

**TRADE MARKS ACT 1994**

**IN THE MATTER OF AN INTERLOCUTORY HEARING  
IN RELATION TO AN OPPOSITION (NO 50975) BY  
GLENEAGLES OF EDINBURGH LIMITED TO  
TRADE MARK APPLICATION NO 2031743  
IN THE NAME OF THE EDINBURGH CRYSTAL GLASS COMPANY LIMITED**

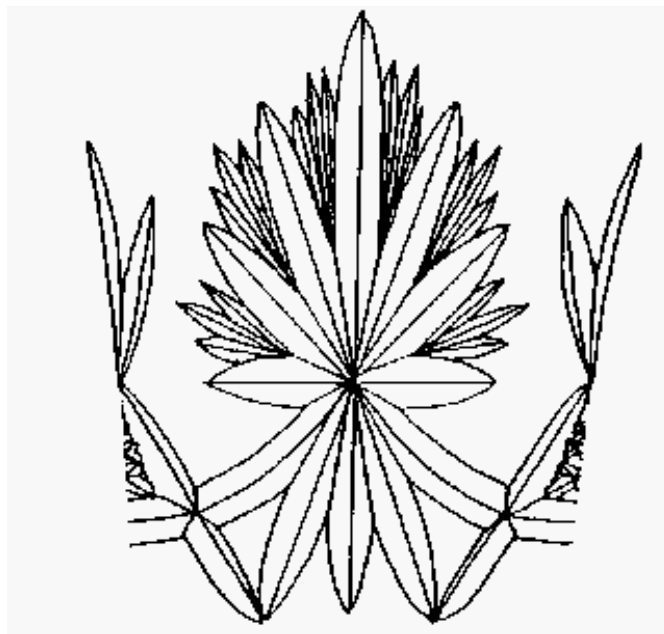
## **TRADE MARKS ACT 1994**

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Trade Mark Application No 2031743  
in the Name of the Edinburgh Crystal Glass Company Limited**

1. Following an Interlocutory Hearing on 30 July 2001, I :
  - (a) allowed a proposed amendment by the opponents to paragraph 1 of their Statement of Grounds.
  - (b) disallowed the proposed amendment by the opponents to paragraph 3 of their Statement of Grounds.
  - (c) ordered that the sum of £200 should be paid by the opponents to the applicants.
2. I am now asked by the opponents, for my written grounds of decision by way of a form TM5 filed on 29 August 2001.

### **BACKGROUND**

3. On 28 August 1995 The Edinburgh Crystal Glass Company Limited (“the applicants”) applied to register a trade mark under application No 2031743 in Class 21. The mark is reproduced below:-



4. The application was accepted and published in Trade Marks Journal 6315 page 02235 on 16 February 2000 for a specification reading:-

Glassware, crystalware, decanters, bowls, vases, jars, perfume sprayers, perfume atomisers, candlesticks, ice buckets, glass ornaments.

And with the following clause:-

Proceeding because of distinctiveness acquired through use and trade evidence.

5. On 16 May 2000, Gleneagles of Edinburgh Limited (“the opponents”) filed a form TM7 and a statement of the grounds of opposition. This was challenged by the registrar as not being sufficiently particularised and the opponents resubmitted the form TM7 and amended statement of grounds on 20 June 2000. These were then served on the applicants who filed their form TM8 and counterstatement on 2 October 2000.

6. The opponents then requested an extension of time dated 3 January 2001, asking for one more month (taking the period to 9 February 2001) in which to file their evidence in chief. This was allowed by the registrar, a position which was maintained without further challenge, even after objection to it by the applicants had been rejected by the registrar

7. On 26 January 2001, the opponents wrote to the Registrar in the following terms:-

“In the process of preparing evidence in support of our clients opposition, it appears that our client would have additional grounds for opposition to registration of the applicants mark.

Accordingly, as provided for in Part 22 of Tribunal Practice Notice No TPN 4/2000, we request that the opponent be allowed to amend the Statement of Grounds submitted ....”

8. A copy of the proposed amendments to the Statement of Grounds was attached to that letter. The amended Statement of Grounds with the proposed amendments in italics, is reproduced here:-

- “1) The Opponent has been using a stylised cut glass design identical or similar to that which is the subject of the Applicants’ trade mark application, since as early as 1988, upon or in relation to *drinking glasses, decanters, bowls and vases made of glass*. Representations of the design as applied to these items are attached hereto, marked 1.
- 2) The Applicant’s trade mark applied for under application No 2031743 resembles the Opponent’s mark and has been applied for in respect of the same or similar goods to those upon which the Opponent’s earlier mark is already used, namely glassware, crystal ware, decanters, bowls, vases, jars, perfume sprayers, perfume atomizers, candlesticks, ice buckets and glass ornaments.

By reason of the Opponent’s earlier rights in its unregistered trade mark, it would be in a position to bring a passing-off action to protect such unregistered trade mark rights and, consequently, registration of application No 2031743 would be contrary to the provisions of Section 5(4)(a) of the Trade Marks Act 1994. Accordingly, it ought to be refused registration.

- 3) *Alternatively, because in 1988 the Applicant's predecessor in title consented to allow the Opponent to use a stylised cut glass design identical or similar to that which is the subject of the Applicant's trade mark application upon or in relation to drinking glasses, decanters, bowls and vases made of glass, the Applicant's mark cannot and does not function as a trade mark under the provisions of Section 1(1) of the Trade Marks Act 1994 as it is not capable of distinguishing the goods of the applicant from those of the opponent. Consequently, the Opponent submits that it is a mark which should be refused under the provisions of Section 3(1)(a) of the Trade Marks Act 1994.*
- 4) *As a result of this consent by the Applicant's predecessors in title to allow the Opponent to use a stylised cut glass design identical or similar to that the subject of the Applicant's trade mark application, the Applicant's mark is likely to deceive the public as to the origin of the goods and should be refused registration under the provisions of Section 3(3)(b) of the Trade Marks Act 1994."*

9. On 7 February 2001, the registrar wrote to the applicants notifying them of the opponents' proposed amendments and inviting their comments on any objections they may have to the proposals.

10. However, two days later, the opponents wrote via fax to the Registrar again, this time enclosing their evidence filed in compliance with Rule 13(7). This consisted of a Witness Statement of Nasser Mohammed, together with exhibits NM1-8 (inclusive). The originals were all filed under cover of a letter dated 13 February 2001. Along with these documents the opponents also filed a Form TM9 requesting another one month extension of time. The reasons given for the request in the Form TM9 were:-

"The opponent has applied to amend its Statement of Grounds and is currently awaiting a decision from the Registry as to whether such an amendment is permitted. The decision will determine whether further evidence needs to be and can be submitted."

11. The covering letter however also suggested that the request for an extension of time was "to lodge additional evidence". It is not clear as to whether this was intended as a reference to the requested amendments to the Statement of Grounds or to more evidence relating to those grounds already allowed into the proceedings.

12. The opponents' request for a further period of one month (until 9 March 2001) was notified to the applicants on 27 February 2001 by the registrar, with the preliminary view that it should be granted, but with an invitation for comments and reasons to the contrary from the applicants.

13. On 6 March 2001, the applicants wrote to the Registrar commenting on both the request for amendments to the opponents' Statement of Grounds and on the request for an extension of time. In short, the applicants agreed to the requested amendment to paragraph 1 of the Statement of Grounds, but not to those in paragraphs 3 and 4. I will comment on their reasons for this later in this decision. On the request for more time from the opponents, the applicants disagree that it is necessary. They go further and request a hearing on the issues and also seek an award of costs in their favour if the amendments are allowed, as the

applicants will wish to amend their counterstatement accordingly. They refer the Registrar to paragraph 22 of Tribunal Practice Notice (TPN) 4/2000 in this regard.

14. On 6 April 2001, the Registrar issued a holding response to both parties, essentially saying that a decision on the proposed amendments to the opponents' Statement of Grounds would be issued shortly. This was followed on 17 May 2001 with a letter stating the Registrar's preliminary view that the proposed amendment to paragraph 1 should be allowed, but not that to paragraphs 3 and 4. The reason given for disallowing paragraphs 3 and 4 were that the reasons as to why the new grounds were not apparent at the outset of the proceedings or how they have come to light at this time, were not sufficient. The Registrar commented further, that the proposed amendments to paragraph 3 (the section 3(1)(a) ground and paragraph 4 (the section 3(3)(b) ground) were both in effect, incorrectly pleaded as relative, rather than absolute grounds for refusal of registration.

15. As a result of the Registrar's preliminary views, the opponents also requested an interlocutory hearing in the matter.

16. That completes my review of the background. At the Interlocutory Hearing held on 30 July 2001 in London, the opponents were represented by Mr Christian Finn of Fitzpatricks and the applicants were represented by Mr Douglas Thomson of Cruikshank & Fairweather. I had had the benefit of skeleton arguments from both parties.

## **THE INTERLOCUTORY HEARING**

### **Opponents' submissions**

17. Mr Finn had stated in his skeleton arguments dated 26 July 2001 (at paragraph 21) :

“Although the opponent has now submitted evidence in support of the opposition, it is based upon the acceptance by the Registrar of the request for amendment of the Statement of Grounds. The opponent does not require any further time to submit evidence unless the amendment is *rejected*.” [My emphasis]

18. This seemed somewhat illogical to me. If the opponents had submitted evidence based on the supposition that the amendments would be allowed, I could not understand why the opponent would require further time to submit evidence if the amendments were rejected? Mr Finn agreed that this was illogical and withdrew the request for the extension of time dated 9 February 2001.

19. In his skeleton arguments, Mr Finn had also given notification of the opponents' wish to delete the requested amendment to the proposed paragraph 4 of the Statement of Grounds (ie the section 3(3)(b) ground). This left only the proposed amendments to paragraphs 1 and 3 - see paragraph 8 above, for details.

20. The Registrar’s preliminary view had been that the amendment to paragraphs 1 was acceptable and this was also the applicants positions. I also decided to allow this proposed amendments.

21. Mr Finn’s submissions on the remaining proposed amendment to the Statement of Grounds ie to paragraph 3 (the section 3(1)(a) ground) essentially reflected the arguments set out most helpfully in his skeleton arguments. I reproduce these in so far as they are relevant to the remaining proposed ground:-

- “9. At the time the opposition was filed, the Opponents’ Trade Mark Attorneys were in possession of a Settlement Agreement reached in court proceedings with the Applicant’s predecessors-in-title, Coloroll Tableware Limited and Coloroll Group Plc (“Coloroll”), [subsequently submitted as Exhibit NM8 to the opponent’s evidence], under the provisions of which Coloroll allowed the Opponent to use a stylised cut glass device identical or substantially similar to that applied for by the Applicant. The Opponent had been using the stylised cut-glass design since 1988, which predated the Applicant’s application, filed in 1995. The opposition was filed based on Section 5(4) of the Trade Marks Act 1994, namely that the Opponent would have a passing off action against the Applicants (as opposed to its predecessors in title), given that the Opponent was aware that the Applicant was only incorporated in 1990.
- 10. In the Applicant’s counterstatement of 29 September, the Applicant claimed title in the design as applied for going back to 1946. The Opponent disputes the Applicants’s claim to be the successor in title to Coloroll.
- 11. When preparing the evidence, the Opponent realised that, in addition or as an alternative to the opposition grounds under Section 5(4), there were grounds for arguing that, because of the use of the identical or almost identical design by both the Applicants and the Opponent, the Applicant’s design does not, and cannot, function as a trade mark.
- 12. The Opponent believes, that in order to reach a correct decision as to the registrability or not of a mark applied for, all facts germane to a case should be available to the deciding officer at the time of making a decision on the opposition.
- 13. Rule 13(11) of the Trade Marks Rules 2000 states that “.... in relation to proceedings before her, the Registrar may at any time if she thinks fit give leave to either party to file such evidence upon such terms as she may think fit” (our italics)
- 14. The Opponent submits that this Rules is similar to Civil Procedure Rules allowing addition of further evidence - see Julian Higgins Trade Mark Application [2000] RPC 321 [HC]; CLUB EUROPE Trade Mark [2000] RPC 329 (HC)”.
- 15,16 .....
- “17. Section 1(1) of the Act states that “.... a ‘trade mark’ means any sign .... which is capable of distinguishing the goods .... of one undertaking from those of other undertakings”.

18. Because both the Applicant and the Opponent use an identical or similar design to that applied for, the design in question does not function as a trade mark, in that it is not “capable of distinguishing the goods of one undertaking from those of [an]other undertaking.” The design is purely decorative and non-trade mark matter.
19. Consequently, the design as applied for does not satisfy the provisions of Section 3(1)(a) of the Trade Marks Act 1994.

Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc., [1999] RPC 111 Page 133; Kerly (13<sup>th</sup> Edition) Chapter 2, pages 18-35.”

### **Applicant’ submissions**

22. Mr Thomson for the applicants gave some background as to the relationship between the two parties involved in these proceedings. He said that the applicants and the opponents are well known to each other. Indeed, several of the applicants’ ex-employees are now employees of the opponents. It is the applicants’ opinion that the opponents know of the applicants entitlement to the use of the trade mark for which registration has been sought and the history of the applicant by virtue of which the applicants can claim that it or its predecessors in title have used that trade mark since 1946.

23. Mr Thomson went on to say that in paragraph 3 of the proposed amended statement of grounds, the opponents states that “the applicants’ predecessor in title consented to the opponent’s use of a stylised glass design”. A copy of the “consent” has been filed by the opponents as Exhibit NM8 to the opponents’ evidence. In the opponents’ first request for further time the reason given was that the return of the evidence had been delayed due to the festive season. No mention was made of the “consent” even though we know that the opponents and its agent had been aware of it since at least as early as March, 2000. It was not until almost a month later, shortly before the second request for further time, that the request to amend the statement of grounds was filed. In the second request for further time the opponents’ agent states that “in the process of preparing evidence in support of our client’s opposition, it appears that our client would have additional grounds for opposition to registration of the applicants’ mark”. This seems to suggest that additional evidence had just come to light. This, however as stated above, cannot be the case. The opponents and its agent knew of the agreement when the opposition was being drafted in May 2000, they knew of it when the Registrar requested further details of the opposition in May 2000, they knew of it when the amended opposition was filed in June 2000, yet they chose not to include the proposed further grounds of opposition.

24. Mr Thomson also argued that the applicants would be disadvantaged if the amendment is allowed as it is not new. He also drew my attention to TPN 4/2000 and in particular paragraph 22 which states if “if an amendment becomes necessary parties should seek leave to amend **at the earliest opportunity**. When seeking leave to amend full details of the amendment together with the reasons for the amendment would be submitted” (emphasis added). He comments further that TPN 4/2000 was published in the Trade Marks Journal on 4 October 2000. The request to amend the Statement of Grounds was not made until late January, 2001 nearly some four months later.

25. Mr Thomson concluded by saying he also shared the Registrar's concerns as detailed in her letter of 17 May 2001, regarding the nature of the proposed amendments.

### **Opponents' submissions in reply**

26. Regarding the delay in making the amendment Mr Finn said there were a number of reasons for this. The opponents had made proposals to the applicants through its trade mark attorney, for settlement of the opposition, on or around 25 July 2000. However, the applicants' attorneys only replied, rejecting the proposals, on 29 September 2000. The opponents had been hopeful that its proposals would be accepted, and had thus not expended any unnecessary time and effort in adducing any further evidence up to the end of September 2000. After receipt of the applicant's counterstatement, the Managing Director of the opponents was out of the UK on business for 8 weeks. Upon his return, at the beginning of November, he then had to search through the records of the opponents for additional information and documentation showing use of its own design, which were then sent to its attorney on 15 December 2000. It was only once the additional documentation came to hand that the opponents realised that there may be a further ground for the opposition which had not been pleaded in the original Statement of Grounds.

27. Regarding the merits of the proposed introduction of the Section 3(1)(a) ground into the proceedings, Mr Finn maintained his position that it should be included in to the proceedings in the face of the Registrar's preliminary view (shared by the applicants) that the ground was in essence, wrongly pleaded as a relative ground, under the guise of an absolute ground. The arguments are relayed in more detail later in this decision.

### **THE DECISION**

28. In my letter confirming the decision I gave orally at the hearing, I said :

“In the light of the submissions, I decided that I would allow the proposed amendment to paragraph 1 of the Statement of grounds, but disallow that to paragraphs 3. This was largely due to what I perceived to be a lack of diligence, timeliness and focussed pleadings on the part of the opponents”.

29. The purpose of this decision is to elaborate on these brief reasons. Much of the applicants' objection to the proposed amendment to the opponents' Statement of Grounds was based (as can be seen from the above) on the arguments that the opponents and their attorneys were well aware of the circumstances surrounding the history of the parties involved and to their use or rights to use the trade mark in suit. They argued that given that was the case, and the generality of the history of the parties is not disputed by the opponents, there was no excuse for the realisation of the proposed new grounds at such a late stage.

30. Both parties referred me to a Registry Tribunal Practice Notice (TPN 4/2000), in particular paragraph 22 thereof, and argue it supports their own position. I reproduce that reference here :



**“Amendment to statements of case and counter-statements**

As parties will be expected to file focussed statements of case and counter-statements, the Trade Marks Registry will consider requests to amend these documents later in the proceedings. Amendments may include adding or removing a ground of opposition/revocation or invalidity or correcting information contained therein. If an amendment becomes necessary parties should seek leave to make the amendment at the earliest opportunity. When seeking leave to amend full details of the amendment together with the reasons for the amendment should be submitted. Whilst each request to amend will be considered on its merits the Registry will aim to give favourable consideration to such requests on the basis that it is likely to avoid a multiplicity of proceedings and thus help resolve the dispute between the parties quickly and at less cost. If the amendment requires the other party to file an amended counter-statement or additional evidence, an award of costs to cover this may be made.”

31. The background to this case shows that the opponents were aware of the “Settlement Agreement” between the parties before the opposition proceedings were launched (see paragraphs 21 and 23 above) in May 2000. The applicants suggest (not disputed by the opponents) that this was as early as March 2000. It was over eight months after the opposition was filed that the request to amend the Statement of Grounds was made by the opponents (on 26<sup>th</sup> January 2001). The reasons offered for this were that settlement proposals had been made by the opponents to the applicants in July 2000 and that it was not until September 2000 that these were rejected. After this, other delays were outlined by the opponents - see paragraphs 26 above.

32. Whilst I accept that it was a reasonable approach by the opponents to ascertain whether a settlement was possible, I do not accept that this can be a legitimate excuse for not deciding at the outset what the full extent of the grounds of the opposition were likely to be. Whilst it is clear from the registrars published approach to pleadings (TPN 4/2000) that focussed and particularised grounds should be filed, there is clearly no intention that this should be at the expense of any ground the opponent (in this case) sees at least as a *legitimate tenable* argument.

33. TPN 4/2000 makes it clear that requested amendments to the pleaded grounds will be looked upon positively if possible, but it is not the intention of this approach to encourage piece-meal pleadings, as and when they occur to a party. The approach is also conditional in that the application to amend should be made at the earliest opportunity, with details of the reasons for the requested amendment. In this case, on application for the proposed amendments, the opponents’ agents in their letter of 26 January 2001 gave the sole reason as being “in the process of preparing evidence in support of our clients opposition, it appears that our client would have additional grounds for opposition to registration of the applicant’s mark”. No details of why this “appeared” to be the case. It was only in the applicants’ letter of 6 March 2001 disagreeing with some of the proposals, that some detail of the historical background to the relationship between the two parties emerged and this remained unchallenged (or elaborated upon) until the opponents’ skeleton arguments of 26 July 2001 and at the hearing.

34. I do not think it is reasonable to expect the applicants to wait over eight months to become aware of what the full grounds of opposition might be, when the opponents were in possession of the same knowledge regarding the Settlement Agreement as they were. In these circumstances I think it is a perfectly reasonable for them to assume the full grounds had been pleaded at the outset, given that the Settlement Agreement will clearly play an important role in both parties cases in the substantive issues. I emphasise the word “might” above because the opponents were somewhat equivocal even in the making of the request for amendment ie “... it appears that our client would have additional grounds ....” (agents letter of 26 January 2001) and “The decisions [on whether to allow the amendments] will determine whether further evidence needs to be and can be submitted” (the form TM 9 dated 9 February 2001). This apparent vacillation put the applicants in a difficult position in being able to direct their own efforts at gathering evidence and did not, in my view, support the opponents arguments of their own diligence or focus during the proceedings.

35. That position, whilst not being within either the letter of or spirit of paragraph 22 of TPN 4/2000, however, should not be the deciding factor, if allowing the amendment would have been to the overall public good in focussing the pleadings and preventing the possibility of a multiplicity of proceedings. However, for reasons I shall give, in my view, this is not the case here.

36. In the official letter of 17 May 2001, the registrar said the following:

“Furthermore, the proposed Section 3(1)(a) ground in paragraph 3 appears to be incorrectly pleaded. It appears to the Registrar that the issues concerns similar or identical matter of the trade mark rather than something in the trade mark itself .

In relation to the Section 3(3)(b) ground in paragraph 4, the opponents say that the trade mark applied for is of such a nature as to deceive the public who would associate it with them. This section relates to an absolute ground which in the registrar’s view is intended to prevent registration because of some intrinsic or inherent feature of the trade mark. The question of other parties rights in the mark is a matter to be dealt with in consider relative grounds for refusal.”

37. In the opponents’ skeleton arguments Mr Finn, dropped the Section 3(3)(b) ground, but still argued for the Section 3(1)(a) one. I reminded him that it was now the registrar’s practice, in an effort to focus the proceedings down to the relevant issues, to challenge grounds which at face value, were either plainly wrong or at least to seek clarification on them. In this case, I believe that the registrar’s pleadings clerk was quite right to question the proposed inclusion of what appeared to be an absolute ground for refusal in Section 3(1)(a), set out as a relative one.

38. Mr Finn argued that the terms of the proposed amendment to paragraph 3 of the Statement of Grounds were intended as an illustration of the actual position in the market place - ie that potentially there are two marks, being either very similar or identical, for essentially the same goods, which will make it impossible for the goods to be distinguished and therefore the mark of the applicant cannot and does not function as a trade mark as specified by Section 3(1)(a) and 1(1) of the Act. I followed his logic but suggested to him that those circumstances were clearly catered for in Section 5 of the Act, under relative

grounds for refusal and that the Section 3(1)(a) argument in these terms was a quite untenable one.

39. Sections 1(1) and 3(1)(a) of the Act state:

*1.-(1) In this Act a "trade mark" means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.*

*A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.*

Absolute grounds  
for refusal of  
registration

*3.-(1) The following shall not be registered -*

*(a) signs which do not satisfy the requirements of section 1(1),*

40. I drew Mr Finn's attention in particular to the words prefacing Section 3(1) ie "Absolute grounds for refusal of registration". Satisfying Section 3(1)(a) is a pre-requisite of any sign which aspires to achieve the status of "trade mark". It is a test of the intrinsic capacity of a sign to function as a trade mark, not its ability to do so relative to other marks - that is catered for in Section 5 of the Act, and I note Section 5(4)(a) has been pleaded (and accepted into the proceedings).

41. Mr Finn in his skeleton arguments referred to me Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc. [1999] RPC 111 Page 113 and to Kerly (13<sup>th</sup> Edition) Chapter 2, pages 18-35. The former is of course renowned trade mark case law on the considerations to be applied under the comparison of confusingly similar trade marks on relative grounds, and whilst clearly there is reference to the inherent necessity for a trade mark to be able to perform its fundamental function of being able to distinguish the goods or services of one undertaking from those of others, to suggest this case supports the opponents case under Section 3(1)(a) is ill-conceived. Neither, in my view, does the reference from Kerly support the opponents' position.

42. The relevant case law which addresses the subject of capacity to distinguish are:

- Philips Electronics NV v Remington Consumer Products, [1999] RPC 809 (Court of Appeal)
- Bach Flower Remedies Ltd v Healing Herbs [2000] RPC 513 (Court of Appeal).
- AD 2000 Trade Mark [1997] RPC 168 Geoffrey Hobbs QC (The Appointed Person)

- Philips Electronics NV v Remington Consumer Products, [2001] RPC 745 (Opinion of Advocate General Colomer,) (European Court of Justice)

43. In the last of the above references, the Advocate General opines that there is not a category of marks which are incapable of acquiring a distinctive character, that would not otherwise be excluded by section 3(1)(b)(c) and (d) of the Act and the proviso thereto.

44. I acknowledge that generic use of a sign by other traders prior to the date of application may be sufficient to deny a sign the capacity to distinguish, particularly where the sign in question effectively becomes the name of a category of goods. This was essentially the position in Bach Flower Remedies Ltd v Healing Herbs [2000] RPC 513 mentioned above. However, customary use in the trade cannot per se be sufficient to deprive a sign of the capacity to distinguish. Section 3(1)(d) of the Act (“*trade marks which 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:*”) specifically addresses such a situation, yet signs excluded by section 3(1)(d) may still qualify as registrable trade marks under the proviso to section 3(1). Further, where the earlier use is limited to just two parties (as in these proceedings), it is unlikely to fall foul of section 3(1)(d). Added to this is the fact that in these proceedings the sign in question is a device or pattern applied to the goods and is hardly of the generic nature referred to above and as such, I can see no legal basis for the proposed section 3(1)(a) ground as pleaded by the opponents.

45. Allowing in a ground which is fundamentally flawed in law, would clearly cause both the applicants and the registrar unnecessary burden and potentially prolong the proceedings and the consequential costs etc. This cannot be in the public interest. Neither does disallowing it lead to a possibility of a multiplicity of proceedings. If I am right, if it is fundamentally wrongly pleaded now, it will always be wrongly pleaded and consequently never form a proper ground of objection in any potential subsequent proceedings.

46. It is for all the reasons given above that I reached my decision not to allow into the proceedings the proposed paragraph 3 to the opponents amended Statement of Grounds.

## **THE COSTS ORDER**

47. At the hearing, I ordered that the opponents pay the applicants the sum of **£200** as a contribution towards their costs. Both the parties were represented by agents from Glasgow, Scotland and both attended in person at the hearing held in London. Based on the time the applicants had to spend in preparation for the hearing and the consequential travel expenses, essentially to argue against a case which was fundamentally flawed, I awarded the sum of £200 from the registrar’s published scale of costs. Tribunal Practice Notice TPN 2/2000 outlines the practice with regards to “Cost in Proceedings Before the Comptroller”. This makes it clear at paragraph 12 and 13 that costs will, more frequently as has been the case in the past, be awarded as the causes of them arise. The figure of £200 was arrived at from the scale published as Annex B to the TPN (“Scale of costs applicable as proceedings commenced before 22 May 2000) in particular item 5 “Preparation and attendance at a hearing”, where the range is given at “£200-£400”.

**Dated this 2<sup>ND</sup> Day of November 2001**

**G J ROSE'MEYER  
For the Registrar  
The Comptroller-General**