

O-379-04

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 81506
BY SAPROTEX INTERNATIONAL (PROPRIETARY) LIMITED
FOR REVOCATION OF REGISTRATION No. 1247666
STANDING IN THE NAME OF HACHETTE FILIPACCHI PRESSE**

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**IN THE MATTER OF Application No. 81506
by Saprotex International (Proprietary) Limited
for Revocation of Registration No. 1247666
standing in the name of Hachette Filipacchi Presse**

Background

1. Trade mark No. 1247666 is registered in the name of Hachette Filipacchi Presse (HFP) for “Bedcovers, tablecovers, household linen (other than clothing), bed blankets and beach towels” (Class 24).
2. The mark itself is as follows:

ELLE

3. On 11 November 2003 Saprotex International (Proprietary) Limited (Saprotex) applied for this registration to be revoked under the provisions of Section 46(1)(b) of the Act on the basis of non-use (and no proper reasons for non-use) for an uninterrupted period of five years in relation to the goods for which it is registered. In the alternative, if the proprietor can show genuine use, the applicant requests that the registration be limited to those specific goods under Section 46(5) of the Act.
4. The applicant makes two further points. Firstly, it contends that any use of the mark ELLE on promotional products associated with the proprietor’s magazine, ELLE, serves only to generate goodwill in the magazine itself, and not in relation to the promotional products. It is also contended that the advertisement or promotion of third party products in ELLE magazine does not constitute use of the mark ELLE in relation to those goods.
5. The registered proprietor filed a counterstatement denying the above ground. HFP asserts that it has made genuine use of the mark (or a form of it falling within Section 46(2)) in relation to the goods at issue. In the alternative HFP asserts that it made preparations for use during the five years ending on 10 November 2003 and that, at the time when such preparations took place, it was not aware that an application for revocation might be filed. It is also asserted that HFP’s use has been in relation to ‘stand-alone’ ELLE goods and merchandise.

6. Both sides ask for an award of costs in their favour.

7. Only the registered proprietor filed evidence. The matter came to be heard on 13 December 2004 when HFP was represented by Ms A R Chaudri of Bristows and Saprotex by Mr M Vanhegan of Counsel instructed by Urquhart-Dykes & Lord.

Evidence

8. HFP has filed a witness statement by Fabienne Sultan, Assistant Director of the proprietor's Intellectual Property Department.

9. Ms Sultan explains that HFP and its subsidiary companies are responsible for publication and distribution of the ELLE magazine. This was first published in France in 1945 and in the UK in 1985. Exhibited at FS1 is a copy of HFP's 1998/99 brochure entitled "ELLE, THE BRAND BUSINESS" which contains a section giving the history of the magazine and ELLE merchandising. A copy of the front cover of the first issue of the magazine is at FS2.

10. Ms Sultan says that:

"4. ELLE magazine in all its editions throughout the world is designed to appeal to women. It is principally a fashion and beauty magazine with a strong focus on women's issues and interests, fashion goods such as women's clothing, shoes and fashion accessories, cosmetics and beauty products and household goods such as those covered by the Registration. ELLE magazine is principally directed to and read by an audience of 18 to 35 year old, sophisticated, educated, career-orientated, upmarket women with significant disposable income. Sales of ELLE magazine have been extremely high. In 1996 for example, 60 million copies of the ELLE magazine (all editions) were sold worldwide, ELLE magazine had 20 million regular readers (including through direct subscriptions to the magazine) and a total audience coverage of 80 million. Consolidated sales figures for ELLE magazine for the year 1997 / 1998 total approximately £69.8 million.

5. As mentioned above, the UK edition of ELLE magazine was launched in 1985 and has enjoyed enormous success with an average monthly circulation in recent years of 200,912. Both the UK edition and the French edition of ELLE magazine have regularly offered ELLE-branded goods for sale through a market section featured in the magazine.

The French edition of ELLE magazine has been distributed for many years and continues to be distributed in the UK market at news-stands in particular and, in common with other foreign language fashion magazines for men and women, at other retail outlets in the UK also. It is widely read by the UK public who have regularly ordered products featured in the market section of the French magazine, initially named BON MAGIQUE and subsequently ELLE PASSIONS, through the mail order system organised by one of HFP's subsidiaries, EXPLOITATION COMMERCIALE D'EDITIONS DE PRESSE (ECEP). Goods are ordered from ELLE magazine using order forms which appear in the

magazines themselves. Where the magazine concerned is the French edition, payment is possible in Euro and French francs. I attach as Exhibit FS3 copies of advertisements for ELLE-branded towels and cushion covers sold under the ELLE mark which have appeared in the French edition of ELLE magazine along with copies of the front covers of the relevant magazines. These are dated 1999, 2000, 2001, 2002 and 2003. The magazines in which they appeared were circulated in the UK. I attach as Exhibit FS4 exportation sales sheets established by the independent organisation NMPP showing the extent to which the French edition of ELLE magazine was distributed worldwide including in the UK during some part at least of the five years ending on 10 November 2003. The UK is referred to variously as “Royaume Uni” and “G. Bretagne”. The column headed “Vente Ex” shows the number of copies of the magazine sold in each country. I attach as Exhibit FS5 copies of the front cover of the UK edition of ELLE magazine dated September 2003, page 278 of this magazine and mini brochure entitled “ELLE Best of Autumn 2003” which was attached to page 278 of the magazine as distributed. ELLE pillow cases and bed linen are offered for sale at page 11 of the mini brochure. Given that the average monthly circulation of ELLE magazine (UK edition) in the UK has been 200,912 in recent years, at least 200,912 members of the UK public will have seen the mini brochure distributed under cover of the September 2003 of ELLE magazine, UK edition.

6. In November 1995, HFP launched its website www.elle.com which is directed to international sales including sales in the UK. The website features ELLE-branded goods and offers these for sale electronically. Sales generated through the website are managed via www.mediasboutique.com. I attach as Exhibit FS6 copy confirmations of orders from UK-based customers for ELLE towels dated January and May 2002. These bear the www.mediasboutique.com website address.

7. In 2002, HFP appointed Chaunes Textiles Industries SA (hereinafter “CTI”) as exclusive licensee for the class 24 goods covered by the Registration and other goods throughout Europe, including the UK. I attach as Exhibit FS7 a copy of the licence dated 28 October 2002. The Registration is specifically referred to on page 30.

8. I attach as Exhibit FS8 a catalogue produced by HFP entitled “ELLE European Licensing Guide 2003”. This was distributed to licensees of ELLE. It refers to CTI on page 55 and HFP’s intention to target the UK as one of its first markets for ELLE-branded household linen, towels and table linen. It also refers on page 63 to HFP’s intended presentation of the ELLE bed linen collection at the AIS Show in Solihull, UK in September 2003. CTI’s UK agent, Zap Ltd, exhibited ELLE household linen (curtains), bed linen and towels at this show and I attach as Exhibit FS9 copy correspondence to and from Zap Ltd confirming this. The AIS show is organised by Associated Independent Stores Ltd which is the largest, independent, voluntary non-food buying group in the UK – it has 275 independent department store and specialist members, 602 outlets across the UK, Ireland, Cyprus and the Channel Islands and £1.6 billion combined membership turnover. I attach as Exhibit FS10 printouts from the website www.aistores.co.uk.

9. I attach as Exhibit FS11 a brochure produced by CTI entitled “ELLE Collection” setting out details and photographs of ELLE bed linen. The brochure is in French, English and German and was circulated in each of France, the UK and Germany in 2003.

10. I attach as Exhibit FS12 copy correspondence from Zap Ltd along with supporting documents showing that Debenhams have agreed to trial ELLE bedding in the UK, House of Fraser (Stores) Ltd and Express Gifts Ltd have purchased ELLE towels and bed linen respectively for sale in their UK stores and the Grattan Catalogue Spring/Summer 2004 issue offers ELLE bed linen for sale in the UK. All of these have resulted from marketing of the ELLE brand by Zap Ltd (including at the AIS show referred to in paragraph 8 above) before these revocation proceedings were filed by Saprotex on 10 November 2003. The Grattan catalogue also refers to HFP’s mini brochure/September 2003 issue of the UK edition of ELLE magazine.

11. I attach as FS13 a copy of a catalogue entitled “ELLE Promotional Items Collection 2001-2002”. This was circulated in the UK and France (hence the fact that it is in both English and French) and offers, for sale in the UK, serviettes and towels under the ELLE mark on page 1 and ELLE-branded beach towels on page 8.”

The Law

11. Sections 46 reads:

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

- (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
- (c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;
- (d) that in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

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

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

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

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

- (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
- (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

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

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

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

12. Section 100 is also relevant and reads:

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

Leading authorities

13. I was referred to and accept that I must be guided by the following main authorities in dealing with the issues before me. In relation to what constitutes genuine use of a mark the European Court of Justice (ECJ) has indicated in *Ansul BV and Ajax Brandbeveiliging BV (Minimax)* [2003] RPC 40:

“36. ‘Genuine use’ must therefore be understood to denote use that is not merely token, serving solely to preserve the rights conferred by the mark. Such use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin.

37. It follows that ‘genuine use’ of the mark entails use of the mark on the market for the goods or services protected by that mark and not just internal use by the undertaking concerned. The protection the mark confers and the consequences of registering it in terms of enforceability *visa-vis* third parties cannot continue to operate if the mark loses its commercial *raison d’être*, which is to create or preserve an outlet for the goods or services that bear the sign of which it is composed, as distinct from the goods or services of other undertakings. Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns. Such use may be either by the trade mark proprietor or, as envisaged in Article 10(3) of the Directive, by a third party with authority to use the mark.

38. Finally, when assessing whether there has been genuine use of the trade mark, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, in particular whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark.

39. Assessing the circumstances of the case may thus include giving consideration, *inter alia*, to the nature of the goods or services at issue, the characteristics of the market concerned and the scale and frequency of use of the mark. Use of the mark need not, therefore, always be quantitatively significant for it to be deemed genuine, as that depends on the characteristics of the goods or service concerned on the corresponding market.”

14. In *La Mer Technology Inc v Laboratoires Goemar SA* [2004] FSR 38 the ECJ gave supplementary guidance in relation in particular to small or minimal use of a mark and the issue of the relevance of use after the filing date of revocation:

“When assessing whether use of the trade mark was genuine, regard had to be had to all the facts and circumstances relevant to establishing whether the commercial use of the mark was real in the course of trade, particularly where such use was viewed as

warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of the use of the mark. When it served a real commercial purpose, in the circumstances cited above, even minimal use of the mark or use by only a single importer in the Member State concerned could be sufficient to establish genuine use within the meaning of the Directive.

(2) While the Directive made the classification of use of the trade mark as “genuine use” consequential only on consideration of the circumstances which pertained in respect of the relevant period and which predated the filing of the application for revocation, it did not preclude, in assessing the genuineness of use during the relevant period, account being taken, where appropriate, of any circumstances subsequent to that filing. It was for the national court to determine whether such circumstances confirmed that the use of the mark during the relevant period was genuine or whether, conversely, they reflected an intention on the part of the proprietor to defeat that claim.”

15. I also bear in mind that the English Courts have emphasised the need for registered proprietors to prove their case with great care particularly where a few items or small amounts of use are relied on (see *Philosophy Di Alberta Ferretti Trade Mark* [2003] RPC 15 and *Laboratoires Goemar SA’s Trade Marks* (in the High Court) [2002] ETMR 34).

Dates

16. The application for revocation was filed on 11 November 2003 and has been made under Section 46(1)(b). In the absence of a request for revocation with effect from an earlier date, the relevant five year period is, therefore, 11 November 1998 to 10 November 2003.

Decision

17. I have recorded above the evidence relied on by the registered proprietor in support of its registration. Mr Vanhegan’s position at the hearing was that the registration should be revoked in its entirety save for ‘beach towels’. As regards the other items in the specification he submitted that no use at all had been shown in relation to table covers and bed blankets and the use in relation to bedcovers and household linen was either not clearly established or insufficient to justify retention of the registration. Ms Chaudri maintained that in relation to the disputed goods the evidence either showed use or preparations for use.

18. I should say in relation to preparations for use that this is not a case where Section 46(3) comes into play. That sub-section applies in the quite specific circumstances where use is commenced or resumed “after the expiry of the five year period and before the application for revocation is made”. In those circumstances use within the three month period preceding the making of the application is to be disregarded unless preparations for commencement or resumption of use began before the proprietor became aware that the application might be made. The subsection reflects the fact that an applicant can specify any five year period of claimed non-use as a basis for his action. It does not have to be the five year period leading up to the filing of the application for revocation. The subsection only bites if use is commenced or resumed in the period between the expiry of the five year period specified and the filing of the application. That

is not the case here as the period concerned is the five years up to and immediately preceding the filing date.

19. Section 46(1)(a) and (b) refer to genuine use of a mark and make no specific reference to preparations for use. Nevertheless, *Ansul* (at paragraph 37) indicates “that use of the mark must... relate to goods or services already marketed or about to be marketed *and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns*” (my emphasis). It seems, therefore, that the primary requirement is for a proprietor to show actual use of his mark but in certain circumstances preparations for use may be brought into the reckoning. The particular example given of advertising campaigns reinforces the fact that the preparations must be directed at securing customers. In other words internal preparations are unlikely in themselves to be sufficient (as to which see also the first sentence of paragraph 37 of *Ansul*).

20. The main thrust of HFP’s case is that by an agreement dated 28 October 2002 Chaunes Textiles Industries SA (CTI) was appointed as exclusive licensee for the Class 24 goods. The agreement, a partially redacted copy of which is exhibited at FS7, shows that CTI was being given wide product and geographical marketing rights. Six categories of goods are identified, (bed linen, bath linen, beach linen, kitchen linen, table linen and decoration fabrics). The territorial coverage extended to large parts of Western and Eastern Europe.

21. The mere existence of a licence is not evidence of use (see *Philosophy di Alberta Ferretti Trade Mark* at paragraph 21). Nor, it seems to me, does the Elle European Licensing Guide 2003 (Exhibit FS8) take matters further forward. The document is said to have been distributed to licensees of ELLE and must accordingly be viewed as an internal document. Ms Sultan notes that the document refers to HFP’s “intention to target the UK as one of its first markets for ELLE – branded household linen, towels and table linen”. Again this is suggestive of a general intention rather than actual use or preparations for use.

22. Of rather more direct relevance is a reference in the Licensing Guide to the intended presentation of the ELLE bed linen collection at the AIS Show in Solihull in September 2003. It seems that the date for this show subsequently slipped to October 2003, that is to say about a month or so before the expiry of the relevant five year period.

23. Considerable attention was focussed on the documents (Exhibit FS9) that are said to provide more detailed confirmation that relevant goods were marketed at the AIS Show. It was also Ms Chaudri’s submission that certain events, which I will come to, that took place after November 2003 stemmed directly from the AIS Show. In her view this engaged the ECJ’s guidance on the potential relevance of events occurring after the relevant period in shedding light on the genuineness of use within the period in question.

24. Exhibit FS9 itself consists of a manuscript note covering copy material confirming the attendance of ZAP (CTI’s UK agent) at the show, and showing order forms for printed bedwear, curtains and tiebacks, and internal e-mails confirming the evolving need for samples to be available for the show. The manuscript covering letter is an unsatisfactory document. It appears by reference to the date to have been prepared for these proceedings rather than being a

contemporaneous document. It seems to me that it should have been filed in proper evidential form. But, it is not, I think, disputed that ZAP had a stand at the show.

25. The e-mail exchanges to and from ZAP relate to samples of duvet covers, pillowcases and towels (the applicant no longer seeks revocation of the latter). It seems that as late as August 2003 only one sample of Elle Fleur Géante duvet cover was available. An e-mail from ZAP dated 18 August 2003 records that “The Elle show has been put back to end of October so the Elle Fleur Geante (Plum) will not now be required”.

26. Further exchanges on 7 October 2003 deal with samples of towels. The e-mail exchanges conclude on 14 October 2003 with one from ZAP indicating that they have sent:

- “1) 3 x Beach Towels (one of each colour)
- 2) Rayures Claret
- 3) Rayures Brown/Purple colour
- 4) Simplicité blue

I also sent them samples of Mini Fleur and Fleur Géante, but they did not put these on display”

27. It is said that items 2, 3 and 4 referred to in the e-mail are duvet covers.

28. As ZAP was the exhibitor it is not clear from this e-mail to whom these items were being sent. However, the above was a response to a question from CTI asking ZAP to “confirm which sample you have sent to Elle for the show”. If that is so it suggests that Elle staff were at the exhibition despite the fact that no one from Elle has given evidence on the matter.

29. There are in addition to this 3 order forms. ZAP is listed as the supplier. There is no indication as to who is being supplied or what is meant by a range of delivery dates (only the first of which is within the relevant period). The “store order number” box on the forms has been left blank.

30. In all this, there is no clear explanation as to what was actually put on display at the show, or photographic or other evidence to show what prominence was given to the ELLE exhibits (ZAP were also said to have been showing their own products). Nor is there any record of enquiries received, orders taken or follow-up contacts. Given the importance that is said to be attached to the event it seems to me that this part of the evidence fails to establish to the requisite standard that bed linen was being marketed.

31. There is, however, evidence in Exhibit FS12 that HFP achieved some success in marketing bed linen and other items after the relevant period. A copy e-mail from Debenhams to ZAP dated 11 December 2003 suggests that the department store was interested in the ELLE range though the writer expresses himself in cautious terms (“When we have these prices, we can start to look to launch the trial at the earliest opportunity”). More relevant is a purchase order from Express Gifts Ltd. But the order has delivery dates of 1 April 2004 which places it well outside the relevant period as is a Grattan Catalogue entry for Spring/Summer 2004. Furthermore, there

is nothing that clearly links this activity to the AIS Show in such a way that it would serve to retrospectively validate the claim that the Show was evidence of the fact that preparations for use were being made that only came to fruition at a later date.

32. The above, although heavily relied on, does not constitute the totality of HFP's case. There are a number of advertisements in ELLE magazines. FS3 contains copies of advertisements for ELLE-branded towels and cushion covers offered through the French edition of the magazine. The individual advertisements mainly show towels. There is one page showing a cushion cover. It was held in *Elle Trade Marks* [1997] FSR 529 that the offer for sale of goods through foreign editions of a magazine would not fail to qualify for the purposes of Section 46 by reason of the fact that there was no evidence of actual sales during the relevant period. It seems to have been accepted in the earlier ELLE case that the advertisements were not limited to France. I cannot with confidence say that the same is true here. So far as cushion covers are concerned, the position is not clear because there is no associated order form or indication as to how the goods may be acquired in the UK. Doubts also arise because a number of the other (mainly beach towel) advertisements in the exhibit bear references such as "Offre valable uniquement en France métropolitaine" or "Offre exclusivement réservée à la France métropolitaine" thus suggesting that the goods so offered were only available on a more restricted geographical basis.

33. Exhibit FS5 shows the front cover of the UK edition of the ELLE magazine dated September 2003 which contained a mini brochure displaying a variety of mainly fashion items. Pillow cases and bed linen are shown amongst other items on pages 10 and 11 of the brochure. It is not possible to see a trade mark on these particular products but I am prepared to accept that the only origin identifier placed before consumers would be the name ELLE which appears many times in the brochure including on other goods. The magazine is said to have a circulation in excess of 200,000. I accept that this brochure shows ELLE branded bed linen being promoted in the UK within the relevant period. Whether this apparently one-off brochure would "be viewed as warranted in the economic sector concerned to maintain or create a share in the market..." is more arguable. Mr Vanhegan drew my attention to comments in a trade magazine in exhibit FS12 which referred back to the mini brochure and indicated that ELLE "plans to list stockists in a future issue". That is not to say that stockists did not exist at the time but it does in my view raise the question as to whether the mere existence of the brochure is enough without any supporting confirmation that the particular products with which I am concerned here were actually available for purchase. Certainly there is no evidence that any sales took place but that might not in itself be fatal to HFP's case. The brochure lists a number of ELLE retail stores on its back cover. But that rather begs the question why not simply provide confirmation that the goods in question were supplied to and available from the listed stores. In all the circumstances I do not find the brochure alone to be enough.

34. There are two final pieces of evidence which call for comment. The first is the CTI "ELLE COLLECTION" brochure at FS11. It is in English, French and German and said to have been circulated in 2003. Precisely when in 2003 is not clear. More importantly, no indication is given as to numbers circulated or to whom the brochure was sent. Is it an internal document produced by CTI for sub-licensees or agents (arguably the most plausible explanation)? Or was it available to the public? Without knowing more this brochure tells me little.

35. The final exhibit is FS13 which is a catalogue of ELLE promotional items from 2001/2. It shows serviettes and towels on page 8. However, as Mr Vanhegan pointed out the “ensemble de serviettes” is translated into English as “towel set” so the catalogue does not assist in the defence of the goods in Class 24 other than beach towels (the same is true of exhibit FS6).

36. It follows that, on the basis of the evidence taking the items both individually and collectively, I am not satisfied that HFP has shown use of the mark in relation to the goods (other than the conceded position in relation to beach towels) or that the evidence is adequate to demonstrate that preparations for use were under way by the end of the relevant period.

37. In reaching that view I have not needed to take into account Mr Vanhegan’s supplementary submission to the effect that where the use has been very late in the period and after notification of a possible revocation action the tribunal is entitled to take these factors into account when assessing the genuineness of the use. He cited the following passage from *Riviera Trade Mark*, O/104/03 in support of that submission:

“65. Taking account of the timing of the start of this use of the RIVIERA mark by Stella (ie. following the first hostile exchange between the parties in March 2000), and the commercially insignificant size of the subsequent trade, I find that this use was intended merely to protect Stella’s trade mark from a non-use attack. This use of the RIVIERA mark by Stella in relation to ice cream logs cannot therefore be regarded as genuine use.”

38. Ms Chaudri’s response to this was that the correspondence that took place between the parties arose from HFP’s threat to take passing off action and a request for details of the use that was said to underpin that claim and that revocation action had not been mentioned. I put these exchanges on record in the event that the matter goes to appeal. It is not necessary for me to reach a concluded view on the matter and I decline to do so.

39. Ms Chaudri’s skeleton argument invited me, were I minded to revoke or part revoke, to exercise discretion in HFP’s favour. The issue of whether the tribunal enjoys a residual discretion was considered in *Premier Brands UK Ltd v Typhoon Europe Ltd* [2000] FSR 767 with the judge finding that there is no such discretion under the 1994 Act. That decision is binding on me.

40. Accordingly, the registration falls to be revoked in relation to all the goods for which it is registered save for ‘beach towels’. The revocation will take effect from the date of the application for revocation, that is to say 11 November 2003.

41. This is one of five revocation actions launched on the same day involving the parties. I heard submissions at the hearing in relation to the costs arising from the material available to me at the hearing. I was also told that there had been a certain amount of ‘without prejudice save as to costs’ correspondence that might need to be considered. The parties’ representatives invited me to defer a decision on costs so that they could assess their position in the light of my decisions on the substantive issues. Exceptionally, I agreed to do so. The parties will, therefore, have fourteen days from the date of this decision to either indicate that they are content to bear their own costs in the light of the overall circumstances of the cases or to file copies of the

'without prejudice save as to costs' correspondence along with their submissions in relation thereto. In the latter case I will issue a separate decision on costs which will also take account of the submissions on costs made at the hearing.

Dated this 30th day of December 2004

**M REYNOLDS
For the Registrar
the Comptroller-General**