

In the Privy Council.

8, 1953

2

1952

ON APPEAL

FROM THE COURT OF APPEAL, MALTA.

BETWEEN

EDGAR STAINES nomine
(Appellant)

GJ4.6.12

AND

VICTOR LA ROSA nomine
(Respondent)

In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL,
MALTA.

UNIVERSITY OF LONDON
WC1

10 FEB 1954

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN
EDGAR STAINES nomine
(Appellant)
AND
VICTOR LA ROSA nomine
(Respondent)

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL,
MALTA.

BETWEEN
EDGAR STAINES nomine
(Appellant)

AND
VICTOR LA ROSA nomine
(Respondent)

RECORD OF PROCEEDINGS

DOCUMENTS

Translation

No. 1.
Writ-of-Summons.

No. 1.
Writ-of-
Summons.

Writ-of-Summons No. 357/1947.

Filed IN H.M. COMMERCIAL
COURT by G. Pace Bonello L.P.
with Five Exhibits, this 29th
September, 1947.

(Sd.) J. Dingli, D/Regr.

GEORGE VI

By the Grace of GOD, King of Great Britain, Ireland,
and the British Dominions beyond the Seas, Defender
of the Faith, Emperor of India.

BY OUR COMMAND, at the suit of Edgar Staines, in his capacity
as Custodian of Enemy Property, representing Messrs. The Bata Over-
seas Shoe Company, Limited, Valletta, Malta — YOU SHALL SUM-
MON — Victor La Rosa, for and on behalf of Messrs. La Rosa Com-
pany, representing Messrs. The Bata National Corporation, Zlin,
Czechoslovakia, to appear before this Court at the Sitting to be held on
the Seventh (7th) November, 1947.

No. 1.
Writ of
Summons.
—continued.

And there; — whereas the Defendant nomine has applied for the registration here in Malta of the word “Bata” as a trade-mark in respect of various goods produced by the Defendant firm, namely, Tyres and Tubes, Technical Rubber, Footwear and Stockings, Shoe Polish and Shoe Laces, as per advertising Notices published in the Government Gazette of the 22nd, 26th and 29th November, 1946 and 3rd and 6th December, 1946 (Exhibits A, B, C, D and E); — and whereas, on the 2nd January, 1947, the Plaintiff entered formal opposition to the registration of each of the above trade-marks on the ground that the word “Bata” had for some considerable time been used to distinguish 10 the goods sold by the Plaintiff firm, and that, consequently, the registration thereof by another firm would create confusion on the local market, the more so as it is applied for in respect of goods similar to those sold by the Plaintiff firm; — and whereas, on the 24th and 25th April, 1947, the Defendant nomine submitted a counter-statement of his grounds against the opposition entered by the Plaintiff; — every necessary declaration being prefaced and any expedient direction being given; — said Defendant nomine to shew cause why the registration of the word “Bata” as a trade-mark in respect of the goods above-mentioned, for which he has applied, should not be dis- 20 allowed by this Court.

With Costs, including the Costs of the Counter-Protest filed on the 1st May, 1947.

You shall summon said Defendant nomine so that a reference to his oath may be made.

You shall further give the Defendant notice that if he wants to contest the claim, he must, not later than two working days previous to the day fixed for the hearing of the cause, file a statement of defence according to law, and that, in default of such statement within the said period, and of his appearance on the day, at the hour and place afore- 30 said, the Court will proceed to deliver judgment according to justice on the action of the Plaintiff nomine on the said day, or on any subsequent day, as the Court may direct.

And after service by delivery of a copy hereof upon said Defendant nomine, or his agent according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Court.

Given by Our aforesaid Commercial Court.

Witness Our faithful and well-beloved The Honourable Mr. Justice A. J. Montanaro Gauci, Doctor of Laws, Judge of Our said Court.

This Thirtieth September, 1947.

40

(Signed) A. J. MONTANARO GAUCI.

No. 2.
Plaintiff's Declaration

No. 2.
Plaintiff's
Declaration

In H. M. Commercial Court.

Edgar Staines nomine

v.

Victor La Rosa nomine

Plaintiff's Declaration.

Respectfully sheweth:—

The Defendant nomine has filed an Application for the registra-
10 tion of the word "Bata" as a trade-mark for various goods produced
by the Defendant firm, namely, Tyres and Tubes, Technical Rubber,
Footwear and Stockings, Shoe Polish and Shoe Laces — as per Notices
published in the Government Gazette of the 22nd, 26th and 29th Novem-
ber and 3rd and 6th December, 1946.

On the 2nd January, 1947, the Plaintiff nomine entered formal op-
position to the registration of the trade-mark in question, submitting
the following grounds, namely:—

Plaintiff firm was set up as a commercial partnership by deed en-
rolled in the Records of Notary Angelo Cachia on the 24th November,
20 1937, which deed was published in the Government Gazette on the 28th
January, 1938. Then, on the 3rd August, 1938, the Plaintiff firm
bought and acquired the entire business formerly carried on in Malta
by Messrs. The Bata Shoe Company of East Tilbury, Essex, England.

The word "Bata" has been used in Malta over a number of years
to distinguish the products of the Bata Shoe Company of Tilbury —
and, after 1938, those of the Plaintiff firm — from other similar goods
sold by other firms.

It follows therefore that the registration of the word "Bata" by
another firm would necessarily create confusion on the local market,
30 and, therefore, in terms of The Industrial Property (Protection) Ordin-
ance, the proposed registration should be disallowed on the ground
that that word has for several years past been lawfully used in Malta
by the Plaintiff firm.

(Signed) F. CREMONA,
Advocate.

,, G. PACE BONELLO,
Legal Procurator.

Witnesses:—

Angelo Incorvaja, John Zammit and Charles Darmanin — to give
40 evidence as to the use of the word "Bata" by Plaintiff firm.

No. 3.
List of Exhibits

In H.M. Commercial Court.

Edgar Staines nomine
v.
Victor La Rosa nomine

List of Exhibits filed together with the Writ-of-Summons.

- A. — Copy of Government Gazette dated 22nd November, 1946.
B. — Copy of Government Gazette dated 26th November, 1946.
C. — Copy of Government Gazette dated 29th November, 1946. 10
D. — Copy of Government Gazette dated 3rd December, 1946.
E. — Copy of Government Gazette dated 6th December, 1946.

(Signed) F. CREMONA,
Advocate.

„ G. PACE BONELLO,
Legal Procurator.

No. 4.
Statement of Defence

In H. M. Commercial Court.

Edgar Staines nomine 20
v.
Victor La Rosa nomine

Defendant's Statement of Defence.

Respectfully sheweth:—

The Plaintiff, the Custodian of Enemy Property, has produced no evidence to show by what authority he is entitled to represent a firm that, according to the Malta Defence Regulations, is not an Enemy Firm.

The Defendant firm has been exporting to Malta, and selling here wholesale and retail, goods of its own manufacture for a period of over 30

sixteen years, as established by the Certificate issued by the Chamber of Commerce of Olomouc (Exhibit A).

The Plaintiff firm does not manufacture the goods in respect of which the firm at Zlin has applied for the registration of the word "Bata", and the goods imported here by the Plaintiff firm are goods manufactured by the Defendant firm at Zlin.

Both the firm at Tilbury and the Plaintiff firm are of recent origin and off-shoots of the "Bata" firm of Zlin.

The claims of the Plaintiff nomine, therefore, are untenable.

10

(Signed) F. N. BUTTIGIEG,
Advocate.

„ EDWARD BUGEJA,
Legal Procurator.

This Twenty-fourth October, 1947.

Filed by Edward Bugeja L.P. without Exhibits.

(Signed) S. BUGEJA,
Deputy Registrar.

No. 5.

Defendant's Declaration

**No. 5.
Defendant's
Declaration**

20 In H. M. Commercial Court.

Edgar Staines nomine

v.

Victor La Rosa nomine

Defendant's Declaration.

Respectfully sheweth:—

30 The Bata firm at Zlin had been exporting to Malta goods of its own manufacture long before the time of the Bata Shoe Company of Tilbury and the Bata Overseas Shoe Company of Malta. It is therefore the Plaintiff firm and the firm at Tilbury that, importing goods made by the Bata firm at Zlin, have been competing with that firm. In fact, the firm in Malta manufactures no Bata goods, whilst the Tilbury firm produces no other goods but hosiery.

No. 5.
Defendant's
Declaration
—continued.

Import documents at the Customs establish the date on which the Defendant firm started trading in Malta.

For his part, the Plaintiff nomine should produce evidence to show the date on which the Plaintiff firm, in its own name and as assignee of the Tilbury firm, first took up the sale of goods manufactured by the firm at Zlin.

There are no grounds therefore for the opposition entered by the Plaintiff nomine with regard to the registration of the "Bata" trademark applied for by the Defendant firm.

Witnesses :—

10

The contending parties — to give evidence in substantiation.

Carmelo Zammit, Paolo Cilia, Andrea Borg and Salvatore La Rosa — to give evidence establishing the date since which they have been buying goods made by the Defendant firm.

Professor Victor Caruana LL.D. — to produce any correspondence exchanged between the Plaintiff firm and the Defendant firm.

The Collector of Customs — to produce Customs documents respecting the import of "Bata" goods.

Plaintiff's witnesses — for cross-examination.

The Comptroller of Industrial Property.

20

Other witnesses if necessary.

(Signed) F. N. BUTTIGIEG,
Advocate.

„ A. V. BONELLO,
Legal Procurator.

„ EDWARD BUGEJA,
Legal Procurator.

No. 6.
List of
Exhibits

No. 6. List of Exhibits

In H. M. Commercial Court.

30

Edgar Staines nomine

v.

Victor La Rosa nomine

List of Exhibits filed together with the Statement of Defence.
A. — Certificate issued by the Chamber of Commerce, Olomouc.

B. — Copy of the Counter-Protest filed by the Plaintiff firm on 1st May, 1947. (The above documents will be produced by the Comptroller of Industrial Property).

No. 6.
List of
Exhibits
—continued.

(Signed) F. N. BUTTIGIEG,
Advocate.
„ A. V. BONELLO,
Legal Procurator.
„ EDWARD BUGEJA,
Legal Procurator.

10

No. 7.

The Evidence of the Comptroller of Industrial Property.

In H. M. Commercial Court.

No. 7.
The Evidence
of the Com-
ptroller of In-
dustrial Pro-
perty.

7th November, 1947.

The Hon. Walter Salomone, Comptroller of Industrial Property, produced by the Defendant, states on oath:—

I am the Comptroller of Industrial Property. I produce a Certificate issued by the Chamber of Commerce of Olomouc and a Counter-Protest sent to me by the Defendant. Both documents belong to my official files and I therefore reserve the right to withdraw them and to file a copy in their stead.

Read over to the witness.

(Signed) J. DINGLI,
Deputy Registrar.

No. 8.
Plaintiff's Evidence.

In H. M. Commercial Court.

4th December, 1947.

The Plaintiff, the Custodian of Enemy Property, states on oath:--

The "Bata" firm, Malta, has a business in Malta and other businesses in West Africa. The firm was declared an enemy firm and I appear on its behalf by virtue of the powers vested in me by two Warrants issued by the Governor—Nos. 12 and 78. I shall produce a copy of both Warrants. Various directions on the matter are given to me in the Warrants in question. 10

The firm "Malta Bata" had business dealings with various other firms and not only with the firm at Zlin.

At the outbreak of the War, following the procedure laid down in the Trading with the Enemy Ordinance, the Attorney-General laid information before the Magistrates' Court to the effect that there were reasonable grounds for supposing that the firm was an enemy firm within the meaning of the law. The Court appointed an Accountant to inspect the books of the firm, and the Accountant so appointed reported back to the Court that the business was in fact an enemy business 20—whereupon the Court transmitted the findings to the Governor and the Governor issued the Warrants I have mentioned. I am showing the Warrant to the Court.

(Signed) EDGAR STAINES.

Read over to the witness.

(Signed) J. DINGLI,
Deputy Registrar.

**No. 9.
Procés Verbal**

No. 9.
Procés
Verbal

In H. M. Commercial Court.

13th January, 1948.

The Defendant withdraws the plea anent Plaintiff's right to appear on behalf of The Bata Overseas Shoe Company Limited, Malta.

The Plaintiff requests an adjournment in order to produce evidence on the merits.

The case stands adjourned to 19th February, 1948.

10

(Signed) J. DINGLI,
Deputy Registrar.

**No. 10.
Plaintiff's Minute.**

No. 10.
Plaintiff's
Minute

In H. M. Commercial Court.

Edgar Staines nomine
v.
Victor La Rosa nomine

The Minute of the Plaintiff nomine.

The Plaintiff hereby produces the annexed document, market Ex-
20 hibit A. *

(Signed) F. CREMONA,
Advocate.

The 13th January, 1948.

Filed by Professor F. Cremona LL.D. with one Exhibit.

(Signed) J. DINGLI,
Deputy Registrar.

* Letter Bata/Zlin to Bata/Tilbury dated 22nd June, 1939.

No. 11.
Defendant's Evidence.

In H. M. Commercial Court.

20th May, 1948.

The Defendant states on oath:—

The Bata firm at Zlin has been sending shoes to us here in Malta since 1929. Before, in 1924, the firm used to send the goods to Mizzi. We dealt directly with the Head Office and, right up to 1939, all goods were sent out from Zlin. Andrea Borg and Paolo Cilia enjoyed exclusive trading rights as regards the rubber shoes made by the firm. Then the firm at Tilbury came into being and they too used to import their goods from Zlin. Here in Malta, the goods were consigned to a man named Vertez, and an Austrian, who was an employee of the firm at Zlin, was sent out. Local retailers included Francis Borg, Greenburgh, Montebello, Azzopardi, Casapinta, Pizzardi, Bellizi, Muscat and others. These dealers first started taking the goods in 1929, as shown by the sales register, which covers the period from May, 1929 to December, 1930. There were other registers besides the one in my possession, recording transactions made in the following years — but I do not know where they are to be found. The firm at Zlin continued trading in Malta throughout the whole time — even during the time of the “Bata Overseas,” which itself used to import the goods from Zlin. The “Bata Overseas” never imported from Tilbury.

CROSS-EXAMINATION

I do not know on whose behalf the British Bata sold the goods— I know the goods were imported from Zlin. Each and every shoe was marked *Bata Made in Czechoslovakia* and the goods were sold to the Bata Overseas here in Malta. The Bata Overseas was set up with the consent of the Bata firm at Zlin. In fact, the Director came over to Malta from Zlin. It was he himself who selected the shops and everything was done under his supervision — and, as I said, the Bata Overseas was set up with his consent. I know that at the time they found various obstacles when applying for permits to open shops here; and they therefore assumed an English name so as to facilitate matters. The English company never sent shoes to Malta. Thomas Bata of Zlin was the founder of the concern which I represent at present. Thomas Bata's step-brother was found guilty of collaboration with the

Germans and he was sentenced to imprisonment and his property was confiscated by the Czechoslovak Government. A book in my possession records the fact that John Bata was sentenced to imprisonment.

No. 11.
Defendant's
Evidence
—continued.

(Signed) VICTOR LA ROSA.

Read over to the witness.

(Signed) J. DINGLI,
Deputy Registrar.

2. 6. 48.

No. 12.

10 **The Evidence of Carmelo Zammit La Rosa**

No. 12.
The Evidence
of Carmelo
Zammit La
Rosa

In H. M. Commercial Court.

20th May, 1948.

Carmelo Zammit La Rosa, produced by the Defendant, states on oath:—

20 The Bata goods that came to Malta were imported from Zlin. They have been so imported from Zlin since 1932 or thereabouts. I know that the Bata Overseas was then established in Malta. I know also that Incorvaja went to Zlin to undergo a course. I worked in the Office of the Bata Overseas from 1936 to 1939 and I am quite certain that all the goods were brought over from Zlin. I was in charge of the correspondence. We made weekly stock-takings and each week we sent the indents to Czechoslovakia for the stocks to be replenished. We sent our requirements to Zlin — not to England. We used to deposit the money at the Banco di Roma to the credit of the firm at Zlin. The Bata Overseas came into being so as to obtain the necessary permits — a certain amount of opposition having been encountered.

CROSS-EXAMINATION

30 The shoes were then sold allegedly as British goods. However, the goods were marked *Made in Czechoslovakia* and bore the Bata Zlin trade-mark. I do not think there was any other company in Czechoslovakia besides the one at Zlin. I remember a traveller came over from Zlin when the shops were opened. We always dealt with the firm at Zlin. The sales were made by the local shops. So far as I was concerned, the English firm was non-existent. We never had anything to do

No. 12. with any English firm. At no time were there two firms in Malta. I
 The Evidence know that some confusion was prevalent. I am 30 years of age. The
 of Carmelo Bata firm at Tilbury had no shops in Malta.
 Zammit La
 Rosa

—continued.

(Signed) C. ZAMMIT LA ROSA.

Read over to the witness.

(Signed) J. DINGLI,

Deputy Registrar.

2. 7. 48.

No. 18.
 The Evidence
 of Paolo Cilia

No. 13.

The Evidence of Paolo Cilia

In H. M. Commercial Court.

10

20th May, 1948.

Paolo Cilia, produced by the Defendant, states on oath:—

I have been in the shoe trade for very many years. I have known the Bata firm for some 18 or 20 years and it was I who introduced the goods of that firm in Malta. Shoe samples were sent over by the Bata of Czechoslovakia and the goods came from Czechoslovakia. I used to place my orders with Arturo La Rosa and Arturo La Rosa imported the goods. I am the proprietor of a shoe-store. At the time when I brought over the goods, I enjoyed sole trading rights in respect of the rubber shoes of the firm. At that time, I never saw any trade-mark that differed from the Bata trade-mark. Since last year, a trade-mark Bata of England and other places has made its appearance on the local market. I never saw any of them before the war. Before La Rosa started importing them, there were no Bata shoes in Malta. I am certain of it: I was the first to place orders for the shoes. 20

CROSS-EXAMINATION

When they opened the shops here in Malta, I placed no more orders for these shoes. I stopped ordering the shoes when they first opened the shop in Kingsway.

(Signed) PAOLO CILIA.

30

Read over to the witness.

(Signed) J. MICALLEF,

Deputy Registrar.

7. 6. 48.

No. 14.
Plaintiff's Minute

No. 14.
Plaintiff's
Minute

In H. M. Commercial Court.

Edgar Staines nomine

v.

Victor La Rosa nomine

The Minute of the Plaintiff nomine.

The Plaintiff hereby produces the annexed document, marked Exhibit A. — *

10 (Signed) F. CREMONA,
Advocate.

The 22nd June, 1948.

Filed at the Sitting by Professor F. Cremona LL.D. with one Exhibit.

(Signed) J. DINGLI,
Deputy Registrar.

* Plaintiff's Evidence in re "Salvatore La Rosa de Cristofaro v. Edgar Staines nomine."

No. 15.
Plaintiff's
Minute

No. 15.
Plaintiff's Minute

In H. M. Commercial Court.

Edgar Staines nomine
v.
Victor La Rosa nomine

The Minute of the Plaintiff nomine.

The Plaintiff hereby produces the annexed document, marked Exhibit A. — *

(Signed) F. CREMONA,
Advocate.

10

The 15th October, 1948.

Filed at the Sitting by Professor F. Cremona LL.D. with one Exhibit.

(Signed) S. FARRUGIA,
Deputy Registrar.

No. 16.
The Evidence
of Angelo
Incorvaja

No. 16.
The Evidence of Angelo Incorporvaja

In H. M. Commercial Court.

8th February, 1949.

20

Angelo Incorporvaja, produced by the Plaintiff, states on oath:—

I had been employed with the Bata Overseas since 1932. We sold goods wholesale and retail under the style of "The Bata Shoe Company Overseas Limited." The sign-board of the establishment was "Bata Shoes". Before the War, we imported the goods from Czechoslovakia. Then the proprietor came to Malta and made arrangements for shops to be opened here. The shops were opened in 1932 under the style of

* Declaration dated 17th September, 1948 and Agreement dated 3rd August, 1938.

The British Bata Shoe Company. The British Bata and the Bata firm in Czechoslovakia were agreed that no shoes were to be imported from Czechoslovakia except through the British Bata. Then, by virtue of an agreement entered into, the British Bata assigned all its rights in Malta to the Bata Shoe Company Overseas Limited. I still represent the British Bata Shoe Company. In view of the agreement made with the local Company, I received telegraphic instructions to register the trademark. I found however I could not do so because of the agreement in question. So I approached the Custodian of Enemy Property and, after the exchange of correspondence, it was agreed that the British Bata should send goods to Malta, provided however that a royalty of 2% on the c.i.f. value of the goods were paid to the Custodian of Enemy Property. I paid that percentage up to a short time ago.

No. 16.
The Evidence
of Angelo
Incorvaja
—continued.

(Signed) S. FARRUGIA,
Deputy Registrar.

No. 17.
Plaintiff's Minute

No. 17.
Plaintiff's
Minute

In H. M. Commercial Court.

Edgar Staines nomine
v.
Victor La Rosa nomine

The Minute of the Plaintiff nomine.

Whereby, for the better implementation of the case, the Plaintiff produces the annexed Note of Submissions.

(Signed) F. CREMONA.

The 7th April, 1949.

Filed at the Sitting by Professor F. Cremona LL.D. together with a Note of Submissions.

(Signed) J. CAMILLERI CACOPARDO,
Deputy Registrar.

No. 18.
Plaintiff's Note of Submissions

In H. M. Commercial Court.

Edgar Staines nomine

v.

Victor La Rosa nomine

The Note of Submissions of the Plaintiff nomine.

Respectfully sheweth:—

1. The Plaintiff is here seeking an Order disallowing the registration of the word "Bata" as a trade-mark in respect of the goods mentioned in the Writ-of-Summons—following formal opposition there-
to entered by him with the Comptroller of Industrial Property in terms
of The Industrial Property (Protection) Ordinance. 10

2. The Defendant, for his part, has put up the plea that he had been making lawful use of the name "Bata" long before the Plaintiff and that Plaintiff's claim is therefore untenable.

3. For this Court fully to appreciate the legality of Plaintiff's claim, and the lack of all juridical basis for Defendant's plea, it is necessary to make a brief exposition of the facts as established in evidence. 20

4. It is a settled point between the parties that the Defendant firm used to supply the local market with its goods, and perhaps it may be stated also that, at one time, certainly before 1932, the Defendant firm sold its products directly to local traders through its own agent and representative, Salvatore La Rosa de Cristofaro. However, in 1932, perhaps even before then — that is to say, when the British Bata Shoe Company Limited, Tilbury, started operations in Malta — the position changed completely. In fact, ever since that time, it was the British Bata Shoe Company alone that used the word "Bata" for the goods which it manufactured or imported; and although the supply of
goods to the British firm continued to be made principally by Defen-
dant firm, the goods so supplied were sold by the British firm under its
own name (vide Evidence Salvatore La Rosa de Cristofaro). It is com-
mon knowledge that the British firm had its own shops in Kingsway
and Britannia Street, Valletta, and that the respective sign-boards
bore the legend "The British Bata Shoe Company Limited." 30

That was the position during the period from 1932 to 1938. Then, on the 3rd August, 1938, the British firm assigned and made over its

entire business in Malta and in British West Africa to the Plaintiff firm, which had been set up by an instrument enrolled in the Records of Notary Angelo Cachia on the 24th November, 1937, duly published in the Government Gazette on the 28th January, 1938. Thereby, not only was the Plaintiff firm vested with all the rights hitherto enjoyed by the British firm in Malta and British West Africa, but the British firm also expressly undertook "to cease all activities there and not during the period aforesaid to sell or supply any goods in either of the said territories unless authorized by the purchasers (Plaintiff firm) in writing." (Clause 8 of the Agreement). Therefore, since the 3rd August, 1938, the only firm that made use of the name "Bata" was the Plaintiff firm. As stated in evidence by Salvatore La Rosa de Cristofaro, who at that time was the Representative of the Defendant firm, as well as the Manager of Plaintiff firm — although the goods were supplied to Plaintiff firm by Defendant firm, it was the Plaintiff firm, and none but the Plaintiff firm, that sold the goods so supplied.

When war broke out, Plaintiff firm came under the control of the Custodian of Enemy Property and, for the time being, its activities here in Malta came to an end. Through the Custodian of Enemy Property, however, Plaintiff firm allowed the British firm to carry on trade in Malta, subject to the condition that the British firm would pay to Plaintiff firm a royalty of 2% on the c.i.f. value of the goods imported into Malta (vide Evidence Angelo Incorvaja). And that is still the position today.

5. The upshot is that, though it may perhaps be said that there was a time before 1932 when the Defendant firm had sold its products to local traders, it is certain that, since 1932, all "Bata" goods were sold, first, by the British Bata, and then, after 1938, by Plaintiff firm. It is therefore certain that Plaintiff firm has enjoyed the lawful use of the word "Bata" ever since 1932 — as assignee of the British firm from 1932 to 1938, and directly from 1938 onwards. The facts subsequent to 1932 leave no doubt whatever as to the rights of Plaintiff firm, and, what is more — considering that a period of over 15 years has gone by — they go to show that if any rights at all were ever enjoyed by Defendant firm, such rights have now lapsed — and certainly do not amount to "prior legal use" as required in section 84 (1) of the Industrial Property (Protection) Ordinance.

6. Apart from the foregoing, the position of the Defendant firm is further prejudiced by the undertaking not to make use, up to 31st December, 1949, of the name "Bata" in the territory of "Great Britain and the whole of the British Empire with the exception of the Far East and Canada." (Vide Letter Bata/Zlin to Bata/Tilbury dated 22nd

No. 18.
Plaintiff's
Note of
Submissions
—continued.

June, 1939). — Which also goes to show that the Defendant firm was indeed in bad faith when it applied for the registration of the word "Bata" as a trade-mark here in Malta.

7. It is submitted further that, juridically, the Defendant firm, that is to say, the Bata National Corporation, Zlin, should not be recognised in Malta as the Successor of *any and every* right formerly enjoyed here by the original Bata Company of Zlin, which was nationalised by the Czechoslovak Government in December, 1945—considering that in this case the nationalisation decrees were of a confiscatory nature and are not therefore enforceable in Malta. Cheshire (Private International Law, Second Edition, pp. 150-155) states: "Confiscation of property on political grounds is an everyday occurrence in the Totalitarian States of today and there is no doubt that it represents a policy which is repugnant to the policy of English law and will not be enforced in England." 10

8. Finally, it is submitted — without prejudice to the foregoing — that the word which the Defendant firm seeks to register as a trade-mark, being no more than a surname without any adjunct whatsoever, does not possess the "distinctiveness" that is an essential requirement where the registration of trade-marks is concerned. Now, although surnames are not expressly debarred by local law, as they are in fact by English law [Trade Mark Act, 1938.—sec. 9 (1) (d)], section 83 of the Industrial Property (Protection) Ordinance, read in its context, makes it clear that a surname by itself does not constitute one of the particulars that the law requires for a mark to be deemed a trade-mark. After all, that is both equitable and logical, in that no person should be in a position to monopolise the use of a surname to the detriment of all other persons bearing the same surname. This apart from the fact, reported in the London "Times" of the 12th December, 1948 — which the Plaintiff is unable to substantiate in the manner prescribed by law — that the Defendant firm has decided to discontinue the use of the word "Bata" and to adopt instead the word "Svit." (Exhibit A). 20 30

(Signed) F. CREMONA,
Advocate.

No. 19.
Defendant's Minute

No. 19.
Defendant's
Minute

In H. M. Commercial Court

Edgar Staines nomine
v.
Victor La Rosa nomine

The Minute of the Defendant nomine.

Whereby the Defendant produces the annexed Note of Submissions.

(Signed) F. N. BUTTIGIEG,
Advocate.

10

This 28th June, 1949.

Filed at the Sitting by Dr. F. N. Buttigieg with a Note of Submissions.

(Signed) J. CAMILLERI CACOPARDO,
Deputy Registrar.

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No. 20.
Defendant's Note of Submissions

No. 20.
Defendant's
Note of
Submissions

In H. M. Commercial Court

Edgar Staines nomine
v.
Victor La Rosa nomine

20

The Note of Submissions of the Defendant nomine.

Respectfully sheweth:—

It is not in accordance with the facts to state that the "Bata" firm at Tilbury had carried on trade at the "Bata" establishment in Kingsway, Valletta: That establishment was opened by the "Bata" firm of Zlin and was organized by a certain Frankll whom the firm at Zlin expressly sent out for the purpose. Further, the firm at Zlin, ap-

No. 20.
Defendant's
Note of
Submissions
—continued.

pointed Salvatore La Rosa de Cristofaro as Manager of the business, whilst a sub-manager, named Vertes, came over from Zlin.

Not only that, but Angelo Incorvaja, an employee in that establishment — and one of the witnesses in the case “La Rosa v. Staines” pending before this Court — was required by the firm at Zlin to undergo, and did in fact undergo, an orthopaedic course at Zlin.

It was only in the year 1947 that the Bata firm at Tilbury imported goods for the local market from India and Egypt, and when, in 1938, the Bata Shoe Company Overseas was set up in Malta to meet local requirements, the goods sold by the newly-constituted firm were goods of the Bata/Zlin and bore the trade-mark “Bata”. 10

No “Bata” firm ever had any business premises at No. 36, Britannia Street, Valletta. It was Salvatore La Rosa de Cristofaro who had his office at that address — and it was there that goods which he imported from Bata/Zlin were sold by him on his own account.

The Plaintiff himself admits, not only that the Bata/Zlin were the first to import their goods here, but also that those goods continued to be sold on the local market with the “Bata” trade-mark stamped on them — even during the time of the Bata Shoe Company Overseas Limited. 20

There are no grounds therefore for Plaintiff's opposition to the registration of that trade-mark.

No evidence has been produced by the Plaintiff to show that the firm at Zlin had ever assigned the “Bata” trade-mark to the Tilbury firm or to the Bata Overseas — or renounced the use thereof in favour of the one or the other firm: and he cannot therefore claim that the Bata/Zlin is not entitled to continue to use or to register its own trade-mark. There is nothing to show in the document at fol. 26 of the Record (Letter Bata/Zlin to Bata/Tilbury, 22nd June, 1939) that the firm at Zlin had assigned or made any waiver in respect of that trade-mark. Further, that document is of no value at all, seeing that the Plaintiff has failed to produce any evidence to show that the man Kraus, who signed it, was the mandatory or the representative of the Bata/Zlin. 30

Further, if that document were of any value, the appointment of the Tilbury firm as the representative of the Bata/Zlin would bring up the argument that the representative may not go or act against his principals. The same argument applies to Plaintiff firm, which claims to be the assignee of the Tilbury firm. According to Plaintiff's contention, the agent or trader who imports into Malta goods made by a foreign firm is entitled to oppose the registration of the trade-mark of that firm — which is absurd. 40

In para: 7 of his Note of Submissions, the Plaintiff states that the Bata/Zlin has been nationalised by a Totalitarian Government and that the trade-mark of the firm has been changed from "Bata" to "Svit"; and he maintains that the confiscation of the Bata/Zlin "represents a penalty which is repugnant to English law" and one that "will not be enforced in England." All of which is contradicted by Plaintiff himself, for the firm at Zlin is still sending its own goods to Malta marked with the "Bata" trade-mark, whilst the word "Svit" — seeing that confiscation is "repugnant to English law" — should not be registered here in Malta in the stead of the word "Bata". On the contrary, the Tilbury firm, in agreement with the Plaintiff — as the Plaintiff has himself stated — is sending here Bata/Zlin goods marked with the trade-mark "Bata."

So far as registration is concerned, it is submitted that, especially at the present day, the word "Bata" denotes, not a surname, but a special brand of merchandise that is everywhere known by that name. Nor are there any shareholders in a nationalised firm bearing the surname Bata. Further, it is stated that... "the name Bata is famous throughout the world for shoes...." And therefore the word Bata possesses sufficient distinctiveness to render it perfectly acceptable for registration.

Apart from the fact that, under the local law, a surname is acceptable for registration, the trade-mark Bata, even if at the present day it denoted no more than a surname, is impressed on the goods in such a way and with so many characteristic features as to render it easily distinguishable from the same word written or embossed in any other way.

(Signed) F N. BUTTIGIEG,
Advocate.

No. 21.

Judgment, H. M. Commercial Court

HIS MAJESTY'S COMMERCIAL COURT

Judge:

The Honourable Mr. Justice A. J. Montanaro Gauci LL.D.

Sitting held on Friday, the
31st March, 1950.

No. 2

Writ-of-Summons No. 357/1947.

Edgar Staines, in his capacity as 10
Custodian of Enemy Property,
representing Messrs. The Bata
Overseas Shoe Company Limited

v.

Victor La Rosa, for and on behalf
of Messrs. La Rosa Company,
representing Messrs. The Bata
National Corporation, Zlin,
Czechoslovakia.

The Court,

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Upon seeing the Writ-of-Summons, whereby the Plaintiff nomine,
submitting: — That the Defendant nomine has applied for the regis-
tration of the word “Bata” as a trade-mark here in Malta in respect of
various goods produced by the Defendant firm, namely, Tyres and
Tubes, Technical Rubber, Footwear and Stockings, Shoe Polish and
Shoe Laces, as per advertising Notices published in the Government
Gazette of the 22nd, 26th and 29th November, 1946 and 3rd and 6th
December, 1946 (Exhibits A, B, C, D and E); — that, on the 2nd Jan-
uary, 1947, the Plaintiff entered formal opposition to the registration of
each of the above trade-marks on the ground that the word “Bata” 30
had for some considerable time been used to distinguish the goods sold
by the Plaintiff firm, and that, consequently, the registration thereof
by another firm would create confusion on the market, the more so as
it is applied for in respect of goods similar to those sold by the Plaintiff
firm; — and that, on the 24th and 25th April, 1947, the Defendant no-
mine submitted a counter-statement of his grounds against the opposi-
tion entered by the Plaintiff; — prayed that; — every necessary

declaration being prefaced and any expedient direction being given; — the registration of the word “Bata” as a trade-mark in respect of the goods above-mentioned, applied for by the Defendant nomine, be disallowed by this Court. — With Costs, including the Costs of the Counter-Protest filed on the 1st May, 1947.

No. 21.
Judgment
H. M. Com-
mercial Court
—continued.

10 Upon seeing the Statement of Defence of the Defendant nomine, pleading:— That no evidence has been produced to show by what authority the Plaintiff, the Custodian of Enemy Property, is entitled to represent a firm that, according to the Malta Defence Regulations, is not an enemy firm; — that the Defendant firm has been exporting to Malta, and selling here wholesale and retail, goods of its own manufacture for a period of over sixteen years, as established by the Certificate issued by the Chamber of Commerce of Olomouc; — that the Plaintiff firm does not manufacture the goods in respect of which the firm at Zlin has applied for the registration of the word “Bata”, and that the goods imported here by the Plaintiff firm are goods manufactured by the Defendant firm at Zlin; — that both the firm at Tilbury and the Plaintiff firm are of recent origin and off-shoots of the Firm “Bata” at Zlin; — and that Plaintiff’s claims are therefore untenable.

20 Having heard the sworn evidence of the parties and of the witnesses produced.

Having examined the acts filed in the Record.

Having heard Counsel on both sides.

Considering:

The evidence tendered by the Plaintiff has established that the firm represented by him was declared an Enemy Firm and that a Governor’s Warrant vested him with powers to appear and act on its behalf.

30 It is established in evidence that the Trade Mark “Bata”, the registration of which is at issue between the Plaintiff nomine and the Defendant nomine, represents the name of the Founder of the Firm “Bata” of Zlin, which manufactures various rubber goods, including shoes, accessories and other goods. The word “Bata” however has now acquired good-will value and is well-known in connection with shoes manufactured at Zlin; and since it is printed and impressed in a particular and distinctive manner, such as to render it distinguishable from others, the trade-mark is acceptable for registration. (Section 83 (a), Chap. 48, Laws of Malta).

40 It is further established in evidence that the firm represented by the Defendant nomine has been exporting its goods to Malta under the name “Bata” since the year 1924; and that it continued so to export

No. 21.
Judgment
H. M. Com-
mercial Court
—continued.

its goods up to the outbreak of war in 1939 (foll. 19, 30, 31 and 64 — Certificate, Chamber of Commerce, Olomouc, dated 4th Feb. 1947; evidence of Defendant, Carmelo Zammit La Rosa and of Angelo Incorvaja). Meantime, by an arrangement made by the firm at Zlin in 1932, the import and sale in Malta of "Bata" goods was taken over by the British Bata Shoe Company, Ltd., of Tilbury; and, in 1938, the latter firm surrendered that business to the firm represented by the Plaintiff. They, however, were but the representatives of the firm at Zlin and the trade carried on by them was trade in the goods produced by the firm represented by the Defendant nomine, as clearly shown by the document filed at fol. 26 of the Record. (Letter Bata/Zlin to Bata/Tilbury, 22nd June, 1939). The firm at Tilbury, and, therefore, the Plaintiff firm, held only the trading rights in Malta of the "Bata" goods produced by the concern at Zlin, and they did not hold any rights in respect of the ownership of the "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 Czechoslovakia, 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 the Plaintiff, and, if obliged at any time to make any direct sales, to pay to 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, the agreement entered into had to remain operative up to the end of 1949, and therefore even that agreement has now terminated.

It has been submitted by the Plaintiff that the firm at Zlin represented by the Defendant has changed its name from "Bata" to "Svit", just as the name of the town itself has been changed. In substantiation, the Plaintiff has produced a copy of the London "Times". Apart from the questionable value of newspaper 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.

It is therefore clear that, whilst the firm represented by the Defendant has 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 used that trade-mark only because it enjoyed

for a time the exclusive rights respecting the import and sale of Bata goods in Malta, sent to it by the Bata firm at Zlin and with the consent of that firm. And therefore Plaintiff's opposition as brought forward in the Writ-of-Summons lacks proper justification.

No. 21.
Judgment
H. M. Commercial Court
—continued.

On these grounds.

The Court

Dismisses Plaintiff's claims with Costs.

(Signed) EDW. CAUCHI,
Deputy Registrar.

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No. 22.
Plaintiff's Note of Appeal

No. 22.
Plaintiff's
Note of
Appeal

In H. M. Commercial Court

Edgar Staines nomine

v.

Victor La Rosa nomine

The Note of Appeal of Edgar Staines nomine.

The said Edgar Staines appears and, deeming himself aggrieved by the judgment given by H.M. Commercial Court on the 31st March, 1950, hereby enters Appeal therefrom to H.M. Court of Appeal.

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(Signed) F. CREMONA,
Advocate.
„ G. PACE BONELLO,
Legal Procurator.

The 11th April, 1950.

Filed by G. Pace Bonello L.P. without Exhibits.

(Signed) EDW. CAUCHI,
Deputy Registrar.

IN H.M. COURT OF APPEAL

No. 23.
Plaintiff's Petition

No. 28.
Plaintiff's
Petition

In H.M. Court of Appeal

Writ-of-Summons No. 357/1947.

Edgar Staines, in his capacity as
Custodian of Enemy Property,
representing Messrs. The Bata
Overseas Shoe Company Limited
v.

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Victor La Rosa, for and on behalf
of Messrs. La Rosa Company,
representing Messrs. The Bata
National Corporation, Zlin,
Czechoslovakia.

The Petition of the Plaintiff in his aforesaid capacity.

Respectfully sheweth:—

By Writ-of-Summons filed in H.M. Commercial Court, the Plaintiff, submitting: — That the Defendant nomine has applied for the registration here in Malta of the word “Bata” as a trade-mark in respect
20 of various goods produced by the Defendant firm, namely, Tyres and Tubes, Technical Rubber, Footwear and Stockings, Shoe Polish and Shoe Laces, as per advertising Notices published in the Government Gazette of the 22nd, 26th and 29th November, 1946 and 3rd and 6th December, 1946 (Exhibits A,B,C, D and E); — that, on the 2nd January, 1947, the Plaintiff entered formal opposition to the registration of each of the above trade-marks on the ground that the word “Bata” had for some considerable time been used to distinguish the goods sold by the Plaintiff firm, and that, consequently, the registration thereof by another firm would create confusion on the market, the
30 more so as it is applied for in respect of goods similar to those sold by the Plaintiff nomine; — and that, on the 24th and 25th April, 1947, the Defendant nomine submitted a counter-statement of his grounds against the opposition entered by the Plaintiff; — prayed that; — every necessary declaration being prefaced and any expedient direction being given; — the registration of the word “Bata” as a Trade Mark in respect of the goods above-mentioned, applied for by the Defendant nomine, be disallowed by this Court. — With Costs, including the Costs of the Counter-Protest filed on the 1st May, 1947.

2. His Majesty's Commercial Court, by judgment given on the 31st March, 1950, disallowed Plaintiff's claim, with Costs.

3. The Plaintiff, deeming himself aggrieved by that judgment, entered Appeal therefrom to this Honourable Court by Minute filed on the 11th April, 1950.

4. The grievance is manifest: The Court below held that the firm represented by the Defendant nomine had enjoyed 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 facts as established during the hearing of the case, however, lead to a different conclusion. 10
It is not at issue between the parties that the Defendant firm used to supply the local market with goods of its own manufacture, and that, for a time, before the year 1932, that firm sold its products to local traders directly through its agent and representative, Salvatore A. La Rosa de Cristofaro. It is likewise a settled point that, at that time, the Defendant firm sold the goods as "Bata" goods. However, in 1932, and perhaps even before 1932 — when, that is, the British Bata Shoe Company Ltd., Tilbury, entered into the local market — the position underwent a complete change, both juridically and *de facto*. In fact, since that date, it was only the British Bata Shoe Company of Tilbury 20
that used the word "Bata" for goods which were manufactured or were imported by that firm for sale on the local market — following an arrangement made with the Defendant firm. Thereafter, the Defendant firm discontinued its sales to local traders, and local traders made their purchases and obtained their requirements from the one and only firm that was carrying on trade in Malta in "Bata" goods, namely, the British Bata Shoe Company Ltd. It is a fact that, following the arrangement above referred to, the supply of goods to the British firm continued to be made principally by the Defendant firm. It should be mentioned, however, that the Tilbury firm also made sales locally of 30
its own goods or of goods that were bought from "Bata" firms other than the "Bata" firm at Zlin. In any case, it is a fact that, since 1932, the Tilbury firm sold the goods here solely on its own account. (Vide deposition Salvatore La Rosa de Cristofaro — 26th January, 1948). All this notwithstanding, the Court below could see no change in the position as it had previously existed. On the contrary, that Court arrived at the conclusion that the Tilbury firm were but the Representatives of the Defendant firm and that the trade carried on by them was trade in the goods produced by the firm represented by the Defendant nomine— as the Court inferred from the document filed at fol. 26 of the 40
Record. (Letter Bata/Zlin to Bata/Tilbury, 22nd June, 1939). That conclusion, however, does not appear to be in consonance with the law.

Apart from the fact that the document at fol. 26 bears a date which is much later than that of 1932, and apart from the fact that the British firm sold here goods that were of its own manufacture or that were imported from places other than Zlin, that firm, the British Bata Shoe Company of Tilbury, was in the enjoyment of its own business existence independently of the Defendant firm and had carried on trade here in Malta in its own rights and on its own account — and not on behalf or for the account of the Defendant firm. The requisites prescribed by law for contracts respecting agents or representatives were altogether absent and therefore the transactions made by the Tilbury firm did not and could not directly affect the Defendant firm, whether favourably or otherwise. That the goods were sold here by the Tilbury firm is admitted by Salvatore A. La Rosa de Crisofaro, who was the Representative of the Defendant firm and, later, the Manager of the Plaintiff firm.

5. The foregoing, if juridically correct — and the Appellant submits it is so — leaves the judgment of the Court below bereft of the very argument on which it stands and leads to the conclusion that the word “Bata” had since 1932 been used solely by the Tilbury firm which, as is common knowledge, used to carry on trade in the shops in Kingsway and Britannia Street under the style and signboard of “The British Bata Shoe Company Ltd.” The rights enjoyed by the Tilbury firm devolved upon the Plaintiff on the 3rd August, 1938, the Tilbury firm having on that date assigned and made over its rights in Malta and British West Africa to the Plaintiff firm, the Bata Overseas Shoe Company Ltd., which had been set up by virtue of an instrument enrolled in the Records of Notary Angelo Cachia on the 24th November, 1937, duly published in the Government Gazette on the 28th January, 1938. It follows therefore that, with effect from that date, the only firm that made use of the word “Bata” was the Plaintiff firm. And the facts above set down go to show that, if the Defendant firm ever had any rights at all, such rights have now lapsed and constitute no “prior legal use” as required by law in connection with the matter of trade-marks.

6. The Appellant submits that if, the foregoing submissions notwithstanding, this Court of Appeal upholds the argument carried in the judgment appealed from, to the effect, that is, that the Defendant firm has held the lawful use in Malta of the “Bata” trade-mark since 1924, without having at any time surrendered it to any other firm — then the claim in the Writ-of-Summons may still be allowed on other grounds. In fact, the Defendant firm cannot be recognised here in Malta as the successor and assignee of any former rights that may have

No. 2a.
Plaintiff's
Petition
—continued.

been enjoyed by the original "Bata" Company of Zlin — the concern, that is to say, that had exported its goods to Malta from 1924 to 1939. Such recognition is out of the question in view of the fact that the original "Bata" Company of Zlin was nationalised by the Czechoslovak Government, and that, for political reasons, the nationalisation of the concern was of a confiscatory nature. It is submitted that, according to the principles governing the law in England, as well as the law in Malta, confiscation of property on political grounds represents a penalty and gives rise to consequences that are essentially at variance with those principles, considered from the point of view of public policy — and therefore nationalisation decrees, when of a confiscatory nature, are not enforceable, because they are not recognised, in these Islands. This is a principle of Private International Law applicable *in subjecta materia*. The position therefore is that the Defendant firm is at present claiming rights which, if they subsisted, it had never acquired — or at least the acquisition of which under the nationalisation decree above-mentioned cannot be recognised by the Courts in Malta. No consideration to this plea was given in the judgment appealed from. 10

7. Therefore, producing the under-mentioned surety for the costs of the Appeal, making reference to the evidence adduced, and reserving the right to produce all further evidence admissible at law—including a reference to Defendant's oath, for which purpose the Defendant is hereby summoned — the Appellant respectfully prays that the judgment given by H.M. Commercial Court on the 31st March, 1950 be reversed and that his claims be allowed — with the costs both of the First and of this Second Instance. 20

(Signed) F. CREMONA,
Advocate.

„ G. PACE BONELLO,
Legal Procurator. 30

This 24th April, 1950.

Filed by G. Pace Bonello L.P. without Exhibits.

(Signed) J. MICALLEF,
Deputy Registrar.

No. 24.
Surety Bond

No. 24.
Surety Bond

G. Pace Bonello, Legal Procurator, son of the late Luigi and the late Carmela nee Degiorgio, born and residing at St. Julian, appears and stands joint surety with the Appellant for the Costs of this Appeal, hypothecating the whole of his present and future property and renouncing every benefit accorded by law.

(Signed) G. PACE BONELLO,
Legal Procurator.

10 G. Pace Bonello L.P. has affixed his signature hereto in my presence.

This 24th April, 1950.

(Signed) J. MICALLEF,
Deputy Registrar.

No. 25.
Defendant's Answer

No. 25.
Defendant's
Answer

In H.M. Court of Appeal

Edgar Staines nomine

v.

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Victor La Rosa nomine

The Answer of the Defendant nomine.

The Judgment appealed from is fair and just and should be affirmed by this Honourable Court. In fact, both the Tilbury firm and the firm in Malta claim that their rights derive to them from the letter signed "Kraus" and dated 22nd June, 1939 — but no evidence has been produced to show that Kraus was the representative of the Bata firm at Zlin.

2. If Kraus had lawfully conveyed to them any rights appertaining to the firm at Zlin, such rights lapsed on the 31st December, 1949
30 — in terms of the aforesaid letter dated 22nd June, 1939.

No. 25.
Defendant's
Answer
—continued.

3. Apart from the foregoing, both the Tilbury firm and the firm in Malta imported and sold goods made by the Bata firm of Zlin, thereby acknowledging the Bata firm of Zlin as the manufacturers of the goods bearing the trade-mark "Bata" — and they cannot therefore enter opposition to the registration of that firm's trade-mark.

4. Finally, it is submitted that, in the cases envisaged in para: 1 and 2 above, the Tilbury firm and the firm in Malta would have been entitled to challenge the right of the firm at Zlin to enter into competition with them by selling its goods on the local market through other firms — but not the right to register the trade-mark of its very own 10 products.

Wherefore — without prejudice to other submissions — the Respondent respectfully prays that the Judgment appealed from be affirmed on the merits as well as on the head of costs.

(Signed) F. N. BUTTIGIEG,
Advocate.

„ E. ASCIAK MIFSUD,
Legal Procurator.

This 10th May, 1950.

Filed by E. Asciak Mifsud L.P. without Exhibits.

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(Signed) U. BRUNO,
Deputy Registrar.

No. 26.
Judgment,
H.M. Court
of Appeal
—continued.

more so as it is applied for in respect of goods similar to those sold by the Plaintiff nomine; — and that, on the 24th and 25th April, 1947, the Defendant nomine submitted a counter-statement of his grounds against the opposition entered by the Plaintiff;—prayed that;—every necessary declaration being prefaced and any expedient direction being given; — the registration of the word “Bata” as a trade-mark in respect of the goods above-mentioned, applied for by the Defendant nomine, be disallowed by this Court. — With Costs, including the Costs of the Counter-Protest filed on the 1st May, 1947.

Upon seeing the Statement of Defence of the Defendant nomine, pleading:— That no evidence has been produced to show by what authority the Plaintiff, the Custodian of Enemy Property, is entitled to represent a firm that, according to the Malta Defence Regulations, is not an enemy firm; — that the Defendant firm has been exporting to Malta, and selling here wholesale and retail, goods of its own manufacture for a period of over sixteen years, as established by the Certificate issued by the Chamber of Commerce of Olomouc; — that the Plaintiff firm does not manufacture the goods in respect of which the firm at Zlin has applied for the registration of the word “Bata”, and that the goods imported here by the Plaintiff firm are goods made by the Defendant firm at Zlin; — that both the firm at Tilbury and the Plaintiff firm are of recent origin and off-shoots of the firm “Bata” at Zlin; — and that Plaintiff’s claims are therefore untenable. 10 20

Upon seeing the judgment given by H.M. Commercial Court on the 31st March, 1950, dismissing Plaintiff’s claim, with Costs.

That Court having considered;—

The evidence tendered by the Plaintiff has established that the firm represented by him was declared an Enemy Firm and that a Governor’s Warrant vested him with powers to appear on its behalf.

It is established in evidence that the trade-mark “Bata”, the registration of which is at issue between the Plaintiff nomine and the Defendant nomine, represents the name of the Founder of the firm “Bata” of Zlin, which manufactures various rubber goods, including shoes, accessories and other goods. The word “Bata” however has now acquired good-will value and is well known in connection with shoes manufactured at Zlin; and since it is printed and impressed in a particular and distinctive manner, such as to render it distinguishable from others, the trade-mark is acceptable for registration (Section 83 (a), Chap. 48, Laws of Malta). 30

It is further established in evidence that the firm represented by the Defendant nomine has been exporting its goods to Malta under the name “Bata” since the year 1924; and that it continued so to export 40

its goods up to the outbreak of war in 1939 (foll. 19, 30, 31 and 64 — Certificate, Chamber of Commerce, Olomouc, dated 4th Feb. 1947; evidence of Defendant, Carmelo Zammit La Rosa and of Angelo Incorvaja). Meantime, by an arrangement made by the firm at Zlin in 1932, the import and sale in Malta of "Bata" goods was taken over by the British Bata Shoe Company, Ltd., Tilbury; and, in 1938, the latter firm surrendered that business to the firm represented by the Plaintiff. They, however, were but the representatives of the firm at Zlin and the trade carried on by them was trade in the goods produced by the firm represented by the Defendant nomine, as clearly shown by the document at fol. 26 of the Record. (Letter Bata/Zlin to Bata/Tilbury, 22nd June, 1939). The firm at Tilbury, and, therefore, the Plaintiff firm, held only the trading rights in Malta of the "Bata" goods produced by the concern at Zlin, and they did not hold any rights in respect of the ownership of the "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 Czechoslovakia, 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 the Plaintiff, and, if obliged at any time to make any direct sales, to pay to 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, the agreement entered into had to remain operative up to the end of 1949, and therefore even that agreement has now terminated.

It has been submitted by the Plaintiff that the firm at Zlin represented by the Defendant has changed its name from "Bata" to "Svit", just as the name of the town itself has been changed. In substantiation, the Plaintiff has produced a copy of the London "Times". Apart from the questionable value of newspaper evidence, the news item in question does not state that the "Bata" trade-mark had 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.

It is therefore clear that, whilst the firm represented by the Defendant has 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 used that trade-mark only because it enjoyed for a time the exclusive rights respecting the import

No. 26.
Judgment,
H.M. Court
of Appeal
—continued.

and sale of Bata goods in Malta, sent to it by the Bata firm at Zlin and with the consent of that firm. And therefore Plaintiff's opposition as brought forward in the Writ-of-Summons lacks proper justification.

Upon seeing Plaintiff's Note of Appeal, and his Petition, praying that that judgment be reversed and that the claim as brought forward in the Writ-of-Summons be allowed — with the Costs both of the First and of this Second Instance.

Upon seeing Defendant's Answer, praying that the judgment be affirmed, with Costs.

Haxing examined the acts filed in the Record. 10

Having heard Counsel on both sides.

Considering:—

The grievances complained of in this Appeal are twofold, namely:
a) that, contrary to the view taken by the Court below, the Respondent firm had abandoned the use of the trade-mark "Bata" in connection with the sale of its goods on the local market ever since the year 1932 when, following an agreement entered into, the import and sale in Malta of "Bata" goods was taken over by the British Bata Shoe Company of Tilbury which, in 1938, assigned and made over its rights to the Appellant firm; b) that the Respondent firm cannot be regarded as the assignee and successor of any such rights as may have been held here in Malta by the original "Bata" Company of Zlin, which exported its goods to Malta from 1924 to 1939 — seeing that the "Bata" Company of Zlin was nationalised by the Czechoslovak Government in December, 1945, and that, for political reasons, the nationalisation of the Company was of a confiscatory nature. 20

Considering:—

It is a settled point that, from 1924 until the outbreak of war in 1939, the Defendant firm had exported its goods to Malta under the "Bata" trade mark. At the outset, the goods were shipped directly to local traders through the firm's agent and representative in the island. Then, in 1932, an agreement was made between the "Bata" Company at Zlin and the British Bata Shoe Company of Tilbury, whereunder the latter firm took over the import and sale in Malta of the products of the Bata Company at Zlin. The concession made in 1932 to the Tilbury firm was in 1938 surrendered to the Bata Overseas Shoe Company Ltd., Valletta, Malta. The evidence adduced makes it clear that the Tilbury firm and, later, the Appellant firm, were but the representatives of the Bata Company at Zlin, enjoying here the exclusive trading rights of the products manufactured by that firm. 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 30 40

“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 31st December, 1949”.

No. 26.
Judgment,
H.M. Court
of Appeal
—continued.

Considering :

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 on the local market, or that that firm had made over and conveyed that trade-mark to the firm at Tilbury or to
10 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 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
20 been using that trade-mark solely because they were the representatives in Malta of the Defendant firm.

Considering :—

As regards the other grievance complained of by the Appellant nomine, no evidence has been produced to show that the Bata Company at Zlin has been nationalised by the Czechoslovak Government, and that, for political reasons, the nationalisation of the Company was of a confiscatory nature. The Appellant made those allegations in connection with the contention that, in the circumstances, no recognition can be extended to the Defendant firm. However, in default of
30 any evidence in substantiation, no necessity arises for a pronouncement thereon. For that question to arise at all, it is necessary in the first place that evidence be produced in substantiation of the allegations made.

It follows therefore that the judgment given by the Court below is to be upheld and the appeal dismissed.

On these grounds, and on the grounds set out in the first judgment :

The Court,

Dismisses the Appeal and affirms the Judgment given by H. M. Commercial Court on the 31st March 1950, with Costs against the Ap-
40 pellant nomine.

(Signed) EDW. CAUCHI,
Deputy Registrar.

No. 27.
Plaintiff's
Petition for
leave to
appeal to
H.M. Privy
Council

No. 27.
**Plaintiff's Petition for leave to
appeal to H.M. Privy Council**

In H.M. Court of Appeal

Writ-of-Summons No. 357/1947.

Edgar Staines, in his capacity as
Custodian of Enemy Property,
representing Messrs. The Bata
Overseas Shoe Company Limited,

v.

Victor La Rosa, for and on behalf
of Messrs. La Rosa Company,
representing Messrs. The Bata
National Corporation, Zlin,

Czechoslovakia.

10

The Petition of the Plaintiff nomine.

Respectfully sheweth:—

By Writ-of-Summons filed in H.M. Commercial Court, the Plain-
tiff nomine, submitting:— That the Defendant nomine has applied for
the registration here in Malta of the word "Bata" as a trade-mark in
respect of various goods produced by the Defendant firm, namely, Tyres
and Tubes, Technical Rubber, Footwear and Stockings and Shoe Pol-
ish and Shoe Laces, as per advertising Notices published in the Govern-
ment Gazette of the 22nd, 26th and 29th November, 1946 and 3rd and
6th December, 1946; — that, on the 2nd January, 1947, the Plain-
tiff entered formal opposition to the registration of each of the above
trade-marks on the ground that the word "Bata" had for some consid-
erable time been used to distinguish the goods sold by the Plaintiff firm,
and that, consequently, the registration thereof by another firm would
create confusion on the market, the more so as it is applied for in res-
pect of goods similar to those sold by the Plaintiff nomine;—and that,
on the 24th and 25th April, 1947, the Defendant nomine submitted a
counter-statement of his grounds against the opposition entered by the
Plaintiff; — prayed that; — every necessary declaration being pre-
faced and any expedient direction being given; — the registration of
the word "Bata" as a trade-mark in respect of the goods above-men-
tioned, applied for by the Defendant nomine, be disallowed by this
Court. — With Costs, including the Costs of the Counter-Protest filed
on 1st May, 1947.

20

30

The Defendant nomine, in his Statement of Defence, pleaded:— That no evidence has been produced to show by what authority the Plaintiff, the Custodian of Enemy Property, is entitled to represent a firm that, according to the Malta Defence Regulations, is not an Enemy Firm: — that the Defendant firm has been exporting to Malta, and selling here wholesale and retail, goods of its own manufacture for a period of over sixteen years, as established by the Certificate issued by the Chamber of Commerce of Olomouc; — that the Plaintiff firm does not manufacture the goods in respect of which the firm at Zlin
 10 has applied for the registration of the word “Bata”, and that the goods imported here by the Plaintiff firm are goods manufactured by the Defendant firm at Zlin; — that both the firm at Tilbury and the Plaintiff firm are of recent origin and off-shoots of the firm “Bata” of Zlin; — and that Plaintiff’s claims are therefore untenable.

H.M. Commercial Court, by judgment given on the 31st March, 1950, dismissed Plaintiff’s claim with Costs.

The Plaintiff entered appeal therefrom to this Honourable Court by Minute and Petition filed respectively on the 11th April, 1950 and
 25th April, 1950.

20 This Honourable Court, by judgment given on the 13th December, 1950, dismissed the Appeal entered by the Plaintiff and affirmed the judgment given by H.M. Commercial Court on the 31st March, 1950.— With Costs against the Appellant.

The Appellant, deeming himself aggrieved by that judgment, wishes to enter appeal therefrom to His Majesty’s Privy Council.

Wherefore the Plaintiff Appellant — submitting that in his opinion the matter in dispute involves a claim the value whereof exceeds five hundred pounds sterling—respectfully prays that this Honourable
 30 Court may be pleased to grant him leave to appeal from the aforesaid judgment, given on the 13th December, 1950, to His Majesty in His Privy Council, thereby to seek the reversal of that judgment both as regards the merits and the order as to costs—his claims being allowed.

(Signed) F. CREMONA,
 Advocate.

„ G. PACE BONELLO,
 Legal Procurator.

This 28th December, 1950.

Filed by G. Pace Bonello L.P. without Exhibits.

(Signed) J. DEBONO,
 Deputy Registrar.

No. 28.
Decree
granting
Conditional
Leave

No. 28.
Decree granting Conditional Leave

HIS MAJESTY'S COURT OF APPEAL
(Commercial Court)

Judges:—

His Honour Sir George Borg M.B.E., LL.D.

The Honourable Mr. Justice L.A. Camilleri LL.D.

The Honourable Mr. Justice W. Harding B.Litt., LL.D.

Sitting held on the 31st January, 1951

No. 1

10

Writ-of-Summons No. 357/1947.

Edgar Staines nomine

v.

Victor La Rosa nomine

The Court,

Having seen Plaintiff's Petition, praying for leave to appeal to His Majesty's Privy Council from the judgment given by this Court on the 13th December, 1950.

Having heard Counsel on both sides.

Considering:

20

An appeal lies to His Majesty's Privy Council from any final judgment of this Court where the matter in dispute on the Appeal amounts to or is of the value of five hundred pounds sterling or upwards.

On the face of it, the amount involved in the present case, though indeterminate, appears to exceed five hundred pounds sterling; and therefore, as determined in re "Caruana v Debono" (27th June, 1949), and in conformity with the constant practice of this Court in similar instances, the case calls for the directions hereunder stated.

On these grounds.

30

The Court,

Gives the Appellant nomine twenty days within which to declare on oath that the matter in dispute on the Appeal amounts to five hundred pounds or upwards, and, provided that he shall within that time make such declaration on oath, allows the Petition and grants him conditional leave to appeal from the judgment given by this Court on

the 13th December, 1950, to His Majesty in His Privy Council, subject to his entering into good and sufficient security, in terms of section 4 of the Order-in-Council of 1909, within one month from the date on which he shall make the declaration on oath aforesaid, in a sum not exceeding two hundred pounds, and, further, gives the Appellant three months, to run as above directed, within which to procure the preparation and translation of the Record and the transmission thereof to the Judicial Committee of the Privy Council.

No. 28.
Decree
granting
Conditional
Leave
—continued.

Costs hereof reserved to the final Order.

- 10 In the event, however, of the Appellant failing to make the declaration on oath aforesaid, the Petition shall stand dismissed, with Costs against the Plaintiff Appellant.

(Signed) J. N. CAMILLERI,
Deputy Registrar.

No. 29.

Appellant's Declaration on Oath

No. 29.
Appellant's
Declaration
on Oath

1st February, 1951.

The Plaintiff, Edgar Staines, appears and makes oath before me in terms of the preceding Decree of H.M. Court of Appeal.

20

(Signed) CARM. VELLA,
Assistant Registrar.

No. 30.
Schedule of Deposit

Writ-of-Summons No. 357/1947.

Edgar Staines, in his capacity as
Custodian of Enemy Property,
representing Messrs. The Bata
Overseas Shoe Company Limited,

v.

Victor La Rosa, for and on behalf
of Messrs. La Rosa Company, 10
representing Messrs. The Bata
National Corporation, Zlin,
Czechoslovakia.

The Schedule of Deposit of Edgar Staines nomine.

Respectfully sheweth:—

This Court, by Decree given on the 31st January, 1951, granted the Plaintiff Appellant conditional leave to appeal to the Judicial Committee of His Majesty in His Privy Council from the judgment given by this Court on the 13th December, 1950, subject to the condition, among others laid down, that he shall, within one month, enter into 20
good and sufficient security in a sum not exceeding two hundred pounds, in terms and for the purposes of section 4 of the Order-in-Council of 1909.

Wherefore, in compliance with the aforesaid Decree, the Plaintiff Appellant hereby deposits, to the benefit of the Defendant Respondent, Victor La Rosa nomine, the sum of two hundred pounds.

(Signed) F. CREMONA,
Advocate.,, G. PACE BONELLO,
Legal Procurator.

30

This 13th February, 1951.

Filed by G. Pace Bonello L. P. together with the sum of two hundred pounds.

(Signed) U. BRUNO,
Deputy Registrar.

No. 31.
Registrar's Minute

No. 31.
Registrar's
Minute

In H.M. Court of Appeal

Edgar Staines nomine
v.
Victor La Rosa nomine

The Minute of Dr. Giuseppe Vella, Registrar, H.M. Superior Courts.

Whereby he produces the annexed letter which he has this day received from His Honour the Chief Justice, Sir George Borg M.B.E.,
10 LL.D.

(Signed) G. VELLA,
Registrar.

This 13th February, 1951.
Filed by Dr. G. Vella with one document.

(Signed) CARM. VELLA,
Assistant Registrar.

No. 32.
H. H. The Chief Justice's Dissent

No. 32.
H.H. The
Chief Justice's
Dissent

In H.M. Court of Appeal

20

Edgar Staines nomine
v.
Victor La Rosa nomine

The Registrar, H.M. Superior Courts.

In terms of section 13 of the Order-in-Council of the 22nd. November, 1909, I hereby state my reasons for dissenting from the judgment given by the Court below and from that given on the 13th December, 1950 by the majority of the Members composing H.M. Court of Appeal:—

30 2. Appellant brought the present action in his capacity as Custodian of Enemy Property, representing Messrs. The Bata Overseas Shoe Company, Valletta, Malta. Defendant was summoned to appear for and on behalf of Messrs. La Rosa Company, representing Messrs. Bata National Corporation of Zlin, Czechoslovakia.

No. 32.
H.H. The
Chief Justice's
Dissent
—continued.

3. The learned Judge presiding over the Court below, and the majority of the learned Judges in the Appeal Court, held that, as a result of the arrangements made in 1932 by the firm at Zlin, the British Bata Company Limited of Tilbury acquired the right to import Bata products here in Malta — which previously the Defendant had personally imported directly from Zlin. In 1938, the Tilbury firm assigned and made over its aforesaid rights to the Bata Overseas Shoe Company Limited of Valletta. That arrangement came to an end in 1949.

4. The first question that arises is whether Plaintiff was vested with authority, or whether he required to be vested with authority, in order to bring the action. If he were vested with no authority, and such authority was necessary, then the result should have been for him to be non-suited — for the dismissal of Plaintiff's claim necessarily implies the acceptance of Defendant's Application to the Comptroller of Industrial Property. 10

5. It does not appear necessary, however, to go into that question. Chapter 48 of the Laws of Malta (Industrial Property — Protection) requires that application for the registration of Trade Marks shall be advertised in the Government Gazette and in two other local newspapers, thus ensuring the fullest publicity, and providing every opportunity for everyone concerned to submit, in the appropriate manner, the reasons for opposing the proposed registration. This is made clearer by section 91 (1) wherein it is laid down that *any person* may give notice of opposition. 20

6. It is my opinion that the sequence of evidence has been inverted. Defendant made his application to the Comptroller 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 I, and, more particularly, sections 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. 30

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.

(Signed) GEORGE BORG,
Chief Justice.

40

7th February, 1951.

No. 33.
Schedule of Deposit

No. 33.
Schedule
of Deposit

In H.M. Court of Appeal

Edgar Staines, in his capacity as Custodian of Enemy Property, representing Messrs. The Bata Overseas Shoe Company Limited, Valletta, Malta.

v.

10

Victor La Rosa, for and on behalf of Messrs. La Rosa Coy., representing Messrs. the Bata National Corporation, Zlin, Czechoslovakia.

The Schedule of Deposit of Edgar Staines nomine.

Respectfully sheweth:—

This Court, by the Decree given on the 31st. January, 1951, granted the Plaintiff Appellant conditional leave to appeal to the Judicial Committee of His Majesty in His Privy Council from the judgment given by this Court on the 13th. December, 1950; and, further, the Court ordered that the Plaintiff Appellant should take the necessary steps to procure the preparation and translation of the Record of the case.

The translation so ordered to be made has now been completed.

Wherefore, in compliance with the aforesaid Decree, and the provisions of the Law, the Plaintiff Appellant hereby deposits the completed translation of the Record of the above case.

(Signed) GIOV. BORG OLIVIER,
Advocate.

„ GIUS. PACE BONELLO,
Legal Procurator.

30

This 20th August, 1951.

Filed by Gius. Pace Bonello L.P. with a typewritten Translation of the Record in re “Edgar Staines nomine v. Victor La Rosa nomine.”

(Signed) U. BRUNO,
D/Registrar.

No. 34
Minute
Approving
Translation

No. 34.
Minute approving Translation

In H.M. Court of Appeal

Edgar Staines nomine
v.
Victor La Rosa nomine

The Minute of the contending parties.

Whereby the contending parties declare that they agree to the Translation of the Record of the above case, lodged by Schedule of Deposit dated 20th August, 1951. 10

(Signed) GIOV. BORG OLIVIER,
Advocate.
for the Appellant Edgar Staines nomine.
(Signed) F. N. BUTTIGIEG,
Advocate.
for the Respondent Victor La Rosa nomine.
(Signed) GIUS. PACE BONELLO,
Legal Procurator.

This 20th August, 1951.

Filed by Gius. Pace Bonello L.P. without Exhibits. 20

(Signed) U. BRUNO,
D/Registrar.

No. 35
Decree granting Final Leave

No. 35
Decree
granting
Final Leave

HIS MAJESTY'S COURT OF APPEAL
(Commercial Hall)

Judges:

His Honour Sir George Borg M.B.E., LL.D., President.
The Honourable Mr. Justice L. A. Camilleri LL.D.
The Honourable Mr. Justice W. Harding B.Litt., LL.D.

Sitting held on Monday, the
Fifth November, 1951.

10

Writ-of-Summons No. 357/1947.

Edgar Staines *nomine*

v.

Victor La Rosa *nomine*.

The Court,

Upon seeing Plaintiff's Application, submitting that the translation and printing of the Record have been completed and praying that he be granted final leave to appeal to His Majesty in His Privy Council.

20

Upon seeing the Decree given by this Court on the 31st January, 1951, granting the Plaintiff *nomine* conditional leave to appeal to His Majesty in His Privy Council from the judgment given by this Court on the 13th December, 1950.— Costs reserved to the final order.

Allows the Application of the Plaintiff *nomine* and grants him final leave to appeal to the Judicial Committee of His Majesty's Privy Council from the aforesaid judgment of this Court.

The Costs in respect of the present Decree, and of the Decree granting conditional leave, to be borne by the Plaintiff, saving recovery thereof, or part thereof, from the Respondent, if and as may
30 be ordered by the Judicial Committee of His Majesty's Privy Council.

(Signed) J. N. CAMILLERI,

D/Registrar.

—

EXHIBITS

Plaintiff's

Exhibits Filed together with the Writ-of-SummonsExhibits
Filed to-
gether with
the Writ-of-
Summons

"A"

REGISTRATION OF A TRADE MARK

Notice is hereby given for the purpose of Section 90 of the Industrial Property (Protection) Ordinance (Chapter 48) that Messrs. Bata National Corporation of Zlin, Czechoslovakia, filed an application for the registration of a Trade Mark reproduced hereunder in respect of Tyres and Tubes produced by them and of their trade. (Trade Mark No. 3997).

10

B A T A

22nd November, 1946.

Office of the Comptroller of Industrial
Property,
Royal Malta Library Building,
Queen's Square, Valletta

Walter Salomone,
Comptroller.

(The Malta Government Gazette — 22.11.1946).

"B"

20

REGISTRATION OF TRADE MARKS

Notice is hereby given for the purpose of Section 90 of the Industrial Property (Protection) Ordinance (Chapter 48) that Messrs. Bata National Corporation of Zlin, Czechoslovakia, filed an application for the registration of a Trade Mark reproduced hereunder in respect of Technical Rubber produced by them and of their trade. (Trade Mark No. 3998)

BATA

26th November, 1946.

30

Office of the Comptroller of Industrial
Property,
Royal Malta Library Building,
Queen's Square, Valletta.

Walter Salomone,
Comptroller.

(The Malta Government Gazette — 26.11.46)

"C"

REGISTRATION OF TRADE MARKS

Notice is hereby given for the purpose of Section 90 of the Industrial Property (Protection) Ordinance (Chapter 48) that Messrs. Bata National Corporation, of Zlin, Czechoslovakia, filed an application for the registration of a Trade Mark reproduced hereunder in respect of Footwear and Stockings produced by them and of their trade. (Trade Mark No. 3999).

BATA

29th November, 1946.

10

Office of the Comptroller of Industrial
Property,
Royal Malta Library Building,
Queen's Square, Valletta.

Walter Salomone,
Comptroller.

(The Malta Government Gazette — 26.11.46)

"D"

REGISTRATION OF A TRADE MARK

Notice is hereby given for the purpose of Section 90 of the Industrial Property (Protection) Ordinance (Chapter 48) that Messrs. Bata National Corporation, of Zlin, Czechoslovakia, filed an application for the registration of a Trade Mark reproduced hereunder in respect of Shoe Polish produced by them and of their trade. (Trade Mark No. 4000).

BATA

3rd December, 1946.

Office of the Comptroller of Industrial
Property,
Royal Malta Library Building,
Queen's Square, Valletta.

30

Walter Salomone,
Comptroller.

(The Malta Government Gazette — 3.12.46)

"E"

REGISTRATION OF TRADE MARKS

Notice is hereby given for the purpose of Section 90 of the Industrial Property (Protection) Ordinance (Chapter 48) that Messrs. Bata National Corporation, of Zlin, Czechoslovakia, filed an application for the registration of a Trade Mark reproduced hereunder in respect of Shoe Laces produced by them and of their trade. (Trade Mark No. 4001).

Exhibits
Filed To-
gether with
the Writ-of-
Summons
— continued.

BATA

10 6th December, 1946.

Office of the Comptroller of Industrial
Property,
Royal Malta Library Building,
Queen's Square, Valletta.

Walter Salomone,
Comptroller.

(The Malta Government Gazette — 6.12.46).

EXHIBIT "A"

LETTER BATA/ZLIN TO BATA/TILBURY *

Exhibit "A"
Letter Bata/
Zlin to Bata/
Tilbury

20 BATA
a.s.
Zlin.

Cambridge, 22nd June, 1939

Address: Telegramu:
"BATOVE"
Telfon: Zlin cisio 2.

Messrs.
British Bata Shoe Co., Ltd.
East Tilbury, England.

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

30 basis.

Exhibit "A"
 Letter Bata/
 Zlin to Bata/
 Tilbury
 — continued.

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.

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. 10

4. As far as footwear, hosiery, tyres and rubber toys and machinery are concerned, you will not purchase in Czechoslovakia 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 purchasing elsewhere, notify the Company 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. 20

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 sales thus consumated.

This arrangement is valid until 31st December 1949.

We remain,

Yours truly,

Bata a.s. Zlin
 (Signed) Illegible

30

* Original in English.

EXHIBIT "A"

PLAINTIFF'S EVIDENCE IN RE "SALVATORE LA ROSA DE CRISTOFARO — versus — EDGAR STAINES NOMINE.

Exhibit "A"
Plaintiff's
Evidence in
re "Salva-
tore La Rosa
De Cristofaro
- versus -
Edgar Staines
nomine

Taken from the Original at fol. 9 of the Record of the case "Salvatore La Rosa de Cristofaro v Edgar Staines nomine", H.M. Commercial Court, adjourned sine die.

In H.M. Commercial Court.

10

Writ-of-Summons No. 21/1948.
Salvatore A. La Rosa de Cristofaro
v.
Edgar Staines noe.

Procès verbal recorded at the Sitting held by the Supplementary Judge, Dr. Alessandro Stilon de Piro, on the 26th January, 1948, at 9 a.m.

Present:—

The Plaintiff, Salvatore A. La Rosa de Cristofaro, assisted by Counsel, Dr. Filippo Nicolo' Buttigieg.

20 Professor Dr. Felice Cremona, appearing on behalf of the Defendant nomine, and Mr. G. Pace Bonello, L.P.

The Plaintiff, Salvatore A. La Rosa de Cristofaro, at his own request, states on oath:—

30 I was the local Manager of the Bata Shoe Co. Overseas Ltd., a concern which was set up in Malta before the war by virtue of deed enrolled in the Records of Notary Angelo Cachia. Besides being the Manager of the local Company, I was also the representative of the suppliers of that Company, namely, the Bata Company of Zlin, Czechoslovakia. As local Manager, I had a security deposit lodged with the Company. The deposit, or fund, represented 25% or 20% of the value of the stock for which I was responsible. At the outbreak of War with Italy, when I was interned, the deposit amounted to about £1000. My impression is that the deposit was made up of an amount due to me for commissions by the British Bata Shoe Co. Ltd., which was in business before the other concern was established in Malta, and of which I was also the local Manager. Further, besides the amount due to me for commissions by

Exhibit "A" the British Bata, I paid into the security fund, each week, 1% out of
 Plaintiff's my own commission of 12% on the local weekly turnover. (I was paid
 Evidence in no salary). At the same time, the British Bata Co., and, afterwards, the
 re "Salva- Bata Overseas, credited my account with the disbursements made by
 tore La Rosa me each week, such as telegraphic expenses, advertising costs and other
 De Cristofaro expenditure incurred in connection with the management of the busi-
 - versus - ness. Then, each week, the Company credited my account with an
 Edgar Staines amount corresponding to 10% on the sums held by them as security. In
 nomine fact, there was what was known as the Manager's Personal Account,
 — continued. which formed part of the firm's weekly system of accountancy. 10

Goods to the British Bata Shoe Company Ltd. were supplied prin-
 cipally by the "Bata, A.S. Zlin", and, afterwards supplies to the "Bata
 Shoe Company Overseas Ltd. (Valletta) continued to be made by the
 firm at Zlin.

When I was released from internment in June, 1945, and I was
 still in Palestine, I wrote to the British Bata Shoe Company of Tilbury
 and asked them more than once to pay me something on account out
 of the sum standing to my credit as above explained, or to advance me
 some money against that sum. They replied suggesting that I should
 apply to the Custodian of Enemy Property in Malta. I wrote to the 20
 Custodian on the 16th July, 1945. I produce the letter and the reply
 received (Exhibits X/Y).

I then heard that the Director General of the Bata Group in the
 Mediterranean, Mr. Frida Meisel, was at Ontario in his capacity as one
 of the Directors of the "Bata Limited", Batawa, Ontario, Canada; and
 I wrote to him the letter marked Exhibit "A" at fol. 4 of the Record.
 The letter marked Exhibit "B" at fol. 5 of the Record is the letter I re-
 ceived from him in reply, and the letter marked Exhibit "C" at fol. 6
 is another letter which I received from Mr. Meisel.

The Custodian of Enemy Property, Malta, replied stating that the 30
 books of the Company were not in his possession and that he could not
 therefore verify my claim.

Here in Malta, we kept only Weekly Balance Sheets, which includ-
 ed (a) goods in stock, (b) goods in transit, (c) goods sold, and (d) or-
 ders placed each week according to sales. They included also the
 Manager's Personal Account. That Personal Account used to be sent
 each week to the Group Manager (Mr. Meisel) at the address which he
 used to give us from time to time. We kept no other books. These Week-
 ly Balance Sheets were later sent to Mr. Cauchi, of Messrs. Cauchi and
 Cauchi, who were the local Auditors of the Bata Shoe Company Over- 40
 seas Ltd. The Company itself sent over the Weekly Balance Sheets
 and I have on occasion seen the documents — in the form of unbound

sheets — at the office of the late Dr. Antonio Caruana Galizia, who was one of the Directors of the Company in Malta. I think Dr. Giovanni Caruana Galizia also appeared at General Meetings on behalf of other interested parties. They used to send Mr. Cauchi Account Books which were compiled from data supplied by the Weekly Balance Sheets — or so I suppose.

Exhibit "A"
Plaintiff's
Evidence in
re "Salva-
tore La Rosa
De Cristofaro
- versus -
Edgar Staines
nomine
— continued.

For some time before the outbreak of the war, the book-keeper who made up the Weekly Balance Sheets was Mr. Angelo Incorvaja. However, they were compiled under my supervision and they were signed by
10 me.

CROSS-EXAMINATION

Apart from representing the firm, I used to make purchases from the Bata Overseas Ltd., that is to say, the Malta firm, on my own account. The goods so purchased were goods intended for sale in other than the shops of the firm. The price of the goods was debited to me in my personal account as Manager and no cash remittances were made in respect thereof — except in those cases where shipments were made against documents and I used to have to pay the Banco di Roma. It happened sometimes that goods which I bought from the firm were
20 transferred by me to the Bata Overseas and — through the mechanism of the Weekly Balance Sheets — the respective price was credited to me in the Manager's Personal Account.

After my release from internment, I stayed on in Palestine, employed with the Bata Shoe Company (Palestine), until the 26th November, 1946.

As regards the two dates rubber-stamped in red ink on Exhibit "C" at fol. 6, the explanation is the following: The date "12th Oct. 45" is the date on which I received the letter from Mr. Meisel, which letter was dated "26 settembre 1945". I sent the letter to the British Bata
30 Co. of East Tilbury in support of my claim for the payment of the amount due to me, and the other date, "19th Jul. 1946", was made by the Tilbury firm, probably when they received the letter.

I think Mr. Meisel obtained the amount stated in that letter from the documents or drafts of the Weekly Balance Sheets which he may have had in his possession. As stated in the letter itself, the amount is in respect of "week 20, 1940".

I used to keep a copy of all the Weekly Balance Sheets in my office. When I was interned, I left them at the office. The copies were made out on sheets of a light green colour.

Exhibit "A"
 Plaintiff's
 Evidence in
 re "Salva-
 tore La Rosa
 De Cristofaro
 - versus
 Edgar Staines
 Nomine
 — continued.

As I have already stated, the goods were supplied by the Bata firm at Zlin, and they were sold, first, by the British Bata, and then by the Bata Overseas, Malta.

The remittances of the Bata weekly cash receipts included 1% which I used to pay into the "Loss Account" or "Goods Depreciation Account"; then, after deducting the remaining 10% (out of which I used to pay the staff), the money was remitted to the Banco di Roma to the credit of the local Company. I had no authority to draw out any money and the Account was handled by Mr. Meisel or other authorised persons who, so far as I know, were not local persons. The amount due to me each week was periodically credited to me by means of a returned approved copy of the Weekly Balance Sheets. When I was employed as local Manager of Bata, I signed a contract on a printed form. I left the contract together with all the other papers at the office of the Bata Overseas. 10

Read over to the witness.

(Signed) Salvatore La Rosa de Cristofaro

„ A. STILON DE PIRO,

Supplementary Judge.

True Copy.

(Signed) J. DINGLI,

Deputy Registrar.

EXHIBIT "A"

Exhibit "A"
 Declaration
 Dated 17th
 September,
 1948.

DECLARATION DATED 17th SEPTEMBER, 1948. *

I ARCHIBALD REDVERS LOUGHTON of East Tilbury in the County of Essex England the Secretary to The British Bata Shoe Company Limited of the same address Make Oath and Say

That the Document shown to me and marked A.R.L. is a true and correct photostat copy of an Agreement in my possession dated the third day of August One Thousand nine hundred and thirty eight and made between The British Bata Shoe Company Limited of the
 10 one part and The Bata Shoe Company Overseas Limited of the other part.

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at Grays in the
 County of Essex

(Signed) A. R. Loughton

this 17th day of September, 1948.

Before Me

(Signed) AUDREY M. CATTON

A Commissioner for Oaths.

20

* Original in English.

Exhibit "A"
Agreement
Dated 3rd.
August, 1938

EXHIBIT "A"

AGREEMENT DATED 3rd. AUGUST, 1938.*

(Initialled) A.R.L

This is the document marked A.R.L. referred to in the Declaration of Archibald Redvers Loughton made the 17th day of September, 1948.

Before me

(Signed) AUDREY M. CATTON

A Commissioner for Oaths.

AN AGREEMENT made the Third day of August One Thousand nine hundred and thirty eight *BETWEEN BRITISH BATA SHOE COMPANY LIMITED* whose registered office is at East Tilbury in the County of Essex England (hereinafter called "the Vendors") of the one part and *THE BATA SHOE COMPANY OVERSEAS LIMITED* of Valletta Malta (a Company incorporated under the Law of Malta (hereinafter called "the Purchasers") of the other part

WHEREAS:—

(A) The Vendors are engaged in carrying on (inter alia) the businesses of dealing with and in all kinds of footwear accessories hosiery rubber goods and other articles and the Purchasers have been incorporated for the purpose of carrying on similar businesses. 20

(B) The Vendors have been engaged in carrying on business as aforesaid at Malta and in the British West Africa the same having been conducted by the Vendors as separate Departments of their business under the style of "Department Malta" and "Department British West Africa" respectively and separate balance sheets have been prepared in each year in respect of each of such Departments in Isle of Malta the Vendors occupy and conduct one Central store /Valletta, 250, Strada Reale / and four retail shops /Sliema Cospicua Hamrun and Cospicua II / and in British West Africa two central stores / Lagos 81-87 Broad Street and in Accra / and five retail stores shops / Kano Ibadan Abeokuta Secondi Kumassi / Particulars of the goods and furniture which were in the said Central Stores and retail shops at the close of business on December Thirty first One Thousand nine hundred and thirty seven and all of which were then in the possession and were the property of the Vendors are contained in the Lists 30

* Original in English.

marked A and B respectively which are annexed to and form part of this Agreement and the Vendors have also prepared as on the said date inventories and balance sheets showing Assets and Liabilities separately for each of the said Departments Such inventories and balance sheets marked "C" and "D" respectively being annexed to this agreement of which they form part.

Exhibit "A"
Agreement
Dated 8rd.
August, 1988
— continued.

(C) Each of the documents A to D have been examined by Mr. Alice Zuchriegel Tilbury on behalf of the Vendors and by Dr. Leopold Meisel of Eindhoven Holland on behalf of the Purchasers who have
10 found such documents to be accurate and each of the parties hereto have agreed to accept and recognise the same accordingly.

(D) It has been arranged between the Vendors and the Purchasers that the Vendors shall sell and the Purchasers shall purchase as on and from the First day of January One thousand nine hundred and thirty eight (hereinafter referred to as "the transfer date") the undertaking and assets of the said businesses and Departments as so carried on by the Vendors in Malta and in British West Africa respectively on the terms and conditions hereinafter appearing *NOW IT IS HEREBY AGREED* between the parties hereto as follows:

20 1. The Vendors shall sell and the Purchasers shall purchase as on and from the transfer date the full benefit of the said businesses conducted by the Vendors in the Island of Malta and in British West Africa respectively under the said name of Department Malta and Department British West Africa and of all the assets thereof as at the transfer date but subject to the liabilities appertaining thereto as the same are specified in the said documents marked respectively A to D inclusive and including all rights and subject to all liabilities if any not included and not expressly mentioned in the said documents and which concern exclusively and are conducted exclusively with the said
30 Malta Department and the British West Africa Department of the Vendors as at the transfer date.

2. THE said sale shall as heretofore agreed take effect as on and from the transfer date and accordingly the Malta Department and the British West Africa Department shall thereupon be deemed by the Vendors to and to have become the property of the Purchasers and to have been taken over and carried on for and on behalf of but at the expense of the Purchasers as from the transfer date videlicet: the First of January One thousand nine hundred and thirty eight and the Vendors shall account to the Purchasers and be entitled to be indemnified accordingly and so far as possible the same shall be settled between the parties hereto within one month from the date of this
40 Agreement.

Exhibit "A"
 Agreement
 Dated 3rd.
 August, 1988
 — continued.

3. THE said businesses being taken over as from the transfer date all receipts and payments from the date of this Agreement are to be settled in account between the parties within ten days from date hereof. If a balance is found in favour of the Vendors the same shall be paid by the Purchasers to the Vendors within one month after its being notified to the Purchasers in writing. If a balance is found in favour of the Purchasers such balance can be deducted from the balance of the purchase price payable to the Vendors as hereinafter mentioned in Clause 6 hereof.

4. IN case the Vendors are obliged after the date of the settlement of the said account to effect payments for the Malta Department and the British West Africa Department or if they receive payments which concern the period after the Thirty first December One thousand nine hundred and thirty seven to which the Purchasers are entitled or if the Purchasers receive or effect payments for any of the said Departments which concern the period before the First January One thousand nine hundred and thirty eight the same shall be accounted for and settled by the party responsible to the other in respect thereof within one month from the date of such respective receipts and/or payments if such sums have not been accounted for and settled between the parties previously. 10

4a. IT is expressly agreed between the parties that all leases tenancy agreements contracts for services and supply of goods be transferred as from the transfer date to the Purchasers who as from such date are to be deemed to have taken over all premises all the furniture and all stocks working material and other goods belonging to either of the said Departments in the condition in which they were on the transfer date

5. IN case the Vendors are held to be legally responsible by any person firm or company whatsoever arising from contracts affecting the said Malta Department or British West Africa Department and for claims which concern the period after the Thirty first December One Thousand nine hundred and thirty seven the Purchasers shall indemnify the Vendor from and against any and all claims and demands in respect thereof and against all expenses of any kind incurred by the Vendors in connection therewith. 30

6. THE purchase price payable by the Purchasers to the Vendors by way of consideration for such transfer shall be the sum of Ten thousand pounds of which the sum of Five thousand pounds has as the Vendors hereby acknowledge been paid to the Vendors on account of the said sum of Ten thousand pounds. The balance of such sum 40

shall be deemed to have become payable by the Purchasers to the Vendors on the Thirtieth June One thousand nine hundred and thirty eight and the Purchasers shall be liable to the Vendors accordingly. In addition the Purchasers shall pay to the Vendors interest at the rate of four per cent per annum from the First January One thousand nine hundred and thirty eight on the amount for the time being outstanding in respect of the said sum of Ten thousand pounds the amount of such accrued interest to the Thirtieth day of June One thousand nine hundred and thirty eight to be payable forthwith interest becoming due subsequently shall be payable by the Purchasers to the Vendors on demand in writing by the Vendors Unless otherwise agreed between the parties all payments to be made by the Purchasers to the Vendors including such interest shall be made to Barclay's Bank Limited Stamford-le-Hope Essex England for the account and on behalf of the Vendors.

Exhibit "A"
Agreement
Dated 3rd.
August, 1938
continued.

7. THE Vendors agree that they will at the expense of the Purchasers execute and do all such assurances and things for vesting in the Purchasers the property and other rights hereby agreed to be sold and transferred to the Purchasers as shall be reasonably required.

8. THE Vendors hereby agree that subject to the due performance by the Purchasers of their obligations under this agreement the Vendors will not at any time hereafter so long as the said businesses are carried on by the Purchasers do any business on the Isle of Malta or in British West Africa. The Vendors undertake (subject as aforesaid) to cease all activities there and not during the period aforesaid to sell or supply any goods in either of the said territories unless authorized by the Purchasers in writing.

9. IN case of any difference or disputes of any kind arising between the parties as to the interpretation or as to any matter arising out of this contract the same shall be referred to the decision of three Arbitrators and the decision of the majority of such three Arbitrators shall be final and binding on the parties. Each of the parties to this Contract will select one of such Arbitrators and the two Arbitrators so chosen will choose a third Arbitrator as Chairman. The Chairman will decide on the place and time of the Arbitration court sittings.

10. THE Purchasers shall pay all stamp duties taxes and costs of and incidental to this Agreement and shall also indemnify the Vendors as from the transfer date from and against all income or other taxes and outgoings of any kind which may be or become payable by the Vendors in England or elsewhere in respect of the profits if any of the said businesses or either of them or which arise in any manner from the carrying out of such businesses since the transfer date.

A.

SPECIFICATION OF INVESTMENTS OF DEPARTMENT MALTA

SHOP ARTICLE No.	La Valetta	Sliema	Cospicua I	Cospicua II	Hamrun	Rabato
101 Rack, iron ducco	109	29	18	18	20	18
102 Chair, iron	33	7	5	5	4	14
105 Fitting — stool cromed	14	4	3	3	2	3
108 Step iron	3	1	1	1		
110 Table for wrapping	1					
111 Table for stockings large	2					
112 Table for stockings small		1	1	1	1	1
113 Drawers for sundries	40					
115 Table for manip. small	1					
118 Control-cash small	1					
119 Table for cash		1			1	
121 Clocks	1					
122 Rubber carpet m2	25					
123 Carpet boucle m2	70	14	4	4	12	9
124 Portable mirrors	4	1	1	1		
127 Sample racks	2					
128 Lighting globes	8	1	1	1	1	
133 Spittoons	2					
134 Cases for repairs	5					
135 Table for repairs	2					
136 Shoe-stretcher	1	1				
Fan large	1					
Fan small	1	1				
145 Electric vacuum-cleaner	1					
Machine for heel	1					
138 Eyelets — presser	1					
140 Button-presser	2					
141 Writing-table	1					
142 Chair for the writing-t	1					
152 Mirror for shelves 128x59	3					
153 Mirror for shelves 128x29	5					
157 Glass for shelves 128x59	3					
Transfer Pieces	344	61	34	34	41	35

SHOP ARTICLE No.	La Valetta	Sliema	Cospicua I	Cospicua II	Hamrun	Rabato
Transfer Pieces	344	61	34	34	41	35
158 Glass for shelves 128x29						
159 Glass for shelves 100x60	10					
160 Glass for shelves 100x30						
162 Trees	9					
163 Reflectors	5					
166 Stool for shoe-cleaner	6					
Glass Duco 26x60	4					
172 Mirror 128x59	4					
Mirror 128x29	4					
179 Glass for trees 28x50	18					
180 Show case	1					
182 Ladies stocking-legs	2					
195 Furniture for show case	3	2	1	1	1	
330 Arm-chair	1	1				
207 Steriliser	1					
208 Glass-bowl		1				
211 Hat-racks	1	1				
217 Foot-bath	1	1				
219 Waste-basket		1				
225 Heater "Jeka"	1	1				
232 Taburets	1					
234 Show case chromed	1	1				
Iron stand	1	1				
Table chromed	1	1				
Instruments for chiropody	1	1				
235 Table for chiropody		1				
Total pieces	421	74	35	35	42	35

B.
SPECIFICATION OF FURNITURE OF DEPARTMENT
BRITISH WEST AFRICA

SHOP ARTICLE No.	Lagos	Accra	Kano	Secondi	Kumasi	Abeokuta	Ibadan
100 Rack chromed	32		6	12	12		
101 Rack, iron duco	90	92	19	12	12	1	60
102 Chair, iron, spring	25	18	3	3	3	2	10
104 Chair, wooden	5						
105 Fitting-stool chromed	11	8	2	3	3	1	5
108 Step, iron	3	2	1	1	1		3
110 Table for wrapping	1			1	1		
112 Table for stockings small	1	1					
113 Drawers for sundries	16	11	8	2	2		10
115 Table for manipul. small		1					
119 Table for cash	1						
123 Carpet boucle m2	35		17				8
124 Portable mirrors	4	5	1			1	2
126 Notice Board				2	2		
127 Sample rack	4	1	1	1	1		
128 Lighting globes	6	4					
133 Spittoons		3					
Wooden step	2						
Metal chrom. ash trays	3						
Shelves for tyres	1						
Wardrobes	2						1
Counter for haberdashery	1						2
134 Cases for repairs	2	5					
136 Shoe stretcher	2	1					
138 Eyelets presser	3						1
140 Button-presser	3	1					1
143 Typewriter	1						
150 Stove	1						
152 Mirror for shelves 128x59	3						2
153 Mirror for shelves 128x29	2						
162 Trees	7	5	1	1	1		1
163 Reflectors	13						
Transfer Pieces	278	158	59	38	38	5	106

SHOP ARTICLE No.	Lagos	Accra	Kano	Secondi	Kumasi	Abeokuta	Ibadan
Transfer Pieces	278	158	59	38	38	5	106
166 Stool for shoe-cleaner	1	1					
173 Stick-out Bata 150/50		9					1
174 Box for customers cards	1						
179 Glass for trees 28/50	40	24					8
183 Drawer for stockings ordin.	40						50
182 Ladies stockings legs	4						
Show case for Haberd.	1						2
Shoe case for sample	1						
Chairs for dining room	2						
Dresser	1						
210 Baldan's stand for chiropody	1						
202 White revolving armchair	1						
204 Box for chemicals	1						
208 Glass-bowl	1						
211 Hat-bowl	1						
217 Foot-bath	1						
219 Waste Basket	1						
221 Taburette	1						
225 Heater "Jeka"	1						
Carpet under the feet	1						
Linen-cover for chairs	11	9					
Rod for trees	96						
Stand for windows	4						20
Glass heels	164						
Frigidaire	1						
Rest for shoes	39						
Office table	4						
Writing table	1						
Chairs	3						
Book board	1						
Round table	1						
Small table	4						
Dining table	1						
Stands	2						
Transfer Pieces	711	201	59	38	38	5	187

SHOP ARTICLE No.	Lagos	Accra	Kano	Secondi	Kumasi	Abeokuta	Ibadan
Transfer Pieces	711	201	59	38	38	5	187
Compl. Bed	2						
Compl. Bed 345	1						
Bathing van	1						
Wooden drawers with glasses		20					
Fitting for show case		3					
Glasses for show case compl.		3					
Total Pieces	715	227	59	38	38	5	187

"C"

M A L T A

	Assets Lstg	Liabilities Lstg
Personal Accounts		603. 1.10
Debtors and Creditors	47.10.0	• 23. 6.10
Bata A.S. Zlin	—	—
Holl. Handelmaaschappij Bave Amsterdam		1.000. 0. 0
Investments	782. 7.6	
Goods	1.943. 3.1	
	<hr/>	<hr/>
	2.773. 0.7	1.626. 8.8
Cash at Bank	314. 6.8	
Remittances in Transit		160.18.7
	<hr/>	<hr/>
	3.087. 7.3	1.787. 7.3
Price of Sale Lstg.		1.300. 0.0

"D"

BRITISH WEST AFRICA

	Assets Lstg.	Liabilities Lstg.
Personal Accounts		2,526. 1. 3
Debtors and Creditors	3,996. 17. 0	1,172. 19. 6
Bata A.S. Zlin	567. 8. 10	
Holl. Handelmaatschappij Bave Amsterdam		4,000. 0. 0
Investments	934. 5. 11	
Goods	9,290. 19. 6	
	<hr/> 14,789. 11. 3	<hr/> 7,699. 0 9
Cash at Banks	1,475. 12. 1	
Money on Way	737. 4. 1	603. 6. 8
	<hr/> 17,002. 7. 5	<hr/> 8,302. 7. 5
Price of Sale	Lstg.	8,700. 0. 0

THE COMMON SEAL of British
Bata Shoe Company Limited was
hereunto affixed in the presence
of

(Signed) Illegible
Director
„ N. Maurice
Assistant Secretary
„ Illegible
Secretary

Signed for and on behalf of the Bata
Shoe Company Overseas Limited

(Signed) Illegible
CHAIRMAN

(Signed) A. Caruana Galizia
DIRECTOR

The Agreement is certified as follows at margin of each folio :—

"We hereby certify that this is a true and correct copy of the Agreement as stated hereon".

(Signed) A. R. LOUGHTON
Secretary

„ J. TUSA
Managing Director.

Exhibit "A"
Cutting,
London
"Times"—
10th Decem-
ber, 1948.

EXHIBIT "A"

CUTTING, LONDON "TIMES" — 10th DECEMBER, 1948.

Czechs Change Name of Bata Shoes

From our Own Correspondent

10

PRAGUE, Dec. 9.

Trade union officials and a committee of employees have decided that the name Bata, famous throughout the world for shoes, is to disappear in Czechoslovakia, where the name originated, and it will also cease to be used for exported goods. The new name is to be Svit, which means "dawn". The name of the town in which the chief Bata factory is situated was changed from Zlin to Gottwaldov in honour of the President a few weeks ago.

More recently some international complications have arisen over the name Bata because most of the Bata factories in foreign countries remained in the ownership of the Bata family after those in Czechoslovakia itself were nationalized. 20

Defendant's

EXHIBIT "A"

Exhibit "A"
Certificate,
Chamber of
Commerce,
Olomouc.

CERTIFICATE, CHAMBER OF COMMERCE, OLOMOUC. *

OBCHODNI A ZIVNOSTENSKA KOMORA V OLOMOUCI
CHAMBER OF COMMERCE AND INDUSTRY, OLOMOUC,
CZECHOSLOVAKIA.

No. 30.391/EO

To whom it may concern

We, the Chamber of Commerce and Industry of Olomouc, Czechoslovakia, do hereby certify that Messrs. Bata, Shoe and Leather
10 Manufacturers in Zlin, have exported to Malta in the years preceding the war the following quantities of footwear of all kinds:

1932	19.815	pairs
1933	32.040	„
1934	40.802	„
1935	44.314	„
1936	49.162	„
1937	48.919	„
1938	51.000	„
1939	15.000	„

20 We further confirm herewith that the said footwear has been produced in the works of the above firm, thus being of Czechoslovak origin. The footwear has been stamped with standard Bata trade mark besides the indication of the country of origin.

Olomouc, February 4th, 1947.

The Chamber of Commerce and Industry
OLOMOUC, Czechoslovakia.

The President:
(Signed) Illegible

The Chief Secretary:
(Signed) Illegible

* Original in English.

Exhibit "B"
Defendant's
Protest to
Comptroller
Industrial
Property

EXHIBIT "B" *

**DEFENDANT'S PROTEST TO COMPTROLLER INDUSTRIAL
PROPERTY ***

FILIPPO N. BUTTIGIEG, LL.D.
AVVOCATO

Balzan, Malta
25th April, 1947.

The Comptroller of Industrial Property,
Valletta.

Sir,

10

With reference to the note filed on the 2nd January, 1947, by Mr. Edgar Staines, Custodian of Enemy Property, acting in the interests of Messrs. "The Bata Shoe Company Overseas Limited of Valletta Malta", objecting to the registration of the trade mark "Bata" in respect of Technical Rubber produced by Messrs. Bata National Corporation of Zlin Czechoslovakia, and of their trade; on behalf of the latter Corporation may I be allowed to state:

1. That Messrs. "The Bata National Corporation of Zlin", had for the last 20 years, sent to Malta, goods of their trade marked "Bata"; this fact could easily be borne out by witnesses and results clearly from the certificate annexed to my similar communication dated 24th April, 1947, issued from the "Chamber of Commerce and Industry" of Olomouc, Czechoslovakia; Messrs. La Rosa Co. Ltd., who represent the above Corporation of Zlin, could moreover furnish Bills of Sale for Bata goods sold in Malta in the year 1931. 20

2. The "Bata Shoe Company Overseas Ltd." does not manufacture goods, but only trades in Bata goods manufactured by the Bata Corporation of Zlin; thereby undoubtedly recognizing the rights of the Bata Corporation of Zlin. Besides, proof could easily be adduced that the goods lately sold and traded by the Bata Shoe Company Overseas Ltd., were not manufactured at Tilbury, England, but they were products manufactured by the Bata Corporation of Zlin. 30

3. It is moreover evident that the Bata Shoe Company Overseas Ltd., is not the successor of the British Bata Shoe Company Ltd. of Tilbury; in fact British firms which are not situated in enemy countries *are not* represented by the Custodian of Enemy Property.

* Original in English.

From the foregoing facts and assertions it is clear that the opposition raised by the Custodian of Enemy Property, as above set forth, cannot be validly upheld and should consequently be withdrawn.

Messrs. La Rosa Co. Ltd., therefore, again request the registration of the word "Bata", in respect of Technical Rubber produced by the Bata National Corporation of Zlin, and of their Trade, of which notice was given on the Government Gazette of the 22nd November, 1946.

Exhibit "B"
Defendant's
Protest to
Comptroller
Industrial
Property
continued.

Your faithfully,
(Signed) F. N. BUTTIGIEG, Advocate.
