

~~G.A.G.2.~~

8, 1953

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In the Privy Council.

UNIVERSITY OF LONDON
W.C.I.
10 FEB 1954
No. 2 of 1952.
INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL FROM THE COURT OF APPEAL
MALTA

BETWEEN

EDGAR STAINES nomine APPELLANT
AND
VICTOR LA ROSA nomine RESPONDENT.

CASE ON BEHALF OF THE RESPONDENT

THE PROCEEDINGS.

1.—This is an appeal by leave of the Court of Appeal of Malta from an Order of that Court (Borg, C.J. and Camilleri and Harding, J.J.), dated the 13th December, 1950, which dismissed an appeal from the Order of the Commercial Court of Malta (Montanaro Gauci, J.) dated the 31st March, 1950.

Record
No. 35, p. 51
No. 26, pp. 37,
et seq.

2.—The proceedings were commenced in the Commercial Court of Malta by Writ of Summons dated the 29th September, 1947, and were brought by the Appellant nomine, Edgar Staines, in his capacity as Custodian of Enemy Property in Malta, representing the Bata Overseas Shoe Company Limited of Valletta, Malta (hereinafter called "Bata Overseas") against the Respondent nomine, Victor La Rosa for and on behalf of La Rosa Company, representing the Bata National Corporation of Zlin, Czecho-Slovakia (hereinafter called "Bata Zlin").

No. 1, p. 3

3.—The subject matter of the proceedings were five applications, numbered 3997 to 4001 inclusive, made by Bata Zlin for the registration of the word BATA as a Trade Mark in respect of the following goods, the advertisements of the said applications being published in the Malta Government Gazette upon the dates respectively particularised.

Plaintiff's Exhibits.	Number	Goods	Date of Advertisement
Exhibit A, p. 5, L.1	3997	Tyres and Tubes	22 November 1946
Exhibit B, p. 5, L.20	3998	Technical Rubber	26 November 1946
Exhibit C, p. 6, L. 1	3999	Footwear and Stockings	26 November 1946
Exhibit D, p. 6, L. 20	4000	Shoe Polish	3 December 1946
Exhibit E, p. 7, L. 1	4001	Shoe Laces	6 December 1946

It is not necessary for the purposes of this Appeal to draw any distinction between any of the above Applications.

4.—On the 2nd January, 1947, the Appellant gave notice of opposition to the above Applications and under the provisions of Section 91 (3) of the Industrial Property (Protection) Ordinance (Chapter 48) commenced these proceedings by the said Writ of Summons, calling upon the Respondent to show cause why the registration of the word BATA as a trade mark in respect of the goods above mentioned, for which he had applied, should not be disallowed by the Court. By his Declaration filed on the 29th September, 1947, the Appellant alleged *inter alia* that the word BATA had been used in Malta over a number of years to distinguish the products of the Bata Shoe Company Limited of Tilbury (hereinafter called “Bata Tilbury”) and, after 1938, those of Bata Overseas, from other similar goods sold by other firms and that it would follow that the registration of the word BATA by another firm would necessarily create confusion in the local market. The Respondent, by his Statement of Defence dated the 24th October, 1947, pleaded *inter alia* :

(A) That the appellant had produced no evidence to show by what authority he was entitled to represent a firm that, according to the Malta Defence Regulations, was not an Enemy Firm. This plea was withdrawn by Proces Verbal dated the 13th January, 1948, and was not relied upon thereafter.

(B) That Bata Zlin had been exporting to Malta and selling there wholesale and retail, goods of its own manufacture for sixteen years, that Bata Overseas did not manufacture the goods in respect of which Bata Zlin had applied for the registration of the word BATA and that the goods imported by Bata Overseas into Malta were goods manufactured by Bata Zlin. This plea was relied upon by the Respondent and in his respectful submission it was substantiated by the evidence and defeats the Appellant's claim.

5.—The proceedings were heard by Montanaro Gauci, J., who dismissed the Appellant's claim with costs on the 31st March, 1950. From this Order the Appellant appealed to the Court of Appeal, who on the 13th December, 1950, dismissed the Appeal and affirmed the Judgment of Montanaro Gauci, J. with costs against the Appellant. On the 28th December, 1950,

Record
No. 2, p. 5

No. 4, p. 6

Record
No. 9, p. 11

Record
No. 21, pp. 24,
et seq.

No. 26, pp. 37,
et seq.

the Appellant petitioned for leave to appeal to His Majesty in Council, No. 27, p. 42
 and on the 7th February, 1951, Borg, C.J. delivered his Reasons for Dissent No. 32, p. 47
 from the Judgment of the Court of Appeal. On the 5th November, 1951,
 The Court of Appeal granted to the Appellant final leave to appeal to His No. 35, p. 51
 Majesty in Council.

HISTORY.

- 6.—In or about 1924 Bata Zlin started to export to Malta under the Trade mark BATA rubber goods, shoes and other products of their manufacture and continued to do so until the outbreak of war in 1939.
- 10 Until 1932 such products were exported to a number of traders in Malta who sold them retail to members of the public. In or about the year 1932 Bata Tilbury opened a shop in Valletta and thereafter opened further shops in Malta through all of which they sold shoes and other goods manufactured by Bata Zlin retail to the public under the Trade Mark BATA. By an Agreement in writing dated the 3rd August, 1938, Bata Tilbury agreed to sell to Bata Overseas on the 1st January, 1939, the whole of the undertaking and assets of the businesses carried on by Bata Tilbury in Malta and after the 1st January, 1939, Bata Overseas conducted the business of the said shops in Malta and sold shoes and other products
- 20 under the Trade Mark BATA. After 1932 all or substantially all shoes exported by Bata Zlin to Malta were sold by Bata Tilbury or Bata Overseas through their said shops.
- Exhibits.
Plaintiff's
Exhibit A, pp. 14,
et seq.

- 7.—It was established by the evidence that from 1924 until the outbreak of war in 1939 all shoes sold in Malta under the Trade Mark BATA whether sold by Bata Tilbury or Bata Overseas or by other retailers were manufactured in Zlin by Bata Zlin, and they bore the marking "Bata—Made in Czechoslovakia" and that they were imported by Bata Tilbury, Bata Overseas or by other retailers as the case might be direct from Bata Zlin. There was no evidence that any shoes or other goods
- 30 had been sold in Malta under the Trade Mark BATA between the outbreak of the war in September, 1939, and the respective dates of the Applications for the Trade Marks the subject of these proceedings.

- 8.—The Appellant produced a letter dated the 22nd June, 1939, purporting to have been written by Bata Zlin to Bata Tilbury, the contents of which were as follows :—
- Exhibits.
Plaintiff's
Exhibit A, pp. 7-8

" Dear Sirs,

" We refer to our recent discussions between your Managing
 " Director Mr. V. E. Schmidt and our representatives at which
 " meeting it was agreed that our mutual co-operation should be
 " put on a sounder basis.

“ It was therefore agreed :

“ 1. We hereby appoint you our exclusive representatives
“ for the territory of Great Britain and the whole of the British
“ Empire with the exception of the Far East and Canada.

“ 2. We undertake on our behalf and on behalf of our
“ associated and subsidiary Companies not to offer or sell any
“ merchandise whether produced by us or other firms to anybody
“ but your firm or any firm which you may indicate to us, as far
“ as the territories herein specified are concerned and for the
“ duration of this arrangement. 10

“ 3. You undertake to give preference to our merchandise
“ when ordering in the territory which we know as Czechoslovakia
“ and undertake to buy from us if our conditions are better or
“ equal to our competitors.

“ 4. As far as footwear, hosiery, tyres and rubber toys and
“ machinery are concerned, you will not purchase in Czecho-
“ slovakia any products than ours, unless we are unable or
“ unwilling to deliver sufficient quantities and at competitive price.
“ Should you feel that our quantities and prices are unsuitable to
“ you, you must, before purchase elsewhere, notify the Company 20
“ by registered letter at least 8 days before entering into any
“ commitments with any other firms in respect to the merchandise
“ described in this paragraph.

“ 5. Should it be found expedient, for reasons of competitors
“ policy, to sell directly to some customer in your territory, we
“ undertake to secure your concurrence first, further not to
“ transact such business under the name ‘ Bata ’ in whatever
“ combination used, and to pay you 5% commission on all the
“ sales thus consumated.

“ This arrangement is valid until 31st December 1949. 30

“ We remain,

“ Yours truly,

“ Bata a.s. Zlin

“ (Signed) Illegible.”

DISTINCTIVENESS OF TRADE MARK BATA.

9.—In the Respondent’s respectful submission, the Trade Mark BATA was at all times from 1924 until the respective dates of the applications for the Trade Marks the subject of these proceedings a manufacturer’s mark, distinctive in Malta of the products manufactured by Bata Zlin in Czechoslovakia. The question of distinctiveness may be considered during 40 successive periods.

(i) 1924 until 1932. During this period Bata Zlin exported to Malta their products marked by them with the words "Bata—Made in Czechoslovakia." These products were sold in Malta by a number of retailers. The only trade origin which the Trade Mark BATA could have indicated and did indicate was the one manufacturer, Bata Zlin, and not the many retailers.

(ii) 1932 until December 1938. During this period Bata Zlin exported their products, marked as previously, but the products were sold wholly, or substantially wholly, by Bata Tilbury through their said shops. There
 10 was no evidence that established or suggested that the mark ceased to be a manufacturer's mark, distinctive of the goods of Bata Zlin, and became a merchant's mark, distinctive of goods imported into Malta or otherwise dealt with by Bata Tilbury, regardless of the manufacturing source of such goods. The marking "Bata—Made in Czechoslovakia" was inconsistent with a merchant's mark and no witness stated that he came to regard the mark as distinctive of goods sold by Bata Tilbury.

(iii) 1st January 1939 until the outbreak of war. During this period Bata Zlin exported their products to Malta, marked as previously, but the products were sold by Bata Overseas, who had acquired the business and
 20 shops previously owned by Bata Tilbury. The Agreement of the 3rd August 1938, transferring such business and shops to Bata Overseas, did not assign or purport to assign to Bata Overseas any right to use the Trade Mark BATA, and there was no evidence that during this period the Trade Mark became distinctive of goods imported into Malta or otherwise dealt with by Bata Overseas.

Exhibits.
 Plaintiff's
 Exhibit A, pp. 14,
et seq.

(iv) The outbreak of war until the respective dates of the Trade Mark applications. There was no evidence of any use of the mark during this period or of any facts that established or suggested that the mark lost its character of a manufacturer's mark, distinctive of the products of Bata
 30 Zlin.

10.—On this issue, Montanaro Gauci, J. held that "the word 'BATA' how-
 "ever has now acquired goodwill value and is well-known in connection with
 "shoes manufactured at Zlin." Further, there were concurrent findings
 of the learned Judge and of the Court of Appeal (from which, on this point,
 Borg, C.J. did not dissent) that Bata Tilbury and Bata Overseas were
 but the representatives of Bata Zlin and that the trade carried on by the
 former was trade in the goods produced by the latter. The Respondent
 humbly submits that this finding is justified by the evidence and that the
 necessary consequence is that there was no independent use of the mark
 40 by Bata Tilbury or Bata Overseas but only use by them as the
 representatives of Bata Zlin who were and are entitled to the mark BATA
 under which the trade was carried on and the goodwill therein.

Record
 No. 21, p. 25, L. 33

p. 26, L. 8

p. 40, L. 37

EFFECT OF THE ALLEGED AGREEMENT OF 22ND JUNE 1939.

Record
p. 22, L. 31
p. 35, L. 25

Exhibits.
Plaintiff's
Exhibit A, pp. 7-8

11.—No evidence was adduced by the Appellant, and the Respondent does not admit, that the signatory to the letter of the 22nd June 1939 was an agent of or otherwise empowered to contract on behalf of Bata Zlin. For the purposes of the succeeding paragraphs, however, the Respondent will assume that the letter embodies the terms of an agreement binding upon Bata Zlin.

Record
p. 19, L. 38

Exhibits.
p. 8, L. 22

12.—It was contended by the Appellant that such agreement constituted an undertaking by Bata Zlin not to use the Trade Mark BATA in Malta before the 31st December, 1949, or in some other way defeated the rights of Bata Zlin in the said Trade Mark. The Respondent contended and contends that upon its true construction the said agreement re-affirms the exclusive right of Bata Zlin to the said Trade Mark. The said agreement did not assign or purport to assign to Bata Tilbury any right in the said Trade Mark but merely appointed Bata Tilbury exclusive agents for the products of Bata Zlin in a territory which included Malta. The only provision relating to the said Mark is that contained in paragraph 5 of the said letter, which provides that in certain exceptional circumstances Bata Zlin will not use the Trade Mark, from which it must be necessarily inferred that in all ordinary circumstances, in which the products are sold through the agency of Bata Tilbury, Bata Zlin will use the said Trade Mark upon their goods. In the Respondent's submission, Bata Zlin were entitled under the terms of the said agreement to make immediate application for the registration of the said Trade Mark in Malta without derogating from the terms of the said agreement.

Exhibits.
p. 8, L. 27

13.—If, contrary to the submission of the Respondent, the agreement, upon its true construction, prevented Bata Zlin from registering the said Trade Mark in Malta during the term of the agreement, such provision ceased to be of effect upon the outbreak of war, upon which event the said agreement was abrogated by reason of the enemy status then acquired by Bata Zlin. Alternatively, the said agreement expired upon the 31st December, 1949, the date of expiry expressed in the agreement, prior to the Judgment of Montanaro Gauci, J. and did not operate and could not have operated as a bar to the registration of the said Trade Mark at the date of the Judgment.

Record
p. 26, L. 12

14.—On this issue the Respondent will rely upon the Judgments of both the Courts below, which were in his favour and, in his humble submission, were correct. Montanaro Gauci, J. said :

“ The firm at Tilbury ” (i.e. Bata Tilbury) “ and, therefore, the “ Plaintiff firm ” (i.e. Bata Overseas) “ held only the trading rights in “ Malta of the ‘ Bata ’ goods produced by the concern at Zlin ” (i.e. Bata Zlin) “ and they did not hold any rights in respect of the ownership of the

10 “ ‘ Bata ’ Trade Mark—which had not been transferred. In fact, according
 “ to the arrangements made, the Tilbury firm, and therefore the Plaintiff
 “ firm, had to give preference to the goods produced by the Defendant firm,
 “ and to make no purchases of similar goods from other firms in Czecho-
 “ slovakia whilst the Defendant firm, for its part, undertook not to offer
 “ or sell its products except to, or through, the firm which is at present
 “ represented by Plaintiff, and, if obliged at any time to make any
 “ direct sales, to pay to the Plaintiff firm a commission of 5% which again
 “ goes to show that the firm at Zlin had every intention to retain for itself
 “ the ownership of the ‘ Bata ’ Trade Mark and the right of exporting its
 “ products under that name. Further, according to the document at
 “ fol. 26 ” (i.e. the letter of the 22nd June 1939) “ the agreement entered
 “ into had to remain operative up to the end of 1949, and therefore even
 “ that agreement has now terminated.”

Exhibits.
 Plaintiff's
 Exhibit A, pp. 7-8

15.—The Judgment of the Court of Appeal on this issue, from which Borg, C.J. did not dissent, was as follows :—

Record
 p. 40, L. 40

20 “ In fact, in terms of the first clause inserted in the agreement filed
 “ at fol. 26 of the Record, the Company at Zlin appointed the Tilbury
 “ firm their ‘ exclusive representatives for the territory of Great Britain
 “ and the whole of the British Empire, with the exception of the Far
 “ East and Canada.’ And, according to the last clause therein, the
 “ Agreement had to remain ‘ valid until the 31st December 1949 ’
 “ The Agreement in question cannot be construed to mean that the
 “ Defendant firm had abandoned the use of the ‘ Bata ’ Trade Mark in
 “ connection with its products in the local market, or that that firm had
 “ made over and conveyed that trade mark to the firm at Tilbury or to any
 “ other firm. All that happened was that the Bata Company at Zlin granted
 “ the exclusive rights of its sole agency to another firm. In so granting
 “ its sole agency, and granting it for a determinate period, the Bata Company
 30 “ at Zlin, far from forfeiting the right to use the ‘ Bata ’ Trade Mark,
 “ actually retained its right to the use thereof through its sole representative.
 “ Consequently, as rightly held by the Court below, whilst the Defendant
 “ firm held the lawful use in Malta of the Bata trade mark since the year
 “ 1924, without having at any time surrendered it to any other firm, the
 “ Plaintiff firm, and the firm at Tilbury, had been using that Trade Mark
 “ solely because they were the representatives in Malta of the Defendant
 “ firm.”

GENERAL CONTENTIONS OF LAW.

40 16.—It was contended by the Appellant that since 1932 Bata Tilbury
 and Bata Overseas had lawfully used the Trade Mark “ Bata ” in Malta
 and that in consequence of such use the Trade Marks the subject of the
 present Applications were not capable of registration by Bata Zlin by

reason of Section 84 (1) of the said Chapter 48 of the Laws of Malta. The said section reads as follows :—

“ 84 (1) The marks and words referred to in the last preceding section must be different from those already legally used by other persons.”

As has been submitted by the Respondent in paragraph 10 hereof and as held by both the trial Judge and the Court of Appeal, Bata Tilbury and Bata Overseas used the said Trade Mark solely as the representatives of Bata Zlin to indicate the goods of Bata Zlin. Such use must, in the Respondent's submission, be deemed to be use by Bata Zlin for the purpose of Section 84 (1). The only use of the said Trade Mark that could have been made by Bata Tilbury or Bata Overseas, in their own capacities, was use of a merchant's mark, indicating goods of their importation or sale. There was no evidence of such use, and if such use of the mark had been made, it would have been illegal as being in derogation of the rights of Bata Zlin. 10

17.—The Respondent respectfully submits that the respective rights to a Trade Mark of a foreign manufacturer of goods and an importer of those goods are the same in Malta as in the United Kingdom and that the law has been correctly expressed by Tomlin, J. in *Impex Electrical Ltd. v. Weinbaum* (44 R.P.C. 405) where he states, at page 410, “ If a manufacturer having a mark abroad has made goods and imported them into this country with the foreign mark on them, the foreign mark may acquire in this country this characteristic, that it is distinctive of the goods of the manufacturer abroad. If that be shown, it is not afterwards open to somebody else to register in this country that mark, either as an importer of the goods of the manufacturer or for any other purpose. The reason of that is not that the mark is a foreign mark registered in a foreign country, but that it is something which has been used in the market in this country in such a way as to be identified with a manufacturer who manufactures in a foreign country.” 20 30

18.—The Respondent respectfully submits that the principles enunciated by Tomlin, J. in *Impex Electrical Ltd. v. Weinbaum* can be properly applied to the facts of the present proceedings and establish that the right to the Trade Mark BATA in Malta lies in Bata Zlin and that neither Bata Tilbury nor Bata Overseas has any claim thereto affecting the right of Bata Zlin to the registration of the Trade Mark.

19.—All the findings of fact and of law in the Judgments of Montanaro Gauci, J. and the Court of Appeal delivered on the 13th December, 1950, were in favour of the Respondent and in his humble submission they are correct and should be supported. On the 7th February, 1951, Borg, C.J. delivered Reasons for Dissent, the material portions of which are as follows :— 40

“ 6. It is my opinion that the sequence of evidence has been inverted. Defendant made his application to the Comptroller

10 “ of Industrial Property in his capacity as the representative of
 “ the Bata firm at Zlin and it rested with him to prove in evidence
 “ that he was in fact the representative of that firm and that
 “ that firm actually existed at Zlin. The above-quoted law, in
 “ section 101 and 102—read in conjunction with the provisions
 “ laid down in Title IV Part 1, and, more particularly, section 39
 “ and 40—requires that the Applicant for the registration of
 “ a Trade Mark shall produce documentary evidence as to the
 “ existence of the firm, the right of the firm to carry on trade
 “ and the right of the Applicant to represent the firm in Malta.
 “ No such evidence was submitted by the Defendant.
 “ 7. No rights were conferred or restored to the Defendant
 “ firm when the arrangements made in 1932 and 1938 terminated
 “ in 1939—for such rights had elapsed.”

The point raised by the learned Chief Justice was not raised by the Appellant or argued before either of the Courts below.

20 20.—In the respectful submission of the Respondent Borg, C.J. was in error in holding that it rested upon the Respondent to prove in evidence that he was in fact the representative of Bata Zlin and that that firm
 20 actually existed in Zlin. The reasons upon which the Respondent bases this submission are as follows :—

(A) Such proof is not required under any of the provisions of the said Chapter 48 of the Laws of Malta. The Sections referred to by the learned Chief Justice relate to the assignment, and not to the registration, of a Trade Mark, and do not, even in the case of an assignment, impose the burden of proof postulated by him. The requirements upon application for registration of a Trade Mark are laid down in Section 86, read in conjunction with Form D scheduled to the Law. The only statements that an applicant is required to make are :

30 (i) Upon Form D, that he claims to be the proprietor of the Trade Mark.

(ii) Under Section 86 (b) a declaration, stating the kind of articles to which it is intended to affix the mark and whether the mark is to be affixed to articles produced by the declarant, or to the goods of his trade.

(B) Upon the principle of *omnia præsumuntur rite acta esse*, it must be presumed, unless the contrary is shown, that the Comptroller satisfied himself that the applications were in order and that the applicant was entitled to make it.

40 (c) The proceedings were commenced by the Appellant against the Respondent, for and on behalf of Messrs. La Rosa Company, representing Bata Zlin. No application has been made by the Appellant to amend the

Writ of Summons substituting a different party as defendant and it must be presumed, and the Appellant cannot be heard to deny, that the proceedings are properly constituted and that Bata Zlin are an existing company and entitled to apply for the registration of the Trade Marks the subject of these proceedings.

FURTHER SUBMISSIONS OF THE APPELLANT IN THE COURTS BELOW.

Record
No. 2, p. 5

21.—The only issue raised by the Appellant in his Declaration of the 29th September, 1947, was based on the alleged user of the Trade Mark Bata by Bata Tilbury and Bata Overseas and the confusion that would be caused, by reason of the reputation alleged to have been created by such user, if the Trade Mark were registered in the name of Bata Zlin. This issue has been fully examined in the preceding paragraphs. A number of other submissions were put forward by the Appellant, however, which remain to be dealt with. 10

Record
p. 20, L. 17

22.—It was submitted by the Appellant before the Court of first instance that the word "BATA" was a mere surname and was not distinctive, and accordingly did not qualify for registration under the provisions of Section 83 of the Law. Mantanaro Gauci, J. held that the word "BATA" had acquired goodwill value and was well known in connection with shoes manufactured at Zlin and that since it was printed and impressed in a particular and distinctive manner such as to render it distinguishable from others, the Trade Mark was acceptable for registration. From this finding there was no appeal to the Court of Appeal. 20

p. 25, L. 34

23.—It was argued before both the Courts below that Bata Zlin should not be recognised as the successor of the rights of the original Bata Company of Zlin, which was nationalised by the Czechoslovak Government by confiscatory decrees that were not enforceable in Malta. No evidence was before the Court as to the manner in which the Bata Company was nationalised or as to the nature of the decrees by which this was effected. 30
Montanaro Gauci, J. did not deal with this argument in his Judgment, but the Court of Appeal, after stating the argument, said: "However, in default of any evidence in substantiation, no necessity arises for a pronouncement thereanent. For that question to arise at all, it is necessary in the first place that evidence be produced in substantiation of the allegations made." The Respondent humbly submits that this finding of the Court of Appeal, from which Borg, C.J. did not dissent, is correct and should be upheld.

p. 41, L. 28

24.—Finally, it was contended before the trial Judge that Bata Zlin had discontinued the use of the mark BATA and had adopted the mark SVIT in its stead. No evidence was adduced in support of this allegation, 40

the Appellant relying merely upon a paragraph that had appeared in "The Times" newspaper of the 10th December, 1948. Upon this contention Montanaro Gauci, J. said: "Apart from the questionable value of news paper evidence, the news item in question does not state that the 'Bata' Trade mark has already been changed, but that it will be changed in the future—and it transpires also that the decision was taken by Trade Union Officials and a Committee of employees and no mention is made as to what the owners of the factory or the Government proposes to do." This contention of the Appellant was not raised before the Court of Appeal.

Exhibits.
Plaintiff's
Exhibit A, p. 24
Record
p. 26, l. 33

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CONCLUSION.

25.—The Respondent therefore humbly contends that the Judgment of the trial Judge and that of the Court of Appeal dated the 13th December, 1951, were right and should be affirmed for the following among other :

REASONS

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1. BECAUSE the Trade Marks sought to be registered are and always have been distinctive of the goods manufactured by the Applicants for Registration.
2. BECAUSE the said Trade Marks are not and never have been distinctive of goods sold by The Bata Shoe Company Limited or The Bata Overseas Shoe Company Limited.
3. BECAUSE neither The Bata Shoe Company Limited nor the Bata Overseas Shoe Company Limited has ever used the Trade Mark BATA upon or in relation to any goods save those manufactured by the Applicants for Registration.
4. BECAUSE the Applicants for Registration have not assigned the Trade Mark BATA to any other person.
5. BECAUSE the Applicants for Registration have not abandoned the Trade Mark BATA.
6. BECAUSE the Applicants for Registration are not debarred by contract or otherwise from registering the said Trade Marks.
7. BECAUSE the Reasons for Dissent of Borg, C.J. are erroneous and should not be followed.
8. BECAUSE the Judgments of Montanaro Gauci, J. and the Court of Appeal were right and should be upheld.

P. STUART BEVAN.

In the Privy Council.

No. 2 of 1952.

ON APPEAL FROM THE COURT OF APPEAL
MALTA.

BETWEEN

EDGAR STAINES nomine ... APPELLANT

AND

VICTOR LA ROSA nomine RESPONDENT.

CASE ON BEHALF OF THE
RESPONDENT

THOMAS COOPER & CO.,
27 Leadenhall Street,
London, E.C.3.