

O-003-08

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO. 1317269
IN THE NAME OF PASTICCERIA E CONFETTERIA SANT AMBROEUS S.R.L.
OF THE TRADE MARK:**

Sant Ambroeus

**AND THE APPLICATION FOR REVOCATION THERETO
UNDER NO. 82932
BY G & D RESTAURANT ASSOCITES LIMITED**

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IN THE MATTER OF registration no. 1317269

In the name of Pasticceria E Confetteria Sant Ambroeus S.r.L.

Of the trade mark:

Sant Ambroeus

**and the application for revocation thereto
under no. 82932**

by G & D Restaurant Associates Limited

BACKGROUND

1) On 12 July 2007, G & D Restaurant Associates Limited, which I will refer to as "G & D", filed an application for the revocation of registration number 1317269. The registration is for:

Sant Ambroeus

2) The registration covers the following list of goods in Class 30:

"Confectionery; sweets, sweetmeats; biscuits, cookies; sugar, honey; cocoa, chocolate, tea, coffee, coffee substitutes; flour, preparations made from cereals; bread, cakes, buns; ice-cream, ices; sauces; all included in Class 30"

3) Completion of the registration procedure for 1317269 took place on 22 September 1989.

4) G & D seeks complete revocation of the registration under Sections 46(1) (b) of the Trade Marks Act 1994 (the Act). It claims that the mark has not been put to genuine use in the United Kingdom by the proprietor or with its consent between 6 July 2002 and 5 July 2007. Success for G & D would mean revocation taking effect on 6 July 2007.

5) The proprietor, Pasticceria E Confetteria Sant Ambroeus S.r.L. (which I will refer to as "Sant Ambroeus") filed a counterstatement, claiming that it has maintained a commercial interest in the trade mark and that it has been in continuous use. It therefore denies that there has been no use of the trade mark in respect of the relevant goods during the period 6 July 2002 and 5 July 2007.

6) Only Sant Ambroeus filed evidence and both parties seek an award of costs. Both parties requested a hearing and the matter came to be heard on 25 November 2008 when G & D was represented by Mr Adrian Speck of Counsel

instructed by Mssrs Elkington & Fife. Sant Ambroeus was represented by Mr Simon Malynicz of Counsel instructed by Mssrs W P Thompson & Co..

EVIDENCE

7) Sant Ambroeus filed evidence in the form of two witness statements. The first is from Mr Giancarlo Isola who is the proprietor's legal representative and has been since 1993. He confirms he is competent with the English language. He states that Sant Ambroeus has established and maintains an active commercial interest in the UK in relation to the goods, the subject of the registration. He states that the trade mark was used in the UK throughout the relevant period in relation to the goods in question and in relation to publicity and marketing activities for such goods. The volume of sales in the UK during the relevant period was €17,000 and he supports this claim by providing copies of a series of invoices as follows:

- (i) Exhibit GI01: Invoice to Jimmy Choo Ltd, London dated 28 February 2004 totalling €3,080;
- (ii) Exhibit GI02: Invoice to Jimmy Choo Ltd, London dated 1 October 2004 and totalling €2,200;
- (iii) Exhibit GI03: Invoice to Jimmy Choo Ltd, London dated 29 September 2005 and totalling €2,332;
- (iv) Exhibit GI04: Invoice to Jimmy Choo Ltd, London dated 24 February 2006 and totalling €3,025;
- (v) Exhibit GI05: Invoice to Jimmy Choo Ltd, London dated 29 September 2006 and totalling €2,854.50;
- (vi) Exhibit GI06: Invoice to Portobello Food Limited, London dated 18 November 2004 and totalling €1,793;
- (vii) Exhibit GI07: Invoice to Credit Suisse, London dated 20 April 2004 and totalling €1512.50;
- (viii) Exhibit GI08: Invoice to JP Morgan Chase Bank, London dated 9 May 2005 and totalling €231.

8) All the above invoices have the trade mark at issue prominently visible at the top of the page and are in Italian. All but one (Exhibit GI06) do not include a detailed list of goods, but rather refer to either "somministrazione di generi alimentari e bevande" or "consumazione di generi alimentari e bevande". Both of these Italian phrases have been translated by Mr Isola as the same English

phrase “selling of food and beverages”. Exhibit GI06 contains the following product list:

Panettoni Classici
Panettoni Pera e Cioccolato
Panettoni Albicocca
Veneziane
Stecche Di Torrone Da
Blister Marrons
Scatole Cartoni
Consegna

Once again, a translation has been provided by Mr Isola and the above list is recorded as:

Classic Panettoni
Panettoni with pear and chocolate
Panettoni with apricot
Cakes of Venice
Torrone
Chocolates
Blister Marrons
Boxes
Deliver

9) In addition to these invoices, Mr Isola also provides, at Exhibit GI09, two copies of brochures both dated 1997 and both in Italian, to demonstrate use of the trade mark on and in relation to the packaging of goods. Both these brochures contain numerous photographs of various boxes of chocolates bearing the trade mark as registered as well as boxes wrapped in paper bearing the trade mark and also a novelty packaging in the form of a cup and saucer where the cup is filled with chocolates and bears the trade mark.

10) Exhibit GI10 consists of a publicity brochure, dated December 2003, advertising a range of goods and services provided by the proprietor. The information is in both Italian and English and provides details of cakes, bar services, “bombonnières and sweetmeat boxes”, “chocolate house” facilities, banqueting, lunch and conference room facilities. With the exception of banqueting, the services listed appear to be provided at the proprietor’s Milan premises, but nevertheless, Mr Isola submits that this brochure was distributed in the UK to many bars, cafeterias and restaurants.

11) Exhibit GI11 provides copies of pages from the Italian language magazine Marie Claire Maison dated December 2006 – January 2007. These pages consist of full page photographs of high-end fashion items such as Cartier and Bulgari jewellery together with chocolate creations originating from the proprietor. The

traders of these products are credited in small print at the bottom of each picture and includes a reference to Sant Ambroeus.

12) Finally, Mr Isola states that the proprietor has been using the trade mark since 1936 in Italy and many other countries including the UK.

13) The second witness statement is from Mr David Alan Gill, the UK agent for the proprietor and dated 16 October 2007. Mr Gill points out that the Marie Claire Maison magazine is available through bookshops carrying foreign language magazines such as Borders Bookshop, 122 Charing Cross Road, London, WC2H 0JR.

DECISION

14) Section 46 of the Act reads as follows:

“(1) The registration of a trade mark may be revoked on any of the following grounds—

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;

(d) that in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that

paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made.

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made either to the registrar or to the court, except that——

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from——

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

15) Consideration has to be taken, also, of section 100 of the Act which states:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

Consequent upon section 100 the onus is upon the registered proprietor to prove that it has made use of the trade mark in suit, or that there are proper reasons for non-use.

16) The application for revocation is based on Section 46(1)(b). In *Philosophy di Alberta Ferretti Trade Mark* [2003] RPC 15, the Court of Appeal held that an application for revocation on the grounds of non-use may be made only after the five years following completion of the registration procedure has ended. The date

for revocation is the date that the application for revocation was made, and cannot be less than five years from the date the registration procedure was completed. In *WIS/ Trade Mark* [2006] RPC 22, Geoffrey Hobbs QC, sitting as the Appointed Person said:

“...This permits revocation with effect from the day following the fifth anniversary of completion of the registration procedure in the case of an application which succeeds under s.46(1)(a) and with effect from any subsequent date at which there has been suspension of use for an uninterrupted period of five years in the case of an application which succeeds under s.46(1)(b).”

17) Therefore, I have to consider whether there was genuine use in the UK of *SANT AMBROEUS*, for all or any of the goods for which it is registered, by the proprietor or with his consent between 6 July 2002 and 5 July 2007.

18) The basis of what constitutes genuine use was decided by the European Court of Justice (ECJ) in *Ansul BV v Ajax Brandbeveiliging BV*, Case C-40/01 [2003] ETMR 85 at paragraph 47:

“1. Article 12(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that there is “genuine use” of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. When assessing whether use of the trade mark is genuine, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of the goods or services at issue, the characteristics of the market and the scale and frequency of use of the mark. The fact that a mark that is not used for goods newly available on the market but for goods that were sold in the past does not mean that its use is not genuine, if the proprietor makes actual use of the same mark for component parts that are integral to the make-up or structure of such goods, or for goods or services directly connected with the goods previously sold and intended to meet the needs of customers of those goods.”

19) In *La Mer Technology Inc v Laboratoires Goemar SA* [2004] FSR 38, the ECJ considered the extent of use, the amount of use and the types of use that can be considered when deciding whether there has been genuine use of a trade mark:

“20. It follows from those considerations that the preservation by a trade mark proprietor of his rights is predicated on the mark being put to genuine use in the course of trade, on the market for the goods or services for which it was registered in the Member State concerned.

21. Moreover, it is clear from paragraph 39 of *Ansul* that use of the mark may in some cases be sufficient to establish genuine use within the meaning of the Directive, even if that use is not quantitatively significant. Even minimal use can therefore be sufficient to qualify as genuine, on condition that it is deemed to be justified, in the economic sector concerned, for the purpose of preserving or creating market share for the goods or services protected by the mark.

22. The question whether use is sufficient to preserve or create market share for those products or services depends on several factors and on a case-by-case assessment which is for the national court to carry out. The characteristics of those products and services, the frequency or regularity of the use of the mark, whether the mark is used for the purpose of marketing all the identical products or services of the proprietor or merely some of them, or evidence which the proprietor is able to provide, are among the factors which may be taken into account.

23. Similarly, as emerges from paragraphs 35 to 39 of *Ansul* set out above, the characteristics of the market concerned, which directly affect the marketing strategy of the proprietor of the mark, may also be taken into account in assessing genuine use of the mark.

24. In addition, use of the mark by a single client which imports the products for which the mark is registered can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor of the mark.”

20) In *Laboratoires Goemar S.A. v La Mer Technology Inc* [2005] ETMR 114, Neuberger LJ held that:

“45 The notion that the use of the trade mark must be substantial or significant before it qualifies as "genuine" seems to me to run into two difficulties in any event. The first is that it does not involve attributing the word "genuine" its natural meaning, although this point of course potentially substantially weakened by the fact that the equivalent word used in the text in Art.10 in other languages may carry with it a slightly different meaning.

46 Secondly, once one imposes a requirement of significance or substantiality, it becomes potentially difficult, time-consuming, and expensive to decide whether, in any particular case, that requirement is

satisfied. In this connection, Mr Tritton made a fair point when he suggested that the introduction of a test of significant use could lead to detailed arguments about the precise nature and extent of the market in which a particular trade mark is to be used, as well as a detailed enquiry in many cases as to the precise nature and extent of the use of the particular mark over the relevant five-year period. I do not regard that as a particularly desirable outcome.

47 Although the use of the instant mark within the jurisdiction can be said to be close to exiguous, I do not think it could be characterised as *de minimis*. Even if it could be so characterised, I do not consider that that concept would be a useful or helpful one to invoke or apply, even if it had not been effectively ruled out by the European Court.

48 I turn to the suggestion, which appears to have found favour with the judge, that in order to be "genuine", the use of the mark has to be such as to be communicated to the ultimate consumers of the goods to which it is used. Although it has some attraction, I can see no warrant for such a requirement, whether in the words of the Directive, the jurisprudence of the European Court, or in principle. Of course, the more limited the use of the mark in terms of the person or persons to whom it is communicated, the more doubtful any tribunal may be as to whether the use is genuine as opposed to token. However, once the mark is communicated to a third party in such a way as can be said to be "consistent with the essential function of a trade mark" as explained in [36] and [37] of the judgment in *Ansul*, it appears to me that genuine use for the purpose of the Directive will be established.

49 A wholesale purchaser of goods bearing a particular trade mark will, at least on the face of it, be relying upon the mark as a badge of origin just as much as a consumer who purchases such goods from a wholesaler. The fact that the wholesaler may be attracted by the mark because he believes that the consumer will be attracted by the mark does not call into question the fact that the mark is performing its essential function as between the producer and the wholesaler."

21) In *The Sunrider Corp v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case C-416/04 P* the ECJ stated:

"72 It follows that it is not possible to determine a priori, and in the abstract, what quantitative threshold should be chosen in order to determine whether use is genuine or not. A *de minimis* rule, which would not allow OHIM or, on appeal, the Court of First Instance, to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, to that effect, order in *La Mer Technology*, paragraph 25). Thus, when it serves a real commercial purpose, in the circumstances referred

to in paragraph 70 of this judgment, even minimal use of the trade mark can be sufficient to establish genuine use (order in *La Mer Technology*, paragraph 27).”

22) Taking account of this guidance from the courts it is clear that genuine use does not need to be quantitatively significant and that when asking if the use is sufficient it is necessary to assess all surrounding circumstances.

23) At the hearing, the Mr Speck made a number of criticisms of Sant Ambroeu’s evidence. These can be summarised as:

- (i) The exhibits fail to demonstrate use for many of the goods that are the subject of the registration;
- (ii) The exhibits show business being conducted with other businesses that are of the kind that would not be making the products available to consumers;
- (iii) The exhibits fail to demonstrate genuine use of the trade mark IN THE UK;
- (iv) There are no examples of how the asserted €2000 advertising spend has been used in the UK.

24) Turning to the first of these criticisms, Mr Isola makes a number of statements indicating use of the trade mark in the UK. In his witness statement he states that “[t]he Proprietor has established, and maintains, an active commercial interest in relation to [he then lists all the goods of the registration] in the United Kingdom” and “[t]he Mark has been used in the United Kingdom throughout the period 6 July 2002 – 5 July 2007 both on and in relation to goods specified in the Registration, and in relation to publicity and marketing activities for such goods”. There are a number of significant points regarding the exhibits submitted in support of these statements. Seven of the eight invoices submitted relate to “consumazione di generi alimentary e bevande” or “somministrazione di generi alimentary e bevande”. Mr Isola has provided his own translation of these terms saying that they both mean “selling of food and beverages”. Although these translations have not been challenged in evidence, at the hearing Mr Speck submitted that, in fact, they translate to “consumption of food and beverages” and “administration of food and beverages” respectively. I do not believe it to be critical which, if either of these translations is the most accurate as I believe the following comments are applicable regardless. Firstly, I agree with Mr Speck that these invoices fail to support the contention that the trade mark has been used on all the goods listed in the registration. It is just not possible to infer this from the Italian phrase “generi alimentary e bevande” that appears on these invoices. Secondly, regardless of whether the Italian words “consumazione” and “somministrazione” translate as “selling”, “consumption” or “administration”, the invoices suggest a service or activity more akin to the banqueting and conference room services that the proprietor also provides (as

detailed in Exhibit GI10) rather than a reference to the goods which are the subject of the registration.

25) The final invoice (Exhibit GI06) details the sale of a selection of panettoni, cakes and chocolate. This invoice, for a total of €1793, is to Portobello Food Limited in London and headed with the trade mark at issue. Mr Speck criticises this because, he contends, that the goods may be sold on to the consumer under another trade mark and not necessarily under the SANT AMBROEUS trade mark. When considering this exhibit in conjunction with Exhibit GI09 which shows various packaging bearing the trade mark in suit, I am satisfied that, on balance, this invoice demonstrates a sale of goods into the UK that are covered by the registration.

26) Mr Malynicz provided a succinct answer to Mr Speck's second criticism that the exhibits show business being conducted with other businesses that are of the kind that would not be making the products available to consumers. Mr Malynicz contends that the companies themselves were the proprietor's customers and I accept this.

27) Mr Speck submitted that the exhibits fail to demonstrate use in the UK. He hypothesised that the seven invoices, referred to above, could all relate to the provision of food and drink to the UK based companies whilst they were in Milan either attending fashion shows or some other corporate event. In response to this hypothesis, Mr Malynicz criticised the approach for not being done by way of cross-examination or by way of response evidence and that his client was disadvantaged by not having an opportunity to address this point by submitting further evidence and he warned against being beguiled by these submissions and reminded me of Mr Arnold's comments in *Extreme* to that effect. Mr Speck submitted that Mr Arnold's comments related to the challenge of primary facts and not to the conclusions that flow from such facts and he contends that he is challenging the latter. He accepts the authenticity of the invoices but challenges the conclusion that they demonstrate genuine use of the trade mark in question in relation to the relevant goods in the UK.

28) Mr Speck's submission falls short of inviting me to disbelieve the evidence but rather highlights the possibility that these invoices demonstrate something different to what Mr Isola believes they do. As such, I believe the circumstances in this case are somewhat different to those highlighted in TPN 5/2007. Certainly, cross-examination of Mr Isola may have shed further light on the precise nature of these invoices. Mr Arnold also commented in *Extreme* that hearing officers must guard themselves against being beguiled but that they should not assess evidence uncritically. I must therefore decide what weight to give this evidence and I must do so not uncritically. In doing this, I am mindful of the comments of the CFI in Case T-334/01, *MFE Marienfelde GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (HIPOVITON)* when it considered genuine use in the context of an opposition proceedings:

“37. However, the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the party opposing new registration to produce additional evidence to dispel possible doubts as to its genuineness.”

29) It is relevant to consider what else the proprietor’s evidence shows. It appears to indicate that Sant Ambroeus trades from single premises located in Milan and that in addition to selling pastries and confectionary it also provides conference room services, chocolate house services as well as bar and banqueting services. The nature of the companies that form the majority of UK customers is also of some relevance. One is a high-end fashion shoe designer (Jimmy Choo Ltd), the other two are the London offices of international investment banks (Credit Suisse and JP Moran Chase). I am being asked to accept that these businesses decided to purchase food and drink directly from Milan. These businesses are not importers or even food and drink retailers but rather, they are the end destination for such products, that is, they are the consumers of such products. I must find on the basis of the facts before me. On balance and taking all the above into account, I find it is rather unlikely that these seven invoices relate to the provision of Sant Ambroeus products in the UK. Instead, it is more likely that they relate to use of the trade mark to create or maintain a market in the services of providing food and drink in Italy. Certainly, in the absence of further corroborative evidence, there is enough doubt in my mind to dismiss these invoices as not being examples of genuine use in the UK.

30) Turning to the final invoice (Exhibit GI06), this details a number of specific food products and also details a charge for boxes and for delivery. This invoice is to a company called Portobello Foods Limited and is for a total of €1793. Mr Speck criticises this exhibit as it fails to demonstrate that the products listed were branded as Sant Ambroeus when marketed to the end consumer and also invites me to accept that as the quantity of boxes listed on the invoice is fifteen that the products were distributed to only fifteen consumers.

31) I must ask myself what is the significance of this invoice in assisting to demonstrate genuine use. The ECJ, in its comments in *Ansul* and *Le Mer*, have said that genuine use need not always be quantitatively significant but that it does not include token use. The CFI have recently commented on how this should be interpreted. I refer to the following comments in *Sonia Rykiel creation et diffusion de modèles v. OHIM* Case T-131/06 where the court was considering the issue of genuine use in relation to articles of clothing:

“53 As stated in paragraph 39 of *Ansul*, ... figures and quantities cannot be assessed in absolute terms but must be assessed in relation to other relevant factors. In this respect, the data above should be viewed in relation to the nature of the goods and the structure of the relevant market.

54 Those articles are goods of everyday consumption, sold at a very reasonable price. They are therefore not luxury goods, expensive and sold in limited numbers in a narrow market, but goods to be sold to a large number of consumers throughout Spain.

55 Therefore, pursuant to the case-law referred to above, it is necessary to examine whether the very small volume of sales of those goods under the earlier word mark might have been offset by the fact that use of the mark was extensive or very regular. In the present case, there is nothing to indicate that use of the mark was extensive or regular, the nine relevant invoices being concentrated in the months of January, February and March 1997, and February and March 1998.

56 The assessment of the turnover and the volume of sales of the product under the earlier trade mark must also be conducted in relation to other relevant factors, such as the volume of business, production or marketing capacity or the degree of diversification of the undertaking using the trade mark.

...

59 The contested decision does not include either any concrete information on or an adequate analysis of the relevant factors, referred to in the previously cited case-law, enabling the minimal turnover (EUR 432) and the very small quantity of goods sold under the earlier word mark (85 units) over a relatively long period (13 months) to be placed in context.

60 In addition, the total amount of transactions over the relevant period seems to be so token as to suggest that, in the absence of supporting documents or convincing explanations to demonstrate otherwise, the use by Cuadrado of the earlier word mark cannot be held to be warranted, in the economic sector concerned and taking account of the nature of the goods concerned, for the purpose of maintaining or creating market shares for the goods protected by the earlier word mark.”

32) The goods of interest in the current proceedings are food and beverages. These would also be described as “goods of everyday consumption” and, despite the proprietor’s apparent focus on quality, are sold at a reasonable price. As I have already found, use of the trade mark in the UK is not extensive or very regular. A single transaction, as evidenced by the invoice to Portobello Foods Limited, is no more than token and such use cannot be held to be warranted in the economic sector concerned for the purpose of maintaining or creating a market share. This scale of trade is very small when considered in respect to the size of the food and drink industry as a whole.

33) Finally, I will consider if the marketing of Sant Ambroeus products assists the proprietor's claim of genuine use. Mr Isola states that the proprietor's spend on advertising and publicity in the UK amounts to €2000 but this is not particularised. The exhibits provide two items of promotional material. The first is an advert in the Italian magazine Marie Claire Maison which is available in at least one outlet that sells imported foreign language magazines. This is not an attempt to advertise in the UK, but rather it is an advert aimed at the Italian consumer that may, in limited circumstances, be seen in the UK. The second is a brochure distributed to "many bars, cafeterias and restaurants" in the UK in December 2003. This brochure (Exhibit G110) is in English and Italian and promotes not only the proprietor's products but also the services listed above. It strikes me as somewhat unusual to promote banqueting and bar services at premises in Milan to bars and restaurants in the UK. Perhaps it is not therefore unsurprising that Mr Isola is unable to provide details of any trade with bars or restaurants in the UK. Without further explanation, the claim seems self evidently incredulous, and the witness' claim is not particularised so as to identify any of the UK businesses in question or the number of businesses to which the brochure was sent. As such, I find that neither of these exhibits are helpful to Sant Ambroeus in demonstrating genuine use.

CONCLUSIONS

34) In summary, taking account of all the surrounding circumstances, I find that there has been no genuine use within the relevant time period and the registration shall be revoked in its entirety under the provisions of Section 46(1) (b) in respect of all the goods with effect from 6 July 2007.

COSTS

35) The applicant for revocation has succeeded and is entitled to a contribution towards its costs. I award costs on the following basis:

Preparing and filing TM26(N) and accompanying statement	£300
Consideration of counterstatement	£200
Considering evidence	£500
Preparation for, and attending hearing	£700
TOTAL	£1700

36) I order Pasticceria E Confetteria Sant Ambroeus S.r.l. to pay G & D Restaurant Associates Limited the sum of £1700. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 6 day of January 2009

**Mark Bryant
For the Registrar,
the Comptroller-General**