

O-215-07

TRADE MARKS ACT 1994

**IN THE MATTER OF CONSOLIDATED APPLICATIONS UNDR NOS 82212
AND 82213 BY ROUSSELON FRERES ET CIE FOR DECLARATIONS OF
INVALIDITY IN RESPECT OF TRADE MARK REGISTRATIONS NOS.
2225281 AND 2225287 IN THE NAME OF HORWOOD HOMEWARES LTD**

TRADE MARKS ACT 1994

IN THE MATTER OF consolidated applications under No. 82212 and 82213 by Rousselon Freres et Cie for declarations of invalidity in respect of trade mark registrations Nos. 2225281 and 2225287 in the name of Horwood Homewares Ltd.

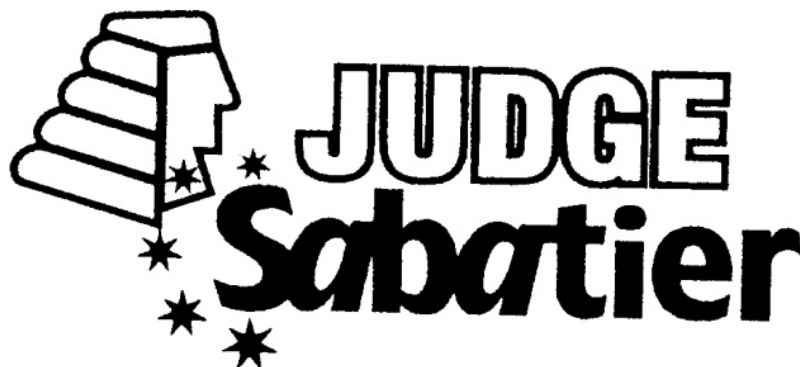
BACKGROUND

1. Trade Mark Nos. 2225281 and 2225287 are registered in respect of the following goods in Classes 8 and 21:

- | | |
|----------|--|
| Class 08 | Cutlery, forks and spoons; hand tools for culinary and for horticultural use; knives. |
| Class 21 | Domestic utensils and containers; pots, pans, steamers, kettles, all non-electric and all for culinary or domestic use; glassware, porcelain, earthenware for domestic or culinary use; tableware; brushes, sponges, non-electric cleaner. |

2. The trade marks are as follows:

2225281



2225287



3. The trade marks are registered in the name of Horwood Homewares Ltd.
4. By applications dated 18 July 2005, Rousselon Freres et Cie applied for registration Nos. 2225281 and 2225287 to be declared invalid under the provisions of Section 47(2)(a) of the Act on the basis that the trade marks were registered in contravention of Section 5(2)(b) of the Act, in that the trade marks are similar, and the goods the same or similar to the applicants' earlier trade marks. Details of these earlier marks, Nos 759851, 940831 and 1514055 are shown as an annex to this decision.
5. In a Counterstatement filed on 26 September 2005, as revised on 2 February 2006, 6 March 2006 and 19 April 2006, the registered proprietors deny the applications have any basis, and claim that the applicants have acquiesced for a continuous period of five years in the use of the registrations, and that pursuant to Section 48(1) of the Act have ceased to be entitled to apply for the registrations in suit to be declared invalid on the basis of the earlier marks specified.
6. Both sides ask that an award of costs be made in their favour.
7. Both sides filed evidence in these proceedings, which, insofar as it may be relevant I have summarised below. The matter came to be heard on 16 January 2007, when the applicants for invalidity were represented by Mr Mark Vanhegan of Counsel, instructed by Saunders & Dolleymore, their trade mark attorneys. The registered proprietors were represented by Mr Michael Edenborough of Counsel, instructed by Mathys & Squire, their trade mark attorneys.

Applicants' evidence

8. First is a Declaration dated 7 November 2005, from Pascale Bruchon acting as President of the Board, and General Manager of Rousselon Frères et Compagnie.
9. Ms Bruchon recounts the history of the SABATIER trade mark from its origins in the nineteenth century when the SABATIER family began manufacturing knives. She says that in 1979 the registered proprietors of various French trade marks containing the mark SABATIER, these being either descendants of, or other successors to the Sabatier family, formed an Association to protect and conserve the distinctive character of the name SABATIER in the field of cutlery. Exhibits 1 and 2 consist of a copy of the Agreement establishing the Association, and a translation into English. The translation of the Agreement states the purpose of the Association as being, in particular:
 - “1) protecting the name SABATIER considered as constituting or forming part of a manufacturing or trade mark in the field of cutlery;
 - 2) for this purpose, bringing together the proprietors of the SABATIER marks presently in use and registered in France prior to the year 1974 (accompanying list of proprietors, either individuals or the representatives of bodies corporate, together with their respective SABATIER marks);

- 3) taking legal action whenever deemed necessary in order to enforce the rights in trade marks incorporating the word SABATIER and belonging to members of the Association; and
- 4) devoting itself to conserving the distinctive character of the name SABATIER and the high quality image recognized therein by its clientele.”

10. The Agreement also states that the members contribute their individual trade mark rights to the Association these being useable by the member, and where necessary, by the Association in its actions. This contribution is referred to as being akin to an exclusive licence, which shall be recorded in writing and/or on the National Trade Mark Register. Ms Bruchon lists the names of the ten proprietors who constituted the association in 1979, and gives details of subsequent name changes and transfers of rights with the associated trade mark details. There is nothing that shows that the owners of the trade mark rights are in any way connected with the Sabatier family.

11. Ms Bruchon says that knives bearing the SABATIER name are traditionally manufactured in the Thiers region of France, and are professional knives used by butchers, cooks and chefs. She says that the SABATIER name is also applied to other cutlery products that are sold to the general public. As Exhibit 3, Mr Bruchon provides a copy of a catalogue (in French and English) that is stated to have been published in June 2002 and distributed to her company’s clients in the UK. Ms Bruchon highlights the information relating to the history, manufacturing techniques and construction of the knives sold under the brands listed. The SABATIER name is used in a composite mark “LION SABATIER with the device of a lion, in relation to knives, forks and sharpening steels. Other products are shown but sold under different marks. Exhibit 4 consists of a “current“ catalogue showing goods sold under the mark “2 LIONS” with the words “SABATIER INTERNATIONAL” beneath contained within a quadrilateral border that has the head and shoulders of a lion protruding from each side.

12. Ms Bruchon says that her company has sold to clients in the UK for many years, in some cases providing bespoke packaging and marking, with other clients packaging the products themselves. She gives the “approximate” wholesale prices for products bought by UK clients in the years 2000 to 2005, which are as follows:

2000	965,000 Euros
2001	921,000 Euros
2002	1,166,000 Euros
2003	773,000 Euros
2004	718,000 Euros
2005	931,000 Euros

13. Ms Bruchon states that the resulting sales figures are approximately double these amounts.

14. Ms Bruchon goes on to give details of UK customers, as follows:

John Lewis Partnership

Stated to have been a customer for some 15 years, Exhibit 5 being examples of past and present packaging. Excluding the non-trade mark matter, this bears the LION device placed above the words SABATIER PROFESSIONAL on packaging stated to be for knives. Exhibit 15 is stated to be an invoice for packaging. The invoice is dated 23 March 2005, and relates to a range of knives from the 2 LIONS SABATIER range sold under the name NEPTUNE, supplied by the applicants to John Lewis.

Lockhart Catering Equipment Ltd

Stated to be a large distributor of catering equipment in the UK, selling to the trade primarily through a catalogue, website and a showroom in East London. Exhibit 6, which is a copy of the Lockhart brochure effective from 6 October 2003, *inter alia* lists SABATIER knives and a carving fork, and a “SABATIER” CHEF’S 17 PIECE KNIFE AND GADGET SET” containing knives, forks and other domestic utensils such a lemon zester, apple corer, scissors, etc.,

Paul Swolf Ltd

Wholesale import/export company dealing in cutlery, selling primarily to the restaurant trade. Exhibit 7 consists of an undated leaflet headed Professional SabatieR, depicting knives and carving forks. The knives have the device of a LION and the word SABATIER on the blade. Some have the word SABATIER on the handle. Ms Bruchon says that her company has been selling such products to this company for more than 25 years.

Divertimenti Retail Ltd

High-end kitchenware and cookware retailer with two stores in London. Exhibit 8 consists of a print from the retailers website taken on 24 October 2005, listing, *inter alia*, GRAND SABATIER and SABATIER knives and knife sets, Elegance SABATIER knives and block, and a copy of the Divertimenti catalogue that dates from some time around December 2005, that depicts a SABATIER “SYDNEY” knife set & block.

Steamer Trading Ltd

Kitchenware retailer with six stores in East Sussex, two in Surrey and one in Kent. Exhibit 9 consists of a print taken from their website on 1 November 2005, which refers to SABATIER knives as being “synonymous with professional knives, with the “Sabatier brand” having been registered by Monsieur Sabatier in France in 1812. It says that although the name is widely used around the world, the original knives are recognizable by three brass

rivets in the handle and are unsurpassed in their quality. The knife depicted has the LION SABATIER composite mark on the blade.

Le Crueset UK Ltd

Ms Bruchon says that her company has been providing LION SABATIER knives to this company for at least 15 years. Exhibit 10 consists of an undated brochure for LION SABATIER knives. The exhibit includes an order form for SABATIER PROFESSIONAL knives from Maxime Girard Sabatier stated as being the suppliers of Le Crueset cookware. The offer is from The Kitchenware Merchants Limited of Andover, Hampshire, and states that the offer closes on 31 December 1991. Exhibit 11 consists of an undated example of packaging for a SABATIER knife, the distributor being noted as Le Crueset UK Limited.

Harrison Fisher & Co Ltd

This company packages the applicants' products itself, and sells a range of 2 LIONS SABATIER INTERNATIONAL products, and a range of knives bearing the words VERITABLE SABATIER which is said to translate as GENUINE SABATIER. Exhibit 12 is a photograph of a knife bearing these words in conjunction with a monogram and the word FRANCE. Exhibit 13 consists of packaging for a VERITABLE SABATIER knife, the distributor being shown as Harrison Fisher & Co Limited.

15. Ms Bruchon says that as can be seen from the catalogues shown in Exhibits 3 and 4, each product has a six-digit reference code. She says that page 11 of Exhibit 3 shows that each knife has a unique four-digit code followed by a full stop and a two-digit code. Ms Bruchon says that the four digits refer to the type of item, and the two digit suffix relates to the mode of packing, by way of example stating 00 means no packaging, the code 50 being a product packaged in a wallet, 20 for products packaged with a card. The two-digit code can also indicate a client, for example, the number 70 denotes products supplied to Harrison Fisher, 30 Le Creuset and 99 for John Lewis products.

16. Exhibit 14 consists of copies of invoices dating from February, October and November 2004, issued by the applicants to some of the companies named above. The earliest, dated 17 February 2004 bears the LION SABATIER composite mark on the heading but the products listed do not mention any goods stated to bear the SABATIER name. Some bear a manuscript entry stating "Produits marques SABATIER LION" and "Produits marques VERITABLE SABATIER". There are also entries in the margins of some invoices referring to a particular brochure, e.g., "2 Lions brochure" and "Lion SABATIER Dumas brochure".

17. The first Witness Statement is dated 28 October 2005 and comes from Stephen Lloyd, General Manager of Paul Swolf Limited, a cutlery export and import company selling to cutlery wholesalers. Mr Lloyd confirms that his company has been buying knives bearing the SABATIER name from the applicants for over 25 years. He exhibits a promotional leaflet that he says shows the products sold. He gives the turnover at retail prices for sales of these goods in 2003 and 2004 as being £7,993.94

and £6935, respectively. He concludes his Statement by giving his understanding of the origins of the SABATIER trade mark.

18. The second Witness Statement is dated 25 October 2005 comes from Alastair Fisher of Harrison Fisher & Co Limited, a company he has been involved with for some thirty years. He says that under the trading name Taylor's Eye Witness his company has sold VERITABLE SABATIER and SABATIER INTERNATIONAL knives and steels. He exhibits a promotional leaflet stated to date from 2005 illustrating the products sold.

19. The third Witness Statement is dated 2 November 2005, comes from Kate Carrick, a Central Buyer for John Lewis PLC, a position she has held for thirteen years. Ms Carrick says that for at least the last thirteen years her company has bought knives from the applicants for sale to the general public. She states that the knives are sold under the mark SABATIER together with the picture of a leaping lion or picture of two lion's heads. Ms Carrick states that she is aware that the applicants also sell knives bearing the same marks to Le Creuset and Taylor's Eye Witness.

20. The fourth Witness Statement is dated 31 October 2005 and comes from Michael Schneideman, a Director of Divertimenti Retail Limited, a company that he and his wife established in 1963. He gives details of his company's trading operation stating that for the past two years it has been selling knives and knife block sets that bear the mark SABATIER that are sourced from the applicants. He refers to an exhibit consisting of a copy of his company's 2004 Christmas catalogue but this is not provided. He gives the turnover at retail prices for sales of SABATIER knives and knife block sets for the years 2004 and 2005 as being £5,750 and £6,299.85, respectively. He concludes his Statement by giving his understanding of the origins of SABATIER branded goods.

21. The fifth Witness Statement is dated 9 November 2005 and comes from Alison Thorne, International Marketing Manager for Le Creuset International, a retailer of cookware, bakeware and kitchen accessories, including knives. Ms Thorne states that she has nearly 17 years experience in the kitchenware/housewares industry. She gives an outline of the extent of her company's UK business, explaining that since at least 1987 they have been selling knives with the mark SABATIER accompanied by the word LION and a picture of a lion etched on the blade, and the name SABATIER stamped on the handle. Ms Thorne gives her opinion as to the perception of SABATIER goods held by the consumer. She confirms her understanding of the origins of the SABATIER name.

22. The sixth Witness Statement is dated 9 November 2005 and comes from Philippa Dianne Eke, a trade mark attorney with Saunders & Dolleymore. As Exhibit 1, Ms Eke provides a search report dated 17 October 2005 for trade mark applications and registrations comprising the word SABATIER having effect in the UK. Exhibit 2 consists of a copy of Pascale Bruchon's Declaration dated 7 November 2005, summarised above. Exhibit 3 consists of undated photographs of a display of, *inter alia*, SABATIER knives, steels and carving forks.

Registered proprietor's evidence Rule 31(3)

23. The first Witness Statement is dated 21 April 2006 and comes from Margaret Jane Arnott, who since April 2000 has been a registered trade mark attorney and partner in the firm of Mathys & Squire, the registered proprietors' representatives in these proceedings.

24. As Exhibit MJA1, Ms Arnott provides copies of the documents filed by the applicants to record itself as the proprietors of UK trade mark Nos. 940831, 759851 and 1514055. She highlights that on 16 November 2003, and 27 November 2003, requests were made to record the applicants as the proprietors of these registrations, the Form TM16 giving the effective date of their applicants' ownership as 17 October 2003.

25. The second Witness Statement is dated 21 April 2006 and comes from Paul William Turner, Managing Director of Horwood Homewares Limited, a position he has held for 15 years.

26. Mr Turner says that his company's business was established in 1896, although the company itself was not incorporated until 23 December 1935, and that it sells cookware and kitchenware under the main brands STELLAR, JUDGE and HORWOOD. He recounts how in 1992 his company came to trade in what he describes as a "traditional Sabatier style of knife" which he explains to mean "a knife with a black handle and three rivets with a bird's beak pommel, an example of which he shows in a photograph as Exhibit PWT1. The knife shown has the attributes stated. Mr Turner says that the knife sold had the word SABATIER placed above a line of four stars engraved upon the blade. He refers to his company having used the trade mark STELLAR since at least 1995 in relation to many products, Exhibit PWT2 being a copy taken from his company's 1994 catalogue. The extract shows the name STELLAR being used in conjunction with cookware, and kitchen/carving knives and a carving fork of the style previously described; the exhibit is not dated. The blade of one knife can be seen to bear the SABATIER and four star mark running along the blade, with STELLAR and star logo running crosswise. The name at the foot of the page refers to P SABATIER. A drawing of the knife is shown as Exhibit PWT3. Mr Turner says that sales of Stellar Sabatier Four Star knives started in March 1992 and ceased in early 1994.

27. Mr Turner refers to his company's participation in a housewares and giftware show held in Germany in 1993. He says that IVO, the supplier of SABATIER knives to his company received a complaint about an advertisement placed in the trade press from the proprietor of a French Trade Mark registration for SABATIER 4 Star. Mr Turner states that he is certain that the complaint was directed "more towards the fact that the advertisement stated that the knives were manufactured in Portugal (rather than France) than that the name SABATIER had been used. The result of the complaint was that IVO stopped supplying Stellar SABATIER four-star knives.

28. Mr Turner goes on to recount that soon after the show, IVO informed his company that they had obtained a license that enabled them to use the P SABATIER brand on knives, which they offered to supply as a replacement for the Stellar Sabatier four-star knives. He says that he agreed to the new supply arrangement subject to the knives

also being marked as Stellar. Mr Turner states that at that time he believed P SABATIER to stand for Portuguese SABATIER, but became aware that it denoted Patrice Sabatier when a copy of a license agreement dated 12 December 1995 was sent to him by IVO in 2004. A copy of the license (and translation thereof) is shown as Exhibit PWT4. The agreement refers to an earlier agreement dated 15 December 1993. It allows IVO non-exclusive use of the French registered P SABATIER name in any country with no control or restriction other than never to enter into any sale, lease or sub-lease. Exhibit PWT5 consists of an extract stated to be from the registered proprietor's 1996 catalogue that shows knives, etc, bearing the marks P SABATIER and STELLAR, both on the blade and packaging. The name P SABATIER is also shown separately contained within a diamond /quadrilateral device. Exhibit PWT6 consists of a drawing of a knife bearing the said marks.

29. Mr Turner says that he believed that the license had been arranged by IVO to enable them to supply his company, his company having an exclusive arrangement with IVO. He states that the original knives were forged in France and finished by IVO in Portugal, but due to problems in obtaining supplies of blanks IVO established their own forging facility in Portugal with no complaint made by anyone in France.

30. Mr Turner recounts the introduction of knives marked with JUDGE and P SABATIER in 1995, examples of which are shown in Exhibit PWT7. This Exhibit is stated to be an extract from the registered proprietors' 1997 catalogue. The first page bears a triangular "JUDGE and Judges head" composite mark in the top left-hand corner, followed by the words "Sabatier Knives" with the name "p Sabatier" in a diamond border shown separated beneath. The remaining page depicts knives, carving forks and a knife-block set with the triangular "judge" logo with the "p Sabatier" name, both on the blades and knife block, and "p Sabatier diamond logo at the bottom of the page. Exhibits PWT8 and PTW9 consist of a drawings depicting a knife bearing the marks as described represented in two different formats. Mr Turner says that JUDGE is a long-established brand of his company that has been in use since at least 1920, although not always in conjunction with the Judges head.

31. The third Witness Statement is dated 28 April 2006 and comes from Neil Michael James Rosati, Marketing Director of Horwood Homewares Limited, a position he has held since 1 July 1997. Mr Rosati states that he has been with the company in other capacities since 1994.

32. Mr Rosati confirms Mr Turner's evidence in relating to Exhibits PWT6 to PWT9. He goes on to recount the move into supplying knife blocks, Exhibit NMJR1 being an extract stated to be from his company's 1997 catalogue. This depicts knives and knife blocks being sold under the STELLAR SABATIER and JUDGE SABATIER marks. He says that his company has also sourced knife sets sold under the JUDGE SABATIER and STELLAR SABATIER brands from China. Mr Rosati confirms that the JUDGE SABATIER logo has been used on knives since July 2000 in the form as registered under number 2225281, a copy of the mark being shown as Exhibit NMJR2. Exhibits NMJR3 and NMJR4 consist of an extract from his company's 2002-03 catalogue with a photograph of a JUDGE SABATIER knife and packaging, and a drawing of the knife. Both exhibits show the mark in use both in its registered form, and various other versions including as a word only.

33. Mr Rosati says that the STELLAR SABATIER logo is not used by his company in the exact form as registered under number 2225287 because his company decided to use STELLAR in an ellipse rather than with a star logo. A copy of the mark as registered is shown as Exhibit NMJR6, which Mr Rosati says is an extract from his company's 2002-2003 catalogue together with photographs of two knives in their packaging. Exhibit NMJR7 consists of drawings showing the trade marks in use. The exhibit shows the STELLAR name in an ellipse, Stellar Sabatier FM in plain font above a description of a knife block set, and STELLAR in an ellipse with SABATIER FM placed beneath on the blade of a knife and on packaging. The drawing shows two versions, one with STELLAR in an ellipse with SABATIER FM placed alongside, and also with SABATIER FM placed beneath, in both cases on the blade of a knife.

34. Mr Rosati goes on to give details of turnover in relation to his company's SABATIER marks, which are as follows:

	STELLAR SABATIER ****	STELLAR P SABATIER	STELLAR SABATIER	JUDGE P SABATIER	JUDGE SABATIER
*March 1992	*£27,923				
*May 1993	£6,779	*£23,560			
1994	-£29	£110,728			
*Sept 1995		£192,454		*£43,815	
1996		£397,321		£15,128	
1997		£491,142		£362,024	
1998		£612,749		£453,487	
1999		£593,830		£457,454	
*Sept/**July 2000		£729,207	*£57,211	£460,933	**£58,544
2001		£784,911	£145,513	£235,329	£23,962
2002		£799,249	£182,629	£21,598	£683,480
2003		£704,200	£333,515	£548	£816,116
2004		£576,137	£557,799	£2,533	£894,908
2005		£375,562	£562,605	£2,265	£810,076

35. Mr Rosati says that knives of this quality are not an everyday purchase, and although the figures are already significant, they are more so given that they represent wholesale rather than retail prices.

36. Mr Rosati says that the knives are not advertised to the general public, but there has been limited trade advertising to promote the launch of new products. Exhibit NMJR8 consists of an example of such advertising from the June 2001 edition of a magazine called Housewares. The advertisement is part of a Market Report from the magazine, referring to STELLAR SABATIER knives/carving fork, alongside LION SABATIER knives from the Fusio range. Mr Rosati says that the names STELLAR and JUDGE were used with SABATIER because of their familiarity to the trade and consumers.

37. Mr Rosati states that although the name SABATIER was adopted to indicate a type of knife, more recently this has extended to use on a range of other styles of knives in keeping with similar usage by other companies. He says that his company sells its products in approximately 2,500 retail outlets throughout the UK, many of which also sell JUDGE SABATIER and STELLAR SABATIER knives. Exhibit NMJR9 consists of a feature entitled “best seller” carried monthly in December 2000 edition of Housewares magazine, Mr Rosati referring to the mention of his companies STELLAR SABATIER knives amongst the top five best sellers. Mr Rosati refers to Exhibit NMJR10, which consists of copies of market reports relating to “professional knives” produced by the Housewares Business Centre in the years 1998 to 2001, Mr Rosati referring to the significance of his company’s market share. Mr Rosati asserts that in view of the quantity of goods sold by his company it is inconceivable that the applicants (or its predecessors) would not have been aware of their use of SABATIER well before their first contact by a letter 18 August 2003, a copy of which is shown as Exhibit NMJR11. The letter sets out the applicants’ registered trade mark rights, and seeks the cessation of the use of SABATIER by Horwood Homewares Limited.

38. Mr Rosati gives details of the trade fairs in the UK and Germany at which his company has exhibited, recalling that he has seen a group of French SABATIER knife manufacturers at the Spring and Autumn fairs held in Birmingham. He provides a copy of the guide to the 2002 exhibition as Exhibit NMJR12. This mentions his company (albeit referring to JUDGE, STELLAR and HORWOOD and not SABATIER), and also an exhibitor named SABATIER ET L’ECONOME noting their main product as Sabatier Mexeur Knives.

39. Mr Rosati refers to the mention of Le Creuset and LION SABATIER in the market report that he exhibits as NMJR8, and to the statement of Alison Thorne, Marketing Manager for Le Creuset, in which she confirms that her company has been selling SABATIER LION brand knives since at least 1987. Mr Rosati says that in his experience, when a magazine runs a feature relating to products, it is customary for the magazine to send a copy of the edition to the company, which means that Le Creuset would have received a copy referring to the registered proprietors’ use of SABATIER. Mr Rosati concludes his statement by giving his views on the issues and merits of these proceedings, *inter alia*, acquiescence on the part of the applicants.

Applicants' evidence in reply

40. This consists of a Witness Statement dated 12 June 2006, from Pascale SOL-Bruchon.

41. Ms Bruchon refers to the transfer of the trade marks registered under numbers 940831, 759851 and 1514055 from Coute'Innov to her company in 2003 following its dissolution. She states that the company had been a subsidiary of her company since 1984, and that she had been its Manager between the years 1991 and 2003.

42. Ms Bruchon refers to the inclusion of some of her company's clients for SABATIER branded goods in the report shown as Exhibit NMJR10, stating that this shows that whilst these company's may have been aware of the registered proprietors' use of SABATIER, her company is one step removed and not aware of the market. Ms Bruchon recounts having first become aware of the registered proprietors use of SABATIER in 2003, when, during a visit to a manufacturing company in China, she was shown a knife bearing the JUDGE SABATIER mark. She says that on her return to France she contacted her attorneys.

43. In relation to Mr Rosati's suggestion that having attended trade fairs the applicants would necessarily have been aware of the registered proprietors' use of SABATIER, Ms Bruchon states that these trade fairs are massive and divided into product areas. As Exhibit 1 she provides an extract from the Ambeinte Fair held in February 2006 saying that this attracted some 147,000 visitors and had more than 4,500 exhibitors. She highlights that her company was located in the kitchen/professional knives section, whereas the registered proprietors were exhibiting under the stainless steel cookwares section. Ms Bruchon says that although the registered proprietors state that they have exhibited at major trade fairs for many years, her company did not encounter any of their knives sold under their SABATIER marks.

44. As Exhibits 2 and 3, Ms Bruchon refers to details of the registered proprietors' accounts for the years 2000 to 2005, stating that these show knives are not their main product line, and that their market does not extend to France.

45. The second Witness Statement is dated 15 June 2006 and comes from Philippa Dianne Eke, a trade mark attorney with Saunders and Dolleymore.

46. Ms Eke refers to the final version of the Counterstatement in which, she says, the registered proprietors dispute that the applicants are properly registered as proprietors of the trade mark registrations they rely upon in these proceedings. Ms Eke refers to Exhibit 4, which consists of an Attestation dated 17 October 2003. The document mentions the dissolution of Coutel'Innov and the transmission of all assets, including trade marks and goodwill, to Rousselon Freres et Cie with effect from 1 January 2003. The remainder of Ms Eke's Statement consists of submissions of the merits of the registered proprietors' case, in particular in relation to the claim that the applicants have acquiesced to their use of SABATIER, in support referring to an extract from the Trade Marks Registry Decision No. BL-0-211-04. Ms Eke mentions that IVO, the company from whom the registered proprietors had initially obtained their knives sold under the names P SABATIER, had applied for registration of that name as a trade mark. Details of the application are shown as Exhibit 6.

47. The final Witness Statement is dated 15 June 2006 and comes from Guillaume Therias, Acting President of the Board, and General Manager of Therias et L'Econome. Mr Therias states that the first time that his company exhibited at the Spring Fair in Birmingham was in 2001, and that he has no recollection of a Horwood stand in that year. He says that he does remember having noticed their stand in 2002 because it was much bigger than the adjacent stands and exhibited quite a number of cookware pieces. He says that he did not notice any knives with a trade mark incorporating SABATIER. Mr Therias says that he did see knives at the 2005 exhibition and would have investigated further had he not been kept busy on other matters. He says that he did not mention having seen these knives to anyone.

48. That concludes my summary of the evidence insofar as it is relevant to these proceedings.

PRELIMINARY ISSUES

49. At the hearing, and as foreshadowed in his skeleton arguments, Mr Edenborough withdrew the defence founded under Section 48(1), the provision relating to acquiescence.

50. Mr Edenborough submitted that in allowing Horwood's applications to proceed in the face of Rousselon Frères et Cie's earlier SABATIER trade marks, Nos. 759851, 940831 and 1514055, the Registry must have considered SABATIER to be "non-distinctive for goods of the nature under consideration. Mr Edenborough then referred to the fact that Horwood Homewares Limited have commenced actions to invalidate the "SABATIER" marks relied upon by the applicants in these proceedings, arguing that as their validity was now open to question, it would be a more efficient use of resources if these applications were determined before the applications made by Rousselon Freres et Cie to invalidate the Horwood Homewares registrations. He did not see any prejudice, stating that it was in the interest of all concerned that the present invalidation actions be stayed pending the final determination of the validity of the applicants' marks.

51. Mr Vanhegan expressed his concern that taking into account the applicants allusion to the possibility of an appeal, the result of a stay to "final determination of the validity" of the applicants' earlier marks could well result in a delay of two to three years. He referred me to *Roger James v News Group*, *Borealis v Stargas* and *Patricia Mary Cowan v AMI Healthcare*, proceedings that dealt with situations where amendments are sought at the last possible moment with the consequences that it was likely to cause delay or alternatively, vacation of the trial date.

52. Mr Vanhegan submitted that from these cases it can be seen that the overriding objective is to avoid any unnecessary delay or increase in costs. He stated that the parties are all present, the evidence is closed and we are ready to attend to the issues. Delaying the matter by staying proceedings would have the inevitable consequence of additional costs being incurred. Given the circumstances outlined by Mr Vanhegan there can be no argument about this.

53. Mr Vanhegan stated the second matter for consideration is whether, by refusing the stay request I would be shutting out the registered proprietors from making their

arguments in relation to the substantive issues they want to raise. He submitted that the position is not like a late amendment which, if refused at the door of the trial he would be unable to argue again. If the stay is not granted the registered proprietors will be perfectly entitled and able to make whatever arguments they wish in their invalidity and revocation actions. Mr Edenborough sought to justify the stay by stating that it had been foreshadowed in the pre-hearing correspondence that had indicated his clients wish to gather all of its evidence so it could see whether it had a sustainable attack and then proceed with matters with some speed. I put it to Mr Edenborough that that argument might hold water in respect of an invalidation based on Section 3(1), where evidence of use within the trade could assist in establishing a word is generic, but in the case of a revocation the onus is on the registered proprietors. I also mentioned the fact that his clients had turned their minds to the generic nature of the SABATIER name some time ago, and had clearly thought they had the support to mount an invalidation; what more evidence did they need? Mr Edenborough agreed, but argued that investigations still need to be done and the evidence made far more solid.

54. The third principle raised by Mr Vanhegan is whether these are arguments that could have been made earlier, possibly as early as 2000 when they sought registration of their own SABATIER marks. At that time the registered proprietors had asserted that their own marks should be registered because the applicants' earlier marks were invalid because they are generic. Mr Vanhegan went on to detail various subsequent events when the registered proprietors could, and in his argument, properly should have raised the invalidity/revocation issues. They had the benefit of specialist advice and specialist representation, and clearly had ample opportunity prior to the substantive hearing date. Mr Vanhegan argued that this is just another phase of the delaying tactics employed by the registered proprietors. Mr Edenborough argued that part of delay in these proceedings had been caused by the applicants, but whether or not that is the case, there can be no escaping the fact that granting a stay would create further delay and costs.

55. Turning to the next point to be considered, which Mr Vanhegan put as to consider the merits of the underlying invalidity and revocation applications. He asked that I consider these in the context of Mr Edenborough's acceptance that, for the purpose of this hearing, that there has been genuine use of the applicants' earlier marks. Mr Vanhegan went on to address the registered proprietors' assertions regarding the word SABATIER being generic as being "hopeless", in support referring to *Associated Newspapers v Express Newspapers* [2003] FSR 51, where Express were wishing to launch a competing newspaper to the Evening Standard under the name Evening Mail or the London Evening Mail. Associated relied on their earlier registered trade marks for, or incorporating MAIL, one of the arguments mounted in defence by Express being that MAIL was used by lots of other traders and was descriptive. To determine this question would require a detailed analysis of the evidence; that is a matter for the substantive decision.

56. Mr Edenborough mentioned the fact that his clients had achieved their registrations in the face of the applicants' earlier marks, which must have been raised and weighed during the examination process. He invited me to draw the inference that having done so it was clear that the registrar had not seen any problems because of the generic nature of SABATIER. What happened in the examination process has

no bearing on these proceedings. In ex-parte matters they do not usually have the benefit of evidence or balanced submissions.

57. Mr Vanhegan stated that as matters stand, his clients cannot sue for infringement, an assertion that Mr Edenborough denied, and that a potential delay of two to three years would be highly prejudicial. He argued that the request for the validity of his clients' marks to be determined before the proceeding now before me "runs completely counter" to the logical approach, and if Mr Edenborough is correct in his logic he should have made the application for invalidity or revocation in 2000.

58. Taking a balanced view of these and the other submissions presented to me, I came to the view that the readiness of these proceedings and the inevitable impact on costs and delay caused are major influences. I did not consider that the outcome of the attacks launched on the registrations owned and relied upon by the applicants would necessarily determine these invalidations. Notwithstanding the concession in relation to the proof of use requirement, I am required to make an assessment of the extent of any reputation based on the use they have made, and to consider the distinctiveness of the applicants' earlier marks as part of the "global" appreciation. The registered proprietors have long asserted that SABATIER is devoid of distinctive character because of its use in relation to the relevant goods. This is not a sudden realisation for them, and whilst they may wish to put in solid evidence, I take the view that they have had ample notice of the need, and sufficient time in which to do so. In all of these circumstances I dismissed the request for a stay in these proceedings.

Decision

59. Turning now to consider the ground on which the applications have been made, that is, Section 5(2)(b), which read as follows:

"5. - (1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected

(2) A trade mark shall not be registered if because -

(a)

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

60. An earlier trade mark is defined in Section 6 of the Act as follows:

"6.-(1) In this Act an "earlier trade mark" means -

(a) a registered trade mark, international trade mark (UK), or international trade mark (EC) which has a date of application for

registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,”

61. In my consideration of a likelihood of confusion or deception I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] 45 F.S.R. 77 and *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723. It is clear from these cases that:

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*,
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,
- (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,
- (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,
- (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v Puma AG*,
- (g) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,
- (h) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*,

- (i) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v Adidas AG & Adidas Benelux BV*,
- (j) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*

62. As I have already mentioned, the applicants rely on three earlier trade marks, registered under numbers 940831, 759851 and 1514055. All achieved registration well in excess of five years prior to the date on which the applications were made, which means that in the ordinary course of events the applicants would have to satisfy the provisions of Section 47(2)(a) in respect of each mark. This requires that they show that the mark has been put into genuine use in the UK in the five years ending with the date of the applications for the declaration, and if it has not been so used, the applicants must establish that there are proper reasons for this. However, in his skeleton argument and submissions, Mr Edenborough stated that as a matter of pragmatism, the registered proprietors "...concede that RF's marks have been put to genuine use. This concession is expressly without prejudice to HH's allegations relating to, *inter alia*, non-use that it has raised against the Professional Sabatier mark". Mr Vanhegan accepted that this concession meant that I did not need to consider the proof of use provision. Whether made for pragmatic or tactical reasons, this seems to absolve me of the need to consider the applicants' use in relation to the Section 47(2)(a) provision. Mr Edenborough did not limit this concession to any particular mark or goods, so I shall proceed on the basis that each of the three marks relied upon have been used in respect of the full range of goods for which they are registered.

63. One of the applicants' earlier marks, No. 759851, for the composite mark incorporating the words PROFESSIONAL SABATIER is registered in respect of carving knives for kitchen and butchery use. The remaining two, Nos 940831 for the word SABATIER, and 1514055 for a composite trade mark containing the word SABATIER with the image of a lion with the word LION beneath, are registered in respect of the same statement of goods in Class 8, namely:

Kitchen knives, cooks' knives, butchers' knives; forks for cooking, carving and roasting; sharpening steels (not being machines)

64. The qualification to the sharpening steels as "none being machines" adds nothing, and takes nothing away from the scope of the specification, for if they were machines the steels would be proper to Class 7. These goods are covered by the specification of goods in Class 8 of the registrations in suit, both in the specifics, such as forks and knives, and also in the more general terms "cutlery" and "hand tools for culinary use". In respect of these goods the channels of trade from manufacturer to retailer will be the same. Even though the "SABATIER" knives seem to be directed at the professional rather than the public at large, this is not reflected in the specifications of either the applicants earlier marks, or the marks under attack. That being the case, I

must proceed on the basis that they share the same consumer base, and reach that consumer in the same retail outlets in exactly the same way.

65. In respect of the “horticultural” goods of the subject registrations, there is a clear potential overlap in “blade” goods, and to this end I would consider this expression to encompass goods that are similar to those of the opponents’ earlier marks. The goods covered by Class 21 of the subject registrations and those of the applicant’s earlier marks are clearly different in nature and their intended uses, but nonetheless may share the same channels of trade, a fact illustrated by Horwood having a trade in both. As I have stated earlier, although the intended market may be the catering professional, this is not reflected in the specifications, so again, the notional end consumer is potentially the same. Knives and cookware may be complementary insofar as one contains what is prepared with the other, but they are in no way in competition. The applicants themselves point out that when exhibiting at trade fairs, goods of the type found in Class 21 are in different sections to knives, which to me is an indication that the trade does not consider these to be goods in the same category or classification. I determine that the goods covered by Class 21 of the registrations in suit are neither the same, or similar to those of the applicant’s earlier marks.

66. Mr Edenborough stated that if there is any commonality in the respective marks, it is only in respect of the fact that they all contain the word SABATIER. He focussed his attention, in particular, on the applicants’ SABATIER and PROFESSIONAL SABATIER marks, stating that in respect of the applicants’ LION mark “...there are manifest differences that, even allowing for the commonality of the word “sabatier”, greatly reduces any similarity that might exist between the marks in question.” The similarity or otherwise of the LION mark and the two marks that are the subject of these proceedings can be argued from a number of perspectives. Clearly the LION device and the word LION have a visual impact, but these elements are separated from SABATIER. Taking the position that in composite marks it is generally accepted that it is the words that will be used as the point of reference, and the fact that the word LION is comparatively small and located within the area of the image, I consider that it is more likely that this composite mark will be referred to as a SABATIER mark than as LION or LION SABATIER. However, this is more of an academic than real question, for if the applicants cannot succeed in respect of their word only mark, SABATIER, they will be in no better position in respect of the other two marks.

67. The guidance requires that marks be compared as a whole, and that is of course the overriding principle, but balanced by the need to have regard to the distinctiveness and dominance of the individual elements. Self-evidently, adding an element must mean that marks are not visually identical, but they may nonetheless still be similar. Where the addition is graphical, the marks may still be aurally similar because, as I have already said, in composite marks it is the word elements that are generally considered to be of greatest significance. It is unlikely that a consumer would seek to refer to a mark by describing an image rather than the easier route of the word element. That, of course will be influenced by the distinctiveness of the additional words. If they are no more than a description of the product, for example, instant coffee, the consumer would have to resort to use of the image for that is the only element that serves to distinguish this coffee from other brands. Where the difference is purely textual, this may mean that they will be aurally distinct, but again depending on whether the addition is merely descriptive.

68. The words JUDGE and STELLAR do not “hang together” with SABATIER to make a meaningful whole, and even less so when presented in the logo form in which they have been registered. To my mind the positioning and difference in the style of font used and the “star” curve around the “S” suggests that SABATIER is a separate element. As far as I am aware, the words JUDGE and STELLAR are not descriptive of the goods, and by their relative positioning and size are the dominant, distinctive element. The corresponding graphical representations (judge’s head and star) serve to emphasize the words but also contribute to the overall visual impact. However, these elements do not overwhelm SABATIER. The question is as put by Geoffrey Hobbs QC in his decision sitting as the Appointed Person in *Raleigh International Trade Mark*, [2001] RPC 202 is whether the later mark “captures the distinctiveness of the opponents’ mark”.

69. Not surprisingly, much of the argument relating to the similarity or otherwise of the respective marks revolved around the central question of whether SABATIER is a word that is distinctive for the goods for which it is registered. The starting point must be Section 72 of the Act, which states that registration is *prima facie* proof of validity. Where the validity of a registration is brought into question, the onus must rest squarely with the attacking party to prove why the presumption contained in Section 72 should not apply. That is a matter for evidence such as can be obtained from the relevant or allied trades, or from publications and reference works; this is not a matter to be determined based on assertion or inference.

70. Mr Edenborough argued that having allowed the registration of the JUDGE and STELLAR SABATIER marks in the face of the applicants’ SABATIER marks, the Registry must have considered these earlier marks to be no barrier because “sabatier was “non-distinctive for goods of the nature under consideration...”. As I have already said, Mr Edenborough may well be correct, but that was a judgment made in different proceedings and without the benefit of evidence or balanced submissions. Mr Edenborough went on to set out his position as follows:

“What is abundantly clear is that there is a profusion of knives on the UK market that bear the word “sabatier” either alone or in combination with some other material (*e.g.*) taking examples only from RF’s evidence filed herein: Lion (1 Bruchon exhibit 3); 2 Lions (1 Bruchon exhibit 4); Maxime Girard (1 Bruchon exhibit 10) and Veritable (1 Bruchon exhibit 12).

RF has not adduced evidence of even a single instance of confusion. Moreover, HH has never experienced any confusion for the last 13 years that it has sold knives bearing the word “sabatier” (Rossati §8). Advertisements for the Steller and Lion products have even appeared in the same journal on facing pages (NMJR8).

From this it is clear that, despite any possible similarity between the marks and goods in question, in fact in the marketplace there does not exist a likelihood of confusion. It is submitted that this is because the relevant public is aware that there are a multitude of such marks, and so has been educated to place no reliance upon the presence of the word “sabatier” *per se* as indicating any particular trade source.

RF admit that there is parallel trading between its products (distributed by various companies) and HH's products (*e.g.* 2 Bruchon §5). This fact of parallel trading without confusion fundamentally undermines RF's case (*Fiorelli TM*, Alan Steinfeld QC sitting as a deputy judge of the High Court, 14 December 2006 [2006] EWHC 3284 (CH)."

71. There is evidence showing use of SABATIER by a number of different companies, but with the exception of the registered proprietors these appear either to be part of, supplied, or licensed by a member of the "SABATIER" association established to protect use of the name. There is a reference in the print taken from the Steamer Trading Ltd website, (Bruchon Exhibit 9) that states that the SABATIER name "...is widely used around the world...", but this does not necessarily mean that it is used in a descriptive sense. There is no evidence from other traders of kitchenware, or more specifically knives, nor anything from any trade associations, trade, catering or general publications or reference works that shows widespread or descriptive use of SABATIER. There is evidence of side-by-side use in publications and at trade fairs from which it would not be unreasonable to expect the informed members of the trade to react in some way to what is said to be use of a sign that the applicants consider to be known to be distinctive of them. The applicants explain that they were not aware of these instances, and it may well be that given the applicants' licensing activities the trade saw this as just another example; there is no evidence either way to assist.

72. Mr Turner says that SABATIER is descriptive of "...a knife with a black handle and three rivets with a bird's beak pommel." This is, in part confirmed by the extract from the Steamer website (Bruchon Exhibit 9) which states that the original knives are recognisable by three brass rivets in the handle. It may well be that the handles of SABATIER knives from the association are of this style, but that does not make the word SABATIER descriptive of a knife or this characteristic such that it can no longer serve to distinguish. Even IVO, the registered proprietors own suppliers, saw the need to obtain a license from the SABATIER association before continuing to supply knives bearing the name. There is no evidence that I can see that this establishes that SABATIER is anything but distinctive, and specifically when used in relation to knives. I have already considered the question of whether SABATIER is, *prima facie*, a distinctive mark in relation to the goods for which it is registered, and have found there to be no evidence that would lead me to a contrary view. The question is whether the applicants have established a reputation in the name, and whether that has enhanced the distinctive character of SABATIER such that it is deserving of a wider than normal scope of protection. Ms Bruchon says that her company has been selling to clients in the UK for many years, but what does "many years" mean? Some of the providers of Witness Statements say that they have been customers of the applicants for at least 25 years, so the period of use is quite long.

73. The goods for which the applicants, or their licensees and customers have used SABATIER fall within the description of knives, carving forks and accessories for these goods, such as blocks and carving steels. Other than the fact that their target consumer is the catering and food-industry professional, there is no evidence that tells me about the extent of the market for the goods sold by the applicants. I am therefore not able to put the turnover figures into context and gauge their significance and likely

impact. The most I can say is that whilst they are not massive even if taken at retail value, neither are they insignificant. Where the difficulty arises is in the mark that has been used. This has primarily been in conjunction with other textual or graphic matter, such as the image of a LION (or two) and the word LION(S). There is evidence showing SABATIER *solus* being used by Paul Swolf Ltd, a company who say they have been selling such products mainly to the restaurant trade for some twenty-five years. Other traders listed as customers of the applicants have made some use of SABATIER on its own, but primarily with other matter that appears to relate to their own brand identification, such as “Grand Sabatier”, “Elegance Sabatier” and “Sabatier Sydney”. There is little or no information giving details of their sales and/or promotion. This does little to establish SABATIER as having a reputation or consumer recognition, and I do not see that I can infer that SABATIER on its own, has a reputation, or justifies protection beyond the norm.

74. The final paragraph of Mr Edenborough’s argument raises the issue of what is generally referred to as “honest concurrent use”, or to put it another way, actual use in which the question of confusion has been tested in the reality of the market. In the *CODAS* case [2001] RPC 14, I stated and gave my reasons why honest concurrent use as provided for by Section 7(2) of the Act would not, of itself be sufficient to ward off an attack that would otherwise be successful, but is one of the factors to be taken into account in the “global appreciation” of a likelihood of confusion.

75. Drawing on the decision of Alan Steinfeld QC sitting as a deputy judge of the High Court in the *Fiorelli* trade mark case, Mr Edenborough argued that the applicants’ admission that there had, in fact, been parallel trading without instances of confusion “fundamentally undermines” the applicants’ case. In that case, Mr Steinfeld QC viewed the considerations in the question of parallel trading to be as follows:

“The relevance of parallel trading is not whether there happens to have been parallel trading in the particular class of goods for which the application to register the trade mark has been made. Rather it is the fact that if in a market which consists of designer clothes and accessories there has been parallel trading for very many years without any actual evidence of confusion in that market, that is in itself a factor to be taken into account when considering the risk of confusion between the two marks. Indeed, on the basis that “the proof of the pudding is in the eating”, it might in certain circumstances be regarded as a decisive factor, particularly when the similarity between the two marks is not all that great.”

76. In these proceedings the stated parallel trading is in respect of the same class of goods, namely knives, carving forks, etc, and in the case of the registered proprietors, also cookware such as saucepans. Whilst not being similar goods in the normal sense, I view these as forming part of the same “kitchenware” market. The registered proprietors have clearly built a substantial business around their “SABATIER” products, which have carried the name in conjunction with their main trade marks, “JUDGE” and STELLAR”. There is clear, unchallenged evidence of parallel trading on a significant scale for many years and even instances where products bearing the competing marks have appeared in proximity and in circumstances where if confusion

was likely, it seems likely that it would have manifested itself, yet there is not one instance reported or claimed.

77. The applicants' case exists in the argument that the additional words and graphical matter in the registered proprietor's marks will be insufficient to indicate a different trade origin to the public. This relies on the premise that the word "SABATIER" will be picked out of the applicants' mark, and either through the strength of the applicants' reputation in that word, or through poor recollection, the consumer will be confused into thinking it is the applicants' mark. I have already commented on the uncertainty regarding the applicants' reputation. I see no reason why the word SABATIER will be singled out for attention. Both JUDGE and STELLAR are well used and distinctive marks. They are not dominated by the SABATIER element. There are a variety of marks that incorporate SABATIER, used by different traders, which in my view is likely to focus attention on other elements in order to distinguish. But in any event, in the *SABEL- PUMA* case it was said that "The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details." which, if applied to this case would support the view that there is little likelihood of confusion.

78. I find this to be a difficult decision to make, but taking the global approach advocated and balancing the competing factors, I come to the view that despite the identity in the use of the distinctive word SABATIER, the differences brought about by the other elements in the registered proprietors' marks serve to distinguish. In reaching this decision I am mindful that by the time the applicants made these applications the marks had been on the register approaching five years, but more importantly, the registered proprietors use of SABATIER is not recent; there has been a long period of substantial use in parallel without any apparent or even claimed confusion. There may be reasons for this, but as Mr Steinfeld QC said "the proof of the pudding is in the eating". I do not consider that the public is likely to wrongly believe that goods bearing the JUDGE or STELLAR SABATIER marks to have come from the applicants or some linked undertaking. In my view there is no likelihood of confusion within the meaning of Section 5(2)(b), and the applications are accordingly dismissed.

79. The applications having failed, the registered proprietors are entitled to an award of costs. I order the applicants to pay the registered proprietors the sum of £3,750 as a contribution towards their costs. This 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 1st day of August 2007

**Mike Foley
for the Registrar
the Comptroller General**