

1 THE PATENT COURT

Court Room 3
Harmsworth House
13-15 Bouverie Street
London, EC4Y 8DP

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Thursday, 7th March 2002

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B e f o r e:

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MR. G. HOBBS, QC
(Sitting as the Appointed Person)

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In the Matter of the TRADE MARKS ACT 1994

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and

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In the Matter of Trade Mark No. 2161257 in the name of
BADGEQUO LIMITED

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and

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Opposition thereto under No. 49198 by SALLY HAIR AND
BEAUTY SUPPLIES LIMITED

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and

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TRADE MARK Nos. 868593, 1181046 and 1187039 in the name of
SALLY HAIR AND BEAUTY SUPPLIES LIMITED

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and

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Revocation Application Nos. 11473, 11474 and 11475 by
BADGEQUO LIMITED

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An appeal to the Appointed Person from the decision of
Dr. W J Trott acting on behalf of the Registrar,
dated 28th November 2001.

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(Computer-aided Transcript of the Stenograph Notes of

Marten Walsh Cherer Ltd., Midway House,

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27/29 Cursitor Street, London, EC4A 1LT.

Telephone No: 0207-405-5010. Fax No: 0207-405-5026.)

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5 MR. COUCHMAN (Harrison Goddard Foote) appeared on behalf of the
Appellant.

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The Respondents were not represented.

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MR. M KNIGHT (Principal Hearing Officer) appeared as the

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Registrar's Representative.

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DECISION

(As approved by the Appointed Person)

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1 THE APPOINTED PERSON: This is an appeal from a decision issued
2 by Dr. W J Trott on behalf of the Registrar of Trade Marks on
3 28th November 2001. In that decision the hearing officer
4 declined to accept that a conflict of evidence which had
5 arisen in the context of parallel opposition and revocation
6 proceedings should be resolved either by striking out parts
7 of the evidence filed by the opponent in the opposition
8 proceedings or summarily revoking the trade mark
9 registrations in issue in the revocation proceedings.

10 There has been a full exchange of views between the
11 persons present at this hearing. I do not intend to enter
12 the details of the Registry proceedings in this decision.

13 My conclusion is that it would not be right to reverse
14 the Hearing Officer in the exercise of his discretion. I do
15 not think that he can be said to have erred in principle or
16 exceeded the latitude allowed to him when taking case
17 management decisions of this kind. I can well understand the
18 sense of dissatisfaction felt by Badgequo Limited at the way
19 in which the evidence has unfolded in the parallel opposition
20 and revocation proceedings. However the conflict of evidence
21 which has emerged raises issues relating to cogency and
22 credibility which need to be considered as part of the
23 overall assessment of the merits of the rival positions. I

24 have the clear impression that the dominant issue in the two
25 proceedings is the question of what, if any, specification of

1 goods the registered proprietor should retain on the basis of
2 the evidence which is before the Registrar. I think it is
3 right to regard that as a matter which should be determined
4 on its merits in the orthodox way and not, as it were,
5 resolved in stages involving a procedural or default ruling
6 on the probative value of the evidence which has been
7 submitted.

8 For those reasons shortly stated I do not propose to
9 interfere with the Hearing Officer's decision. I think the
10 right way forward is for an early hearing to be appointed for
11 these matters to be dealt with as soon as they reasonably can
12 be on their substantive merits. That may or may not involve
13 a separation of the revocation proceedings from the
14 opposition proceedings. That is a matter upon which Badgequo
15 Limited will wish to consider its position in the light of
16 what has happened here today.

17 The appeal will be dismissed. I have been given no
18 reason to believe that the respondent to the appeal has
19 incurred any costs in that connection. The appeal will
20 therefore be dismissed with no order as to costs.

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