

O-110-06

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2315523
BY BRANDWELL (IRL) LIMITED TO REGISTER
THE TRADE MARK HAMPTON IN CLASS 18**

AND

**IN THE MATTER OF OPPOSITION No. 92816
BY COACH, INC**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application No. 2315523
by Brandwell (IRL) Limited to register the
Trade Mark HAMPTON in Class 18**

and

**IN THE MATTER OF Opposition No. 92816
by Coach, Inc**

BACKGROUND

1. On 12 November 2002 Brandwell (IRL) Limited (hereafter Brandwell) applied to register the mark HAMPTON in respect of a specification of goods that reads:

“Articles made of leather or imitation leather; articles of luggage; bags, briefcases, handbags, rucksacks, holdalls, travelling bags and trunks; belts; key fobs, card cases and holders; wallets and purses; umbrellas and parasols; parts and fittings for all the aforesaid goods.” (Class 18).

The application is numbered 2315523.

2. On 22 September 2004 Coach, Inc. (Coach) filed notice of opposition to this application on the basis of an earlier right, HAMPTONS, which it claimed had been used in the UK and elsewhere since 2000 on and in relation to goods made of leather and other materials including handbags, carryalls, satchels, business cases, purses, cosmetic cases and travel bags. Objection is said to arise under Section 5(4)(a) and in particular the law of passing off.

3. The applicant filed a counterstatement denying the opponent’s claimed use and reputation and with it the above-mentioned ground of opposition. Somewhat surprisingly, the applicant also denies that the marks are similar. Brandwell claims use of its own mark for a number of years in relation to the goods of the application.

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

5. Both sides filed evidence. The matter came to be heard on 11 April 2006 when the applicant was represented by Mr M Tappin of Counsel instructed by Ansons and the opponent by Ms F Clark of Counsel instructed by Memery Crystal Solicitors.

Opponent’s evidence

6. Daniel Ross, Assistant Secretary of Coach has filed a witness statement. He says that the trade mark HAMPTONS was first used in the UK in about 2000 and use has been continuous since that date in relation to the goods identified in the statement of grounds.

7. In support of this he exhibits:

- DR-1 - a copy of a print-out from his company's website showing goods bearing the mark. The print-out carries a date of 4 January 2005 and shows the mark in the context COACH HAMPTONS in relation to ranges of bags, belts, a hat and an umbrella. All prices are in dollars.
- DR-2 - magazine advertisements featuring HAMPTONS goods. Mr Ross adds that "Although these advertisements were published in American magazines, many of the magazines are also distributed in the United Kingdom".
- DR-3 - copies of newspaper advertisements featuring the mark. Again Mr Ross says that although the advertisements were published in American newspapers, many of them are also distributed in the UK.
- DR-4 - copies of articles appearing in magazines and newspapers referring to HAMPTONS goods. Included are articles from The Times (London) and The Evening Standard (London). Many of the other magazines and newspapers are also said to be distributed in the UK.

8. Worldwide advertising of goods under the HAMPTONS mark prior to the material date is said to have been in excess of US \$6.5 million. Sales figures (again worldwide) are given as US \$8 million, US \$38 million and US \$60 million for the years ended 30 June 2000 to 30 June 2002 respectively.

9. Sales of goods in the UK amounted to US \$243,000 and US \$224,000 for the years ending 30 June 2001 and 30 June 2002 respectively. During the period prior to the material date sales were principally through Harrods in London and at a Coach shop on Sloane Street.

Applicant's evidence

10. Sean Mahon, the Managing Director of Brandwell has filed a witness statement.

11. He says that his company adopted the Trade Mark HAMPTON in the Spring of 2002 and the trade mark is currently being used in the United Kingdom in relation to a wide range of leather and imitation leather articles including, luggage, travel packs, back packs, holdalls, purses, wallets and small leather items. Advance orders for HAMPTON products with a wholesale value of £1,600,000 were taken from customers in the United Kingdom in August 2002 and those orders were delivered in February 2003, at which time the goods were invoiced. At the present time, leather goods bearing his company's trade mark HAMPTON are sold in excess of 400 outlets throughout the United Kingdom. As a general rule, the retail value of the company's HAMPTON products is said to be 230% more than the wholesale value giving an approximate retail value of orders taken in August 2002 of approximately £3,680,000. No evidence has been supplied in support of these use claims.

12. The remainder of Mr Mahon's statement is largely in the nature of submission in relation to Mr Ross's evidence. I take it into account but need not record it in full at this point. He provides two exhibits in support of his claims:

- SM1 - is a response to Mr Ross' reference to the opponent's website and consists of a print-out from the ORDERING INFORMATION part of the site which states that "Coach.com is not currently accepting orders with billing or shipping addresses outside of the United States and Puerto Rico".
- SM2 - contains extracts from the website www.stpmag.com referring to UK editions of Vogue, Vanity Fair and ELLE magazines and www.copyrights.co.uk referring to the UK edition of MARIE CLAIRE magazine. This material has been filed in response to Mr Ross's exhibit DR-2 and is intended to suggest that the exhibited material relates to US publications that have no UK readership because there are separate UK editions.

13. The main thrust of Mr Mahon's critique of the opponent's evidence is that the use shown relates to the US; no information is given as to the position in this country (for instance by reference to UK circulation figures for the publications concerned) and the goods appears to bear, and be sold under, the mark COACH.

Opponent's evidence in reply

14. Mr Ross has filed a second witness statement. He says it is misleading to suggest that his company's goods are branded COACH and not HAMPTONS. All the goods are branded COACH and many are also branded with other marks such as HAMPTONS. The latter appears on labels attached to articles. He exhibits, DR-5, specimen labels. I note that the word HAMPTONS appears in association with other matter beneath bar codes with dollar pricing underneath. Mr Ross says that the prices are shown in dollars because these particular labels were used in the United States.

15. In response to Mr Mahon's claim that the opponent's magazine advertisements would, for the most part, have no UK readership. Mr Ross says that his company also advertises in International catalogues which are distributed outside the United States. He exhibits, DR-6, a catalogue from Fall 2000 which is said to have been distributed in the UK and, DR-7, a Fall 2002 catalogue also distributed in this country. No information is given on the quantity distributed, to whom and with what results.

16. That completes my summary of the evidence.

The law and relevant authorities

17. Section 5(4)(a) of the Act reads:

"5.-(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or
- (b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

18. The requirements for this ground of opposition have been restated many times and can be found in the decision of Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *WILD CHILD Trade Mark* [1998] RPC 455. Adapted to opposition proceedings, the three elements that must be present can be summarised as follows:

- (1) that the opponent's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the applicant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the applicant are goods or services of the opponent; and
- (3) that the opponent has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the applicant's misrepresentation.

19. In *REEF Trade Mark* [2002] RPC 19 Mr Justice Pumfrey observed that:

"27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur."

20. The above passage sets out the evidential burden on an opponent relying on a passing off claim and also refers to the necessity of establishing the claim at the relevant date. The Act is silent on the matter of the relevant date but Article 4.4(b) of First Council Directive 89/104 makes the position clear:

"(b) rights to a non-registered trade mark or to another sign used in the course of trade were acquired prior to the date of application for registration of the subsequent trade mark, or the date of the priority claimed for the application for registration of the subsequent trade mark and that non-registered trade mark or other sign confers on its proprietor the right to prohibit the use of a subsequent mark;"

21. The relevant date here, therefore, is 12 November 2002.

22. At the hearing Mr Tappin, sensibly, did not pursue the denial in the applicant's counterstatement that the marks in issue are similar. They are not identical as a result of the absence of a final S in the applied for mark but they are very closely similar. In large measure too the competing goods are identical and, where not identical, closely similar. This is a case where it is said that misrepresentation and damage can be inferred if the opponent's claim to goodwill is made out. Ms Clark relied on a passage from *Chelsea Man Menswear Ltd v Chelsea Girl Ltd* [1987] RPC 189 (at page 194) in support of that proposition. I accept that that is the case. Although there is no evidence of confusion and no proof of actual damage these are matters on which the tribunal is entitled to form its own view and draw reasonable inferences – see *Mecklermedia Corporation v D.C. Congress Gesellschaft mbH*, [1997] FSR 627 to this effect.

23. Not surprisingly, therefore, submissions at the hearing were largely directed towards whether the opponent had established goodwill. At this point it will be convenient to refer to the main authorities relied on by Counsel in support of their positions. In relation to the scale of use necessary to underpin a claim to goodwill, Ms Clark referred me to passages in *The Law of Passing-Off* by Christopher Wadlow (at 3-55) where it is suggested that very slight trading activities have been held to suffice. In further support of that position I have also been directed to, *Sheraton Corp of America v Sheraton Motels Ltd* [1964] RPC 202, *Stannard v Reay* [1967] RPC 589 and the *Chelsea Man* case referred to above. The same paragraph in Wadlow's is also relied on for the comment that "advertising directed at a specific market in actual preparation for trading does generate sufficient goodwill to support the action". The inference being that the opponent here must be in a stronger position as it claims an actual trade and not just advertising to induce trade.

24. The other main authority I was referred to by Ms Clark is *Pete Waterman and Others v CBS United Kingdom Ltd* [1993] EMLR 27 where it was held (page 58 of the judgment) that the presence of customers in this country is sufficient to constitute the carrying on of business here whether or not there is otherwise a place of business here. The circumstances of that case were that record companies and artists were shown to have placed bookings from the United Kingdom in connection with the use of a recording studio in New York. Ms Clark submitted that the opponent here must be in a stronger position when the totality of its evidence is considered because it also had a retail presence in this country at Harrods and its own Coach store in Sloane Street.

25. Mr Tappin, for the applicant, sought to distinguish the above cases on their facts from the current action and referred me to observations of Jacob J (as he was then) in *Hart v Relentless Records Ltd*, [2003] FSR 36 at page 679 (paragraph 62) to the effect that the law of passing off does not protect a goodwill of trivial extent. I was also referred by Mr Tappin to passages in *Euromarket Designs Inc and Crate & Barrell Ltd*, [2001] FSR 20 at pages 293 et seq regarding how I should approach advertisements in overseas magazines etc that may happen to have some circulation in this country and where it was said that there must be an enquiry as to what the purpose and effect of the advertisements in question are.

26. Before I turn to the evidence and the detailed submissions thereon, I must touch on the distinctiveness or otherwise of HAMPTONS/HAMPTON. Mr Tappin's skeleton argument reminded me of Morritt LJ's observation in *Bach Trade Marks*, [2000] RPC 513 to the effect that use of a mark does not prove that the mark is distinctive. That was in the context of a

mark which faced a claim that it had become generic and where, on the evidence before the Court, there was ambiguity as to whether it would be seen as distinctive or descriptive. For reasons which I think are not difficult to discern neither party has claimed that HAMPTON or HAMPTONS is descriptive of a style of bag or any other goods relevant to this action. Some of the opponent's use has given me cause to wonder how consumers would react to use of the word but as matters stand there is no evidence suggesting the word is inherently descriptive in relation to the goods at issue. The opponent's use of HAMPTONS is nevertheless as a secondary indicator (COACH being the main mark). There is, of course, no reason why a secondary indicator or sub-brand cannot in itself become distinctive of its proprietor's goods – examples abound in the marketplace – but it does require consideration to be paid to the prominence given to the secondary indicator and the extent to which (if at all) it has, as Mr Tappin put it, permeated the consciousness of the public. These are issues of fact that I will return to in my analysis of the evidence and related submissions below.

27. As submission at the hearing entailed a detailed evaluation of the evidence filed by Mr Ross I propose to do the same:

DR-1 - this consists of COACH website pages showing a range of bags which are referred to as COACH HAMPTONS. The document carries a date of 4 January 2005 which is the date of Mr Ross' witness statement. It is criticised by the applicant as not addressing the position at the relevant date, carrying no indication that it is directed at potential customers in this country and having no supporting evidence as to the number of UK visits to the site nor reference to UK sources for the goods. Mr Mahon's evidence is also to the effect that the ordering information page on the website (SM1) indicates that orders are not currently being accepted from outside the United States and Puerto Rico. I have also been referred to observations in Kerly's Law of Trade Marks (Fourteenth Edition) at 23-054 to 23-061 in relation to the considerations to be borne in mind where internet usage is involved.

Ms Clark responded to these criticisms by noting that Mr Ross' evidence was generally well directed towards the relevant date so it was a reasonable inference that the website material was properly reflective of the position at the material date. She also drew my attention to the fact that the website contained a 'store locator' and the inference must be that it would have included the UK (either Harrods or the Coach store on Sloane Street).

There are simply too many inferences and too little substantiation here to make the website pages of any real value. Mr Ross does not answer Mr Mahon's criticism of the website evidence. It does not seem to be contested, therefore, that direct ordering from the UK via the website was not possible. The most that can be said is that there is a reference to 'store locator'. It ought to have been a simple matter to disclose what information lay behind this website screen prompt but the evidence is silent on this and the question of 'visits' to the site from the UK. Furthermore, Mr Ross does not attempt to deal with the relevance of the 4 January 2005 website print to the position as at 12 November 2002. He does not, for instance, confirm that the information has not changed in any material way. I find this exhibit to have little, if any, evidential value.

DR-2 - these magazine advertisements for HAMPTONS goods fall into two main categories. All are American magazines but some are acknowledged to be of purely local interest (The Los Angeles Magazine and Southern Living to take the first two in the bundle) whilst others have more familiar names. In this latter category, for instance, are ELLE and Marie Claire. Mr Mahon's evidence addresses the latter group by suggesting that these were the US

editions of magazines which would have separate UK editions with advertisements etc directed at this particular market.

So far as I can tell (the quality of reproduction does not always make for easy reading) the magazines that would have UK counterparts are priced in US or Canadian dollars on their front covers. That may not be conclusive as to their area of circulation. It may still be possible to order them from abroad. But it seems to me that where material of this kind is being filed in support of a claim to goodwill in the UK, it requires more than a bare claim to persuade the tribunal that it has achieved this effect. Some indication of UK circulation or subscription figures would be a starting point. But even that is not necessarily indicative that the advertisements contained in the publication, which are ostensibly aimed at a US audience, are also directed at UK customers. There is no indication that any of these advertisements generated or were calculated to generate business from the UK or that UK customers or potential customers made enquiries as a result of these advertisements. Ms Clark attempted to get over this difficulty by suggesting that this and other evidence should not be viewed in isolation. It should, she submitted, be considered against the background that there were also UK retail sources, namely Harrods and the Coach store in Sloane Street. In her view, therefore, the advertisements were more than simply an adjunct to a US business. They were relevant to the extent that anyone seeing the advertisements could follow them up at or through the UK retail outlets.

Despite these claims, there is no reference to the UK outlets in the magazine advertisements and no evidence suggesting that the advertisements, nevertheless, had the effect of stimulating a trade in this country either by enquiry or through the UK retail outlets. In any case Ms Clark's submission presupposes that the advertisements were seen by UK customers at all – a point that has not been established in evidence.

Although in these circumstances the point might seem somewhat academic, it is also appropriate to comment on the way in which HAMPTONS is used in these advertisements. The point also carries over to other exhibits. The advertisements generally give significant prominence to the mark COACH. In fact there is a fairly consistent theme to the presentation of the DR-2 advertisements that they feature a large picture of a model with “made by COACH” underneath and small print running vertically to the left hand side of the page which also features the word COACH followed by further information on the goods including references such as “HAMPTONS SMALL TOTE” “NEW DORA SANDAL” and such like referring, as I understand it, to the clothing and accoutrements of the pictured model. The small print is likely to make very little immediate impression on the casual reader who would consider herself to be looking at a COACH advertisement. It is possible that a few more fashion conscious readers who want to know more may seek out the additional information in the small print. The extent to which that is likely to be the case can only be guessed at particularly as these advertisements in US magazines appear to raise no obvious expectation in the mind of the casual UK reader that the advertised goods are available for purchase either through the medium of the magazine itself or from UK sources.

On the basis of the low level of prominence given to the word HAMPTONS in these advertisements I would have been doubtful whether it (as distinct from COACH) could be said to have made any material impact on consumers in this country. If that is overstating the position and a few aficionados had noted the HAMPTONS mark then I would have expected the opponent to be in a position to file confirmatory evidence to that effect. But for the

reasons already given there is no basis for assuming any UK awareness of these advertisements in the first place.

DR-3 - this exhibit suffers from much the same problems as DR-2 in terms of lack of information on UK circulation figures or any means of gauging the impact on the UK public. It is said that “many of the newspapers also are distributed in the United Kingdom”. Mr Ross is not specific as to which ones. Perhaps the Washington Post and The New York Times are distributed here, perhaps also to a slightly wider audience than expatriate Americans. But in reality this is a matter of speculation. I note, too, that one of the newspapers is said to be ‘The New York Times Int’l’ (12 December 2000). Does that mean that there is an International edition specifically intended for overseas circulation?

The advertisements themselves give no clue that they are addressed to an audience outside the US if that is indeed the case. Some of the advertisements give store locations. The list of stores varies according to the newspaper. Thus, The New York Times (of 23 March 2000) gives addresses at 57th Street and Madison, 84th Street and Broadway etc whereas the Los Angeles Times (of 17 December 2000) gives addresses at 190 Post Street, Stanford Shopping Centre etc. Other advertisements are of a more general nature but give no address, contact or ordering point in the UK. The closest one gets are references to “Available at select department stores” in some advertisements but that has to be read in the context of the fact that these are US publications.

Ms Clark was right to say that in some instances slightly greater prominence is given to the word HAMPTONS though even taking the opponent’s most favourable position it is still decidedly subordinate to COACH. The first exhibited example is a case in point showing the words HAMPTONS HAUTE above a picture of a bag and in much smaller print New Hamptons Flap beneath the pictured bag. Other advertisements have only the ‘small print’ reference to HAMPTONS and other words above the pictures of bags. Pricing is always in dollars. I am unable to draw any meaningful conclusions as to the individual or collective impact of these essentially US advertisements on a UK audience in terms of creating awareness of the name HAMPTONS.

DR-4 – this consists of articles in magazines referring to HAMPTONS goods. They are again drawn from US publications. It is unnecessary to repeat the criticisms outlined above. Indeed a number of the publications appear to be even more local in character (the Springfield News-Leader, The Hartford Courant, Montgomery Advertiser etc). Two items do, however, call for comment as they are taken from UK newspapers. One is from the Times of 18 January 2002 and the other from the Evening Standard of 4 October 2002. The Times article, which is entitled ‘Move over Gucci’, is primarily about Coach. There is a reference to Hamptons as follows:

“How times have changed. Now a new generation of women (and men) is carrying **Coach** bags. American, British and Japanese customers are placing their orders early for the new season’s collection, which includes backpacks and duffel bags. They are made from highest-quality leather and include mobile-phone pockets. This spring’s **Hamptons** bag is considered the perfect holdall for the first weekend break of the season for visitors to Long Island.”

Although the words Coach and Hamptons are highlighted this is probably no more than the product of the fact that these words formed part of the search criteria. The article is a lengthy

one (1005 words). I doubt that the reference to Hamptons can have made much if any impact even if it is taken as a brand indicator rather than designating a style of bag ('this spring's' version of an established product type on one reading of the words).

The Evening Standard website, which is in any case only a month or so before the relevant date in these proceedings, describes a visit the writer made to Woodbury Common in upstate New York which is said to have the largest collection of designer outlets in the world. There is a reference to "Luxe American bag label Coach was packed with excitable types snapping up the Hampton Carry-All" The article is written from the perspective of someone in the US at the time (it is entitled "Get the bus for the best fashion bargains"). I consider these articles to be of negligible assistance to the opponent.

28. In response to the applicant's criticisms of the opponent's evidence in chief three further exhibits were filed:

DR-5 - Consists of photocopies of three labels showing what I take to be product coding above a bar code. Then beneath the bar code in small print 'Hamptons Hobo', 'Hamptons Flap' and 'Hamptons Hat'. The articles are priced in dollars. The exhibit was heavily criticised by Mr Tappin. He asked rhetorically why no UK labels had been exhibited and noted that Mr Ross does not even say that the exhibited items are in substance the same as those used in the UK. It is not, in his view, prominent use and the mark has not been shown to be in use on the goods themselves. Ms Clark, on the other hand, noted that Mr Ross was based in the US and had presumably used what was readily available to him. In her view there was no reason why I should construe these examples of labels as not also being representative of UK use.

I find it surprising that no UK material is available. However, it emerged during the course of the hearing that the Sloane Street store has closed (this is not in the evidence but, as a result of enquiries, Counsel acknowledged this to be the position). Hence that source of material is no longer available. But it does not explain why there are no records of the trade in Harrods or why no explanation is offered as to why better evidence is not available.

DR-6 & DR-7 – these are copies of international catalogue that feature the HAMPTONS mark. They do so to various extents and with varying degrees of prominence. The Fall 2000 catalogue has COACH prominently displayed on the cover page and a reasonably prominent reference to the 'Hamptons Leather Collection' on the next page. Other references (of rather lesser prominence) on this and some of the succeeding pages are to 'Coach Hamptons Leather Small Hobo' and such like. The Fall 2002 catalogue appears to contain just a single small reference to 'Coach Hamptons Leather Clip Demi Flap'. In neither case is the claim that the catalogues were distributed in the UK substantiated or expanded upon. Thus I do not know how many copies were circulated, to whom, on what basis (eg was it only on request, or to an established mailing list, or to the UK retail outlets), what the response was (if any), how customers would have placed orders or whether those customers understood the HAMPTONS name to be a distinctive indicator of Coach's goods.

29. In addition to the exhibited material Mr Ross refers to sales of \$243,000 to end June 2001 and \$224,000 to end of June 2002. Although these sums are not large they are not trivial either and must be taken as an indication of some sort of trade in the UK. Mr Ross claims that these sales were principally through the two UK retail outlets (he does not claim that any of them was the result of the advertisements and material referred to elsewhere in the evidence).

30. There are a number of difficulties with the general claim. Firstly, and most obviously, there are no examples of either the goods, their packaging or the advertising/promotional activity that might have supported that trade. There are no invoices either in relation to the commissioning/supply of the goods or retail invoices evidencing their sale. Even allowing for the fact that the Coach store no longer exists it is difficult to believe that no documentary evidence remains to substantiate the trade that took place. Nor is there any evidence from the trade or the public (as to which see Mr Justice Pumfrey's remarks in *REEF*). The latter is important here as the HAMPTONS brand is firstly subordinate to COACH and secondly by no means always prominently displayed. Even if I was to accept at face value Mr Ross' claims that the sales referred to above were by reference to the mark HAMPTONS I cannot be certain as to the impact the mark would have made on consumers. How did they enquire about or order the goods? These remain in my view matters for conjecture rather than reasonable inference.

31. Ms Clark submitted that it was not appropriate to subject the individual pieces of evidence to criticism without considering the broader picture. As I have already indicated, she contended that I must consider the US magazine and newspaper articles in the context that readers would have had access to retail outlets for the goods in the UK. This was not a case in her view where the products were inaccessible as it were to potential UK customers. She also made the point that these are luxury goods which are sought out by the fashion-conscious and reputation can be established by word of mouth. I accept that these may be relevant considerations but there must be a sufficient basis in the evidence for these factors to come into play. Whatever exclusivity and reputation may attach to the brand in the US, my clear conclusion is that the exhibited material is a long way short of establishing any sort of awareness of, or reputation in, the mark HAMPTONS in this country. The sales figures taken on their own are suggestive of a modest trade which if properly substantiated might have provided the basis for a claim to goodwill under the mark HAMPTONS in relation to relevant goods. But, for the reasons given, I am unable to accept the claim on the basis of the evidence before me. As the opponent has failed to establish goodwill in this country under the mark HAMPTONS that is an end to the matter.

32. The opposition, accordingly, fails under the only ground on which it was brought. The applicant is entitled to a contribution towards its costs. I order the opponent to pay the applicant the sum of **£2000**. 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 the case if any appeal against this decision is unsuccessful.

Dated this 24th day of April 2006

M REYNOLDS
For the Registrar
The Comptroller-General