

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 11188 BY
KOREA STORAGE BATTERY CO. LIMITED
FOR THE RECTIFICATION OF THE REGISTER AND
A DECLARATION OF INVALIDITY IN
RESPECT OF TRADE MARK REGISTRATION No 1578842
IN THE NAME OF FIAMM AUTOMOTIVE LIMITED**

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for the rectification of the register and
a declaration of invalidity in
respect of trade mark registration no 1578842
in the name of Fiamm Automotive Limited**

Background

1. Trade mark no 1578842 is for the mark **HANKOOK** and is registered for the following goods:

Electric accumulators and batteries; all included in Class 9

The trade mark was registered on 21 July 1995 and stands registered with effect from 20 July 1994 - the date of filing.

2. On 28 October 1999 Korea Storage Battery Co. Limited of Daejon, Korea applied for the rectification of the registration and a declaration of invalidity in respect of the above registration. At the time of the application the registration stood in the name of Euro Battery Distribution Limited but during the proceedings the name of the proprietor was changed to Fiamm Automotive Limited.

- The applicant states that the proprietor of the registration in suit was involved in the distribution of his (the applicant's) goods by reference to the trade mark HANKOOK at the time of the application for registration. The applicant states that it was not possible for his distributor not to know of the applicant's rights in the trade mark HANKOOK.
- The applicant states that he never gave his agreement to the filing of the application for the registration in suit and it was never brought to his attention. The applicant states that in 1999 Euro Battery Distribution Limited (EBDL), still acting as his distributor, advised him of EBDL's claim to their earlier rights in the trade mark HANKOOK in the United Kingdom.
- The applicant states that he is the proprietor of United Kingdom trade mark registration no 1587136 for the trade marks:



(being a series of two) in respect of the following goods:

*batteries for vehicles; battery chargers; batteries; accumulators; transformers;
jump leads; parts and fittings for the aforesaid goods; all included in Class 9.*

- The applicant states that he is the proprietor of a number of registrations and applications for marks incorporating HANKOOK in countries which are signatories to the Paris Convention, including Jamaican registration no 25565 filed on 27 November 1992. He states that the Jamaican registration covers the same or similar goods to those covered by the registration in suit. He states that he is the proprietor of the mark (both registered and unregistered) in suit in a Convention country in accordance with section 60 of the Act.
- The applicant states that the trade mark in suit was registered in bad faith and in fraud of (sic) his trade mark rights.
- The applicant states that the registration in suit is invalid under section 47(1) of the Act as it was filed in bad faith and was, therefore, registered in breach of the provisions of section 3(6) of the Act.
- The applicant states that the registration in suit is invalid under section 60 of the Act as the application for registration was filed by his representative in the United Kingdom without his consent.
- The applicant requests that under the terms of section 60(3)(b) that he is substituted as the registered proprietor of the registration in suit or in the alternative that the registration is declared invalid.

3. The registered proprietor filed a counterstatement.

- He denies that Fiamm Automotive Limited - formerly EBDL - has ever been a distributor for the applicant or that any agreement to this effect has ever existed and so the applicant cannot rely upon section 60 of the Act.
- He denies that United Kingdom registration 1587136 entitles the applicant to claim to be the proprietor of the trade mark HANKOOK in a Convention country as section 55(1)(b) of the Act defines Convention country in terms that specifically exclude the United Kingdom. He further denies that the Jamaican registration entitles the applicant to rely on the provisions of section 60 of the Act since the registration dates from a time when Jamaica had not acceded to the Paris Convention.
- He denies that the registration in suit was obtained in bad faith and in fraud of the applicant's trade mark rights. He then goes onto matters which he states that he will prove. However, he filed no evidence in relation to these matters. The statements that he made are as follows:
- EBDL adopted the mark at a time when the applicant had no reputation in the United Kingdom in relation to batteries under the mark and EBDL had no reason to believe that the applicant had any reputation in relation to batteries or other products.
- EBDL was responsible for the introduction of the mark as a brand for batteries into the United Kingdom and by its own efforts subsequently developed a considerable market share.

- Prior to the introduction of the mark into the United Kingdom by EBDL the applicant had never supplied batteries to the United Kingdom under the mark but had only supplied unbranded batteries.
- Registration of the mark was undertaken by EBDL to protect the investment made by it in the sales and marketing of batteries under the mark.
- There was no agreement between the parties regarding representation in the United Kingdom and EBDL purchased batteries under the mark from a variety of sources other than the applicant.
- There was no marketing support from the applicant and EBDL spent twelve months developing the catalogue for the range and also point of sales materials.

4. Both parties seek an award of costs.

5. The applicant filed evidence. The registered proprietor wrote to the Office in the following terms:

“.....wishes to advise that our client does not consider it necessary to file evidence, as nothing in the evidence submitted by the other side supports their case.”

6. On 18 May 2001 the parties were advised that a hearing would be held in relation to the instant proceedings on 4 September 2001. On 28 August and 29 August 2001 the Office received requests from the parties for a postponement of the hearing - on the basis that the parties were in negotiations. The request for a postponement was refused owing to the lateness of the request. The parties were advised that the case would be considered upon the basis of the pleadings and the evidence filed. However, the parties were advised that the issuing of the decision would be deferred until 5 November 2001 to allow the parties time to reach an agreement.

7. The parties have not advised the Office of any agreement having been reached and 5 November 2001 has come and gone. Consequently, after a careful study of the papers I duly give the following decision.

Applicant's evidence

8. The applicant's evidence consists of an affidavit dated 30 October by Kyung-Sin Hur, who is a director of Korea Storage Battery Limited (KSBL).

9. Mr Hur states that his company's first use of the trade mark HANKOOK in relation to automotive batteries was as early as 1981 in the Middle East, Africa and South Africa. He states that from 1990 his company used the trade mark HANKOOK in relation to batteries throughout Europe (excluding the United Kingdom), Japan, North America and Australia. He refers to a schedule of trade mark registrations owned by his company.

10. Mr Hur states that his company first used the trade mark HANKOOK in relation to

automotive batteries in the United Kingdom in May 1993. He states that usage has been continuous since that date. He gives the following figures in relation to sales within the United Kingdom:

Year	Total Number of Batteries	SALES Hankook Branded	TO Unbranded	EBDL Total	Sales to others Unbranded and PB Branded
1993	79,463	21,953		21,953	57,510
1994	75,427	69,760		69,760	5,667
1995	150,108	150,108		150,108	0
1996	100,049	100,049		100,049	0
1997	122,762	122,762		122,762	0
1998	186,662	143,092		143,092	43,570
1999	124,333	48,010	52,225	100,235	24,098
2000. 1-6	83,209	22,840	37,077	59,917	23292
TOTAL	922,013	678,574	89,302	767,876	154,137

11. Mr Hur states that HANKOOK branded batteries have been supplied only to EBDL.

12. Mr Hur exhibits as KSH2 an invoice. It would appear to be addressed to EBDL, however, there is no mention of the HANKOOK trade mark. The bulk of the rest of the contents is made up of numbers which have no key to explain their meaning. The document would appear to emanate from February 1994. The best that can be said of this exhibit is that it indicates some connection between KSBL and EBDL, probably in February 1994. Mr Hur exhibits as KSH3 his company's United Kingdom catalogue which he states was published as early as June 1994 and given to potential customers.

13. Exhibit KSH3 consists of the following:

- A leaflet headed HANKOOK BATTERY FOR AUTOMOBILES. It relates to various automobile and motorcycle batteries. It is dated July 1984 and emanates from the applicant.
- A leaflet from the applicant entitled Guide To Battery Products. It bears no date and there is no reference within it to HANKOOK.
- There are various other leaflets relating to various automotive batteries produced by the applicant. Several of these show use of HANKOOK on illustrations of the batteries. In the extensive list of types of batteries the goods are referred to by serial number rather than

by trade mark. The documents are undated.

14. Mr Hur states that his company first sold batteries bearing the HANKOOK mark to EBDL in May 1993. He exhibits as evidence of the continuing commercial relationship document KSH4. This exhibit consists of the following:

- A commercial invoice dated 31 January 1994 to EBDL for various batteries. There is no reference on the invoice to HANKOOK.
- Two Order forms from EBDL to Korea Storage Battery Co for batteries which are to be branded HANKOOK.
- Two proforma invoices dated 20 June 1994 from the applicant to EBDL for automotive batteries which refer to the brand HANKOOK. A commercial invoice is also attached in relation to one of the proformas - there is no reference to HANKOOK on this. There is also exhibited an international bill of lading between the parties. There is no reference to HANKOOK upon this.

15. Mr Hur exhibits further correspondence between the parties as exhibits KSH5, KSH6, KSH7, KSH8, KSH9 and KSH11. KSH5 consists of a commercial invoice dated 29 June 1994 for automotive batteries, there is no mention of HANKOOK. KSH6 consists of two sales contracts between the parties dated 4 December 1993 and 6 May 1994 respectively. Both relate to automotive batteries, neither refers to HANKOOK. KSH7 is a bill of lading, it relates to the two parties but there is no reference to HANKOOK. KSH8 consists of documentation of an order for goods supplied by the applicant to EBDL, the HANKOOK brand is referred to on the documentation. Also included in this exhibit is a shipping advice form dated 23 August 1994.

This again relates to the same parties. There is no reference to HANKOOK on the form. Exhibit KSH11 consists of an order from Fiamm Automotive Ltd to Korea Storage Battery Ltd dated 20 December 2000. There is no reference to HANKOOK in the order. Included in this exhibit is also a purchase order by Fiamm to Korea Storage Battery Ltd dated 20 August 2000; there is reference in this order to HANKOOK wet. Mr Hur refers to exhibit KSH 9 as being letters to EBDL. However, KSH9 is a printout from the Patent Office web sit (see below). I have checked the exhibit and note that it is stapled and marked at the beginning and end 2000 - 6826. Consequently it is clear to me that this exhibit is not as indicated by Mr Hur in his affidavit.

16. Mr Hur relates how his company became aware of the registration in suit in February 1999 when there was a meeting with Fiamm.

17. Mr Hur states that in December 1999 there was a meeting with Fiamm in Seoul where he states Fiamm stated that they would assign the registration in suit to his company under certain conditions. He states that Fiamm suggested conditions in return for the assignment:

- i. an exclusive license to use the trade mark HANKOOK for five years
- ii. the right to affix the trade mark HANKOOK on, or use in connection with, types of batteries that his company does not manufacture and market.

18. Mr Hur states that his company would consider the first proposal a license agreement. The

second condition, he states, they would not give consideration to. He states that in relation to the latter his company advised that if Fiamm provided them with a specification of the batteries they would consider if they could manufacture them. He states that the meeting ended with an understanding that a written agreement would be drafted and for specific terms to be negotiated. He states that Fiamm promised that they would provide a draft copy of Agreement Proposal on Assignment. Fiamm have not proved such an agreement. He states that his company has repeatedly contacted Fiamm to send the agreement, without result. Mr Hur states that the sole response received from Fiamm relating to the possible assignment was a short statement in a telephone conference. In this statement Fiamm stated that the trade mark HANKOOK was considered to be an intangible asset at the time of purchase of EBDL by Fiamm and, therefore, they needed more time to review the matter.

19. Mr Hur states that on 6 March 2000 his company wrote to Fiamm requesting the voluntary cancellation of the registration in suit with a draft copy of an assignment agreement. He states that this was the last correspondence between the parties.

20. Mr Hur states that his company's parent company, Hankook Tire Manufacturing Co. Ltd, first used the trade mark HANKOOK in relation to motor vehicle tyres in the United Kingdom at least as early as 1980. He states that the usage has been continuous since then. Exhibit KSH9 is a print out from the Patent Office's web site trade mark registration no 1359178 for the trade mark:

HANKOOK

in respect of: *tyres for vehicle wheels; inner tubes for tyres; spray-prevention flaps and guards, all for vehicles; mudguards for vehicles; all included in Class 12.* As the registration is in the name of a different legal entity I cannot see how this assists the applicant. (That Mr Hur states that the proprietor of registration no 1359178 is the parent company of the applicant does not militate against the two companies being separate legal entities which enjoy separate legal rights and responsibilities.) Exhibit KSH10 is a printout of the graphical representation of the above trade mark.

21. Mr Hur states that his company has not always sought registered trade mark protection immediately following initial sales into a country. He states that this does not indicate "no interest" in the trade mark. He considers that the activities of an importer in filing a trade mark application, claiming a trade mark as their own, is in the instant case not in accordance with acceptable standards of commercial behaviour.

22. This completes my summary of the evidence of the applicant.

Decision

23. I note that the application is in the name of Korea Storage Battery Co. Limited. However Mr Hur describes himself as a director of Korea Storage Battery Limited. There is no reference to "Co." Various of the materials refer to the name with "Co" and without "Co". The absence or presence of the "Co" in the light of the documentation furnished appears to me a minor matter, especially taking into account the need to translate in and out of Korean. I consider it reasonable to accept that the entities are one and the same. I have nothing before me to suggest that I should

consider the matter otherwise. The registered proprietor has not raised this as an issue. He knows who the applicant is and has used the name without the “Co” in correspondence to the applicant. I will, therefore, treat, the two titles as indicating the same entity.

Application for rectification under section 60(3)(b) of the Act

24. Section 60 of the Act states:

(1) The following provisions apply where an application for registration of a trade mark is made by a person who is an agent or representative of a person who is the proprietor of the mark in a Convention country.

(2) If the proprietor opposes the application, registration shall be refused.

(3) If the application (not being so opposed) is granted, the proprietor may-

(a) apply for a declaration of the invalidity of the registration, or

(b) apply for the rectification of the register so as to substitute his name as the proprietor of the registered trade mark.

(4) The proprietor may (notwithstanding the rights conferred by this Act in relation to a registered trade mark) by injunction restrain any use of the trade mark in the United Kingdom which is not authorised by him.

(5) Subsections (2), (3) and (4) do not apply if, or to the extent that, the agent or representative justifies his action.

(6) An application under subsection (3)(a) or (b) must be made within three years of the proprietor becoming aware of the registration; and no injunction shall be granted under subsection (4) in respect of a use in which the proprietor has acquiesced for a continuous period of three years or more.

25. Section 55(1)(b) defines a Convention country as follows:

“(b) a “Convention country” means a country, other than the United Kingdom, which is a party to the Convention.”

26. It is to be noted that the United Kingdom is not a Convention country in the terms of the Act and so the applicant cannot rely on a United Kingdom registration in relation to this part of the legislation.

27. I note that the applicant has done nothing in the way of furnishing evidence in relation to what are Convention countries. I presume from the grounds of the application - it is not clear - that the applicant is relying upon being the proprietor of a mark in Jamaica. This in itself raises an issue, according to the records of the World Intellectual Property Organisation - which I consulted as

the applicant had not seen fit to supply appropriate documentation - Jamaica became a party to the Convention on 24 December 1999. This is after the date of the application.

28. The applicant has to be the proprietor of a mark in a Convention country. He needs to substantiate the claim to such ownership. The sole documentation that he has put in to substantiate his claim is exhibit KSH1. This exhibit seems to be a schedule of registrations and/or applications for the trade mark HANKOOK in various countries. No primary documentation has been furnished e.g., registration certificates. No documentation has been shown to show ownership of these trade marks. (It is to be noted in this context that the applicant's own evidence shows a HANKOOK trade mark in the ownership of a third party in the United Kingdom.) It is also to be noted that there is no indication of the relevant goods in this schedule. The evidence to substantiate the claim to ownership is clearly inadequate. **As the applicant has failed to establish that he is the owner of a mark in a Convention county the application for rectification must be dismissed.**

29. Section 60 relates to the action of an agent or representative. The applicant has to prove that the registered proprietor is or was his agent or representative.

30. I take note of the "Notes of the Trade Marks Act 1994" published by the Patent Office and based upon the Notes on Clauses used by Parliament when the Trade Mark Bill was before it. These state in relation to section 60(1):

"Defines the scope of the section - it applies where an application for registration is made by an agent or representative of a person who is the proprietor of the mark concerned which is party to the Paris Convention. "Agent or representative" means in particular a commercial agent or representative (such as a distributor), but can also include a legal agent or representative".

If the registered proprietor was the agent or the representative of the applicant it would be reasonable to presume that there would be some form of agreement between the parties. The applicant has furnished no such agreement or indicated the existence of such an agreement. He has furnished evidence that shows that he supplied goods to the registered proprietor but this is very different from showing that the latter was his agent or representative. Buying goods from a party certainly does not make one his agent or representative; even if one buys them on a regular basis. Mr Hur in his affidavit describes the registered proprietor as an importer, not as an agent or representative (or distributor). His description of the negotiations between the parties does not describe a situation that can be readily characterised as that between manufacturer and agent or representative. To some extent the producer agent relationship is a master servant relationship, there is no indication of this in his evidence. Mr Hur's evidence indicates solely that the registered proprietor imports the goods of the applicant. It is also noted that Mr Hur's affidavit refers to sales to persons other than the registered proprietor - if not under HANKOOK. **As the applicant has failed to establish that the registered proprietor is or was his agent or representative the application for rectification must be dismissed on this basis also.**

Application for invalidation of the registration under Section 47(1)

31. Section 47(1) of the Act states:

“The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).”

32. Section 48(1) of the Act states:

“(1) Where the proprietor of an earlier trade mark or other earlier right has acquiesced for a continuous period of five years in the use of a registered trade mark in the United Kingdom, being aware of that use, there shall cease to be any entitlement on the basis of that earlier trade mark or other right-

(a) to apply for a declaration that the registration of the later trade mark is invalid, or

(b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,

unless the registration of the later trade mark was applied for in bad faith.”

33. The applicant has based his claim under Section 3(6) of the Act, which states:

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

34. As the application is based on a claim to bad faith the provisions of section 48 cannot come into play and, therefore, I do not need to consider the issue of acquiescence.

35. Lindsay J in *Gromax Plasticulture Limited v. Don and Low Nonwovens Ltd* (1999) RPC 167 stated that the words bad faith in the context of the Act encompass:

“dishonesty and, as I would hold, includes some dealings which fall short of the standard of acceptable commercial behaviour observed by reasonable and experienced men in the particular field being examined.”

36. In *Demon Ale Trade Mark* [2000] RPC 355 Mr Hobbs QC, acting as the Appointed Person, stated:

“I do not think that Section 3(6) requires applicants to submit to an open-ended assessment of their commercial morality. However, the observations of Lord Nicholls on the subject of dishonesty in *Royal Brunei Airlines Sdn. Bhd. v. Philip Tan* [1995] 2 AC 378 (PC) at p.389 do seem to me to provide strong support for the view that a finding of bad faith may be fully justified even in a case where the applicant sees nothing wrong in his own behaviour.”

In relation to the findings of Lindsay J (see above) Mr Hobbs held that:

“These observations recognise that the expression “bad faith” has moral overtones which appear to make it possible for an application for registration to be rendered invalid under Section 3(6) by behaviour which otherwise involves no breach of any duty, obligation, prohibition or requirement that is legally binding upon the applicant.”

37. The applicant has not clearly particularised his claim in relation to bad faith. In the statement of grounds a simple, bald statement is given that the application was made in bad faith. In the affidavit of Mr Hur he states that his company has not always sought registered trade mark protection immediately following initial sales into a country. He states that this does not indicate “no interest” in the trade mark. He considers that the activities of an importer in filing a trade mark application, claiming a trade mark as their own, is in the instant case not in accordance with acceptable standards of commercial behaviour.

38. I infer from the evidence and the pleadings that the basis of the claim to bad faith is ownership of the trade mark; the applicant believes that he is the owner of the trade mark and not the registered proprietor and that consequent upon this the application was made in bad faith.

39. From the evidence before me I consider that it is established that the applicant furnished the then registered proprietor with automotive batteries from 1993 and that the HANKOOK trade mark was used upon them. From the exhibits it can be seen that the registered proprietor requested goods to be branded HANKOOK (for instance in exhibit KSH4 the two orders from the registered proprietor to the applicant dated 12 June 1994 and 13 June 1994). The request for the goods to be so branded raises the issue of whether the registered proprietor is buying goods that are potentially unbranded upon which HANKOOK is used to indicate his role as the source in the United Kingdom.

40. It is clear from the evidence of the applicant that he has used the HANKOOK trade mark in other countries. I have no doubt that the registered proprietor was aware of this; he is somewhat unlikely to have come up with the trade mark HANKOOK on his own. In considering the issue of ownership of a trade mark in a third country it is necessary to be circumspect. If any person in a third country could claim successfully that an application was made in bad faith simply because it consisted of his trade mark or was similar to his trade mark the long established geographical limitations of trade mark rights would be thrown into confusion.

41. From the affidavit of Mr Hur it is clear that the HANKOOK branded goods have only been sold to the registered proprietor. The registered proprietor has been the sole conduit of sales of batteries sold under the trade mark HANKOOK within the United Kingdom.

42. The applicant has not furnished any evidence as to how the trade mark has been used in the United Kingdom. It could be that the trade mark has been used as clearly indicating the source as that of the registered proprietor or of the applicant. The applicant refers to exhibit KSH3 as showing his United Kingdom catalogue and technical specifications leaflet. However, the claim in relation to the catalogue is contradicted by his own evidence. The catalogue is dated July 1984, however, the applicant states that the trade mark was not used in the United Kingdom until May 1993. It strikes me as bizarre that the applicant would produce a catalogue for goods that would not be on the market for nearly nine years. On the basis of the evidence I do not accept that this

catalogue was for use in the United Kingdom market; although it may have been used in other English speaking markets. The other exhibits in KSH3 also cannot be clearly identified with use in the United Kingdom. On the basis of the evidence I have nothing that indicates how the trade mark has been used in the United Kingdom. For the applicant's case the nature of the use is I believe important. It is for the applicant to prove his case, he could have supplied evidence to show how the trade mark has been used in relation to the goods and any promotional material. For whatever reason he has not done so.

43. In the counterstatement the registered proprietor made a variety of claims that he did not substantiate with evidence. They are, therefore, simply claims that he made. Effectively he claims that he was responsible for the introduction of the trade mark as a brand for batteries in the United Kingdom and applied for the trade mark to protect the investment he had made in the sales and marketing of batteries under the trade mark. I cannot see that the argument that he filed the application to protect his investment in sales and marketing - in relation to which no evidence has been filed - rebuts a claim to having made the application in bad faith. As Mr Hobbs stated above "a finding of bad faith may be fully justified even in a case where the applicant sees nothing wrong in his own behaviour." That the registered proprietor feels justified in his action or sees nothing wrong in his behaviour does not per se act as a defence. However, again it is for the applicant to prove his case; the registered proprietor does not have to disprove it, he can be passive - as he specifically chosen to be in the instant case. Bad faith is a serious allegation that must be proved (see *LOADED Trade Mark*, SRIS 0/455/00 and *SMILEY DEVICE trade marks*, BL 0/313/01).

44. In considering the issues before me I have taken cognisance of *MedGen Inc v Passion for Life Products Ltd* [2001] FSR 30. This deals with a passing-off action but still holds firm parallels with the instant case. In that case evidence was furnished as to how the trade mark was used, in the instant case there is no evidence as to how it has been used. If the registered proprietor had at the time of the application used the trade mark to indicate that he was the "source" of the goods, that all enquires, complaints etc would rest with him he could have seen it as reasonable to apply to register the trade mark. He could be the one expending money in promotion and after sales service and the public would associate it with him. Again the evidence is silent in relation to this matter but the applicant has done nothing to show that this was not or could not be the case. The applicant also states that the registered proprietor indicated that he wished to use the trade mark upon goods which were not the products of the applicant; this seems to be indicative that the registered proprietor saw the trade mark as indicating that he is the originator of the goods.

45. As stated by Mr Hobbs in *Demon Ale* a finding of bad faith may be fully justified even in a case where the applicant sees nothing wrong in his own behaviour. So if the registered proprietor saw nothing wrong in his action this would not necessarily be a shield to the accusation of bad faith.

46. In the terms of *Gromax* I consider it appropriate to consider whether the application for registration falls short of acceptable commercial behaviour of reasonable and experienced men. In coming to a conclusion in relation to this I am much hampered by what is missing from the evidence of the applicant. I cannot hypothesise whether the omissions are by design. In *Scandecor Development AB v Scandecor Marketing AB* [1999] FSR 26 the Court of Appeal warned that where there is no agreement which regulates the parties' rights, the problem:

“is ultimately soluble by a factual enquiry [with] all the disadvantages of the length of its duration, the cost of its conduct and the uncertainty of its outcome”.

47. In the instant case no agreement has been produced and the factual enquiry is hamstrung by the failings of the evidence. Again the above case deals with passing-off and goodwill and not with the issue of bad faith. However, if the registered proprietor is the owner of the goodwill of the trade mark HANKOOK in relation to electric accumulators (another name for batteries) and batteries in the United Kingdom I find it difficult to envisage how he could have acted in bad faith; he would have rights in the trade mark. The absence of evidence as to how the trade mark is used in the United Kingdom leaves this question open. However, the applicant has certainly not demonstrated that he is the owner of the goodwill.

48. On the facts before me I cannot see how I can find that the registered proprietor has acted in bad faith. Perhaps he has but the case of the applicant has not been made out; a matter not assisted by the vagueness of his pleadings. I, therefore, consider that I must reject the claim that the registered proprietor has acted in bad faith. It could be that if the applicant had furnished evidence that this would have assisted the registered proprietor. But he has not and it is for the applicant to prove his case.

49. I, therefore, refuse the application for a declaration of invalidity of the registration.

50. The registered proprietor is entitled to a contribution towards his costs and I therefore order the applicant to pay him the sum of £235. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 26TH day of November 2001

**D.W.Landau
For the Registrar
the Comptroller-General**