of the trade mark over a period of many years, myself and my company Music Ground are inextricably linked with the trade mark in the minds of purchasers of goods bearing the trade mark. I appreciate that the title of ownership to the trade mark is complicated. However, I have at all stages either been involved in or responsible for businesses using the trade mark and I am the one common link between all the parties who claim to have held the trade mark over the years. The opponents have attempted to portray my activities as illegitimate and perhaps devious, but any such allegations are denied. I claim ownership of the trade mark and the opponents have provided no firm evidence that should be sufficient to persuade the Trade Marks Registry to deny my claims to the trade mark.”

40 “As set out in my own declaration of 15th December 1995, I have used the trade mark HIWATT in the United Kingdom and evidence of that use has been provided to the Trade Marks Registry. The opponents have made no sales of goods bearing the Trade Mark in the United kingdom and have provided no evidence of their claim to ownership of the Trade Mark in the United Kingdom.”

45 Exhibit RJH2 is a copy of a statutory declaration dated 13 December 1995 by Mr Harrison is

support of his application number 1568731. In this he states that the mark has been “used by me, and by companies in which I have an interest, since 1983”. He provides estimated total turnover and total advertising figures. The figures provided are as follows:

Year	Turnover (approx.) £	Advertising (approx.) £
1989	44,000	9,000
1990	30,000	3,400
1991	37,000	1,500
1992	15,000	3,000
1993	20,000	1,200

Beneath the paragraph containing the turnover figures Mr Harrison states:

“No separate figures are available for goods bearing the Trade Mark, the foregoing is an estimate of our total sales figures.”

Whilst beneath the advertising figures he states:

“No separate figures are available for the promotion of the Trade Mark, the foregoing is an estimate of our total promotional budget.”

A number of the advertisements attached to this declaration are for Hiwatt Ltd and Hiwatt Equipment Ltd, and are dated prior to 1983. There are then advertisements, magazine articles and brochures dated 1983 - 1990, some for Biacrown Ltd others in the name HIWATT.

The second statutory declaration, dated 28 July 1998, is by Alan John Venner who is a Senior Partner in the firm Venner, Shipley & Co. the trade mark agent of the applicant.

Mr Venner states that the applicant was advised by his company to obtain information from other members of the trade, and to this end, the agency prepared a draft declaration. These Mr Venner states were sent by the applicant to business colleagues. The declarations from Jeffrey Lewis and Adrian Elderken were filed on 18 June 1998 as they had been witnessed. Mr Venner states that another four declarations were received but these had not been witnessed. He states that it has not proved possible to obtain witnessed statements as at the date of his declaration and so the unwitnessed declarations are attached at exhibits AJV1 - AJV4. These four statements all take the same form in that they state that the signatory associates the mark of HIWATT with Mr Harrison. The two statutory declarations of Mr John Arbiter, dated 13 August 1998 and Mr Adrian Elderkin, dated 12 May 1998 are also in the same form and echo the message - that they associate the mark HIWATT with Mr Harrison.

OPPONENT’S EVIDENCE IN REPLY

This consist of a statutory declaration, dated 1 February 1999, by Shigeki Saito, who has

previously given a statutory declaration in these proceedings.

5 Mr Saito disputes the chain of title outlined by Mr Harrison. He acknowledges that Gaborr Limited (1901255) was incorporated on 1 April 1985 with the directors being Eric Dixon, Martin Clinch, James Sheridan and Richard Harrison. In January 1986 William Dixon was also appointed as a director. Mr Saito agrees that the rights in HIWATT were transferred from Biacrown Ltd to Gaborr Ltd and that Gaborr Ltd was dissolved on 12 December 1989. He then claims that Gaborr Ltd assigned the rights in the mark to Turntone Ltd.

10 I note that, despite what Mr Saito says in his reply evidence, that this is the first time that the opponents have claimed that their title to the mark is based, inter alia, on an assignment from Gaborr Ltd to Turntone Ltd. It is not clear what the next step in the chain of title leading to the opponents is said to be. Indeed in Mr Saito's first declaration he says that the chain of title depended upon an assignment in 1988 from Biacrown to Four Life Co Ltd, and then a subsequent
15 assignment to the opponents. This is also the position taken by Mr Itoh in paragraph five of his declaration.

20 Mr Saito also claims that irrespective of the above Mr Harrison has no claim to the HIWATT trade mark. Mr Saito states that according to the applicant "the chain of title to Hiwatt ends at Gaborr Ltd and no explanation is provided for the long interval between the dissolution of that company in 1989 and the present application date, nor of any connection between the company and the applicant other than a bald, unfounded assertion."

25 Mr Saito claims that the evidence of use provided by the applicant was not evidence of use by the applicant. Mr Saito repeats his assertion that Mr Harrison "manufactured evidence", and denies that the opponent ever acquiesced or tolerated the applicant's claim to the mark.

30 That concludes my review of the evidence. I now turn to the decision.

DECISION

35 At the hearing the opposition under Section 5(4) was withdrawn. As a preliminary point I was asked by Mr Edenborough to exclude paragraphs 2 to 13 inclusive of the second statutory declaration of Mr Saito dated 1 February 1999. It was contended by Mr Edenborough that these paragraphs were not strictly in reply to the evidence of the applicant as required by Rule 13(7) of the Trade Marks Rule 1994 (as amended). Having considered the views of both sides I am of the opinion that the paragraphs in question can be regarded as a response to the statements made
40 by Mr Harrison as to the history of the various companies mentioned in the case. The evidence therefore remains in the proceedings.

The only ground of opposition is under Section 3(6) which is as follows:

45 *"A trade mark shall not be registered if or to the extent that the application is made in bad faith."*

The Act does not define the term bad faith, leaving it to the Tribunal or the Court to determine whether an application was made in bad faith based upon the circumstances of a particular case. The Notes on Sections, published by the Patent office, and based upon the Notes on Clauses provided to Parliament during the passage of the Trade Marks Bill in relation to Section 3(6) provides examples of where bad faith might be found, these are:

(i) where the applicant had no bona fide intention to use the mark, or intended to use it, but not for the whole range of goods and services listed in the application;

(ii) where the applicant was aware that someone else intends to use and /or register the mark, particularly where the applicant has a relationship, for example as employee or agent, with that other person, or where the applicant has copied a mark being used abroad with the intention of pre-empting the proprietor who intends to trade in the United Kingdom;

(iii) where the mark incorporates the name or image of a well-known person without his agreement. (This should not be taken as meaning that this provision is legislating for the protection of a personal name or reputation - these remain unprotected under English law, but the nexus between unregistrability and the name of a well-known person is that of bad faith in which the application is made.)

I also take account of the views of Lindsay.J. in *Gromax Plastics Ltd v Don and Low Nonwovens Ltd* (1999 RPC 367 at page 379) who said:

“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.”

It is well established that in an opposition under Section 3(6) of the Act the onus is on the opponent, reflecting the usual approach under English law that he who asserts must prove.

Mr Blum asserted that, regarding the statutory declaration supporting the applicant’s earlier application, 1568371, “..Mr Harrison was either deliberately dissimulating or was reckless as to what he said in this declaration.” In particular Mr Blum referred to the proviso’s which accompanied the turnover and marketing figures. Under the turnover figures Mr Harrison had stated:

“No separate figures are available for goods bearing the Trade Mark, the foregoing is an estimate of our total sales figures.”

Whilst beneath the advertising figures he stated:

“No separate figures are available for the promotion of the Trade Mark, the foregoing is an estimate of our total promotional budget.”

The opponent contends that in using such language the applicant attempted to mislead the

Registrar, at the hearing the figures were described as “false”. Further, in relation to the advertisements which were attached to the applicant’s statutory declaration, the opponent contends that these do not all relate to use by the applicant as many are dated prior to 1983 when Mr Harrison states that he began to use the mark. It is also clear from the advertisements themselves that they relate to companies other than the applicant.

Mr Blum also referred to a hearing which took place in relation to the application, and claimed that the hearing officer had been “deceived”. Reference was also made to comments on the Registry file under the assertion that they were on a public file. However, the comments relied upon by Mr Blum were not filed in evidence and cannot be taken into account.

I was invited to consider these assertions in the light of the offer by the applicant to create false invoices relating to the use of the trade mark HIWATT in the UK. I note that the allegations regarding the meeting in Japan and the “offer” to create false invoices have been flatly denied by the applicant, who claims that there were other misunderstandings during the meeting due to problems with the interpreter. There is insufficient evidence to make a finding of fact.

The history of the mark and the situation regarding assignments is very unclear. Making the best I can from the evidence I do not believe that the opponent has shown that the applicant acted in bad faith. Whilst I accept that the provisos to the turnover and marketing figures might be seen as weakening the applicant’s case that the mark had become distinctive through use I do not accept that they constitute an attempt to mislead the Registry, indeed quite the contrary. Similarly, with regard to the advertisements attached to the statutory declaration. These are very clearly dated, and the applicant has clearly stated when his use began. I regard the provision of the other advertisements as evidence to back the applicant’s assertion that the mark has been in use since 1963. Although I do not subscribe to the picturesque image painted by Mr Edenborough that the advertisements showed that there was a single hand on the tiller of a ship sailing through the choppy waters for thirty years.

The decision made by the Registry that the trade mark was acceptable because of “distinctiveness acquired through use” is not under consideration as part of this opposition. The opponent has claimed that the Registry decision was based on false and misleading claims. In my view they have not substantiated these claims and so the original decision of the Registry must stand. In all the circumstances, I take the view that I should find in favour of the applicant. I therefore dismiss their opposition under Section 3(6) of the Act.

I must also consider the opponents alternative claim under Section 3(6), that the applicant filed his application whilst aware of the opponents’ legal title to the mark. The opponents’ claim to title depends upon their assertion to have purchased the common rights in the mark in the UK and / or “world-wide”. However, the opponents’ case is no more than a series of confused and conflicting assertions. There is no documentary evidence of a chain of assignments of the unregistered trade mark HIWATT from Biacrown Ltd to the opponents (or anyone else). Under English Law, an unregistered mark can generally only be assigned with the goodwill in the business. There is simply no evidence of this.

The applicant’s own claim to title is equally unclear but that is irrelevant. He has made an application for registration. He does not need to show title to the unregistered mark to do this.

It is for the opponent to show that it holds title to the mark and the goodwill it represents. The opponent has failed to do this. Accordingly this aspect of the opponents' case under Section 3(6) also fails.

5 The opposition having failed the applicant is entitled to a contribution towards his costs. I order the opponent to pay the applicant the sum of £1235. 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.

10 Dated this 25 day of October 2000

15 George W Salthouse
For the Registrar
The Comptroller General