

O/043/12

TRADE MARKS ACT 1994

**IN THE MATTER OF CONSOLIDATED APPLICATION NOS. 83904 & 83906
BY THE LONDON ORGANISING COMMITTEE OF THE OLYMPIC GAMES AND
PARALYMPIC GAMES LIMITED: LONDON 2012 FOR REVOCATION
OF REGISTRATION NOS. 550174 & 1427042 STANDING IN THE NAME OF
POBJOY MINT LIMITED**

BACKGROUND

1.Registration Nos. 550174 and 1427042 for the trade mark **OLYMPIC** stand registered in the name of Pobjoy Mint Limited (“Pobjoy”). The trade marks were applied for on 9 April 1934 and 2 June 1990 respectively. The trade marks are registered for the following goods:

No. 550174

Class 6: Aluminium and goods made from aluminium.

Class 8: Electro-plated cutlery; forks; knives, ladles and spoons; all made of precious metal.

Class 9: Electrical contacts; crucibles; spectacles frames; all made from precious metal.

Class 14: Precious metals and alloys of precious metals; goods in precious metals or coated therewith; jewellery; precious stones.

Class 15: Mutes for musical instruments made of precious metal or coated therewith.

Class 16: Pens; penholders; pen cases and pencil cases; inkstands; all made from precious metal or coated therewith.

No. 1427042

Class 14: Watches; jewellery, coins and medals; all included in Class 14; but not including any such goods relating to the official Olympic Games.

2. On 5 November 2010, The London Organising Committee Of The Olympic Games And Paralympic Games Limited: London 2012 (“LOCOG”) applied for revocation of these registrations under the provisions of section 46(1)(b) of the Trade Marks Act 1994 (“the Act”). LOCOG seeks revocation of trade mark No. 550174 in respect of all the goods for which it stands registered save for “Precious metals and alloys of precious metals; goods in precious metals or coated therewith; jewellery” in class 14. Revocation of trade mark No. 1427042 is sought only in respect of “watches”.

3. LOCOG asks for the registrations to be revoked with effect from 4 November 2010.

4. On 27 January 2011, Pobjoy filed Forms TM8 and counterstatements. While it accepts that within the relevant period registration No. 550174 had not been used on any of the goods in classes 6, 8, 9, 15 and 16, it says that its trade mark has been used on the goods registered in class 14. Insofar as registration No. 1427042 is concerned, Pobjoy says that the trade mark has been used on watches.

5. Only Pobjoy filed evidence. Neither party asked to be heard or filed written submissions in lieu of attendance at a hearing.

EVIDENCE

6. This consists of a witness statement, dated 8 April 2011, from John Charles Smith who is Pobjoy's General Manager. Mr Smith explains that having started work at Pobjoy as the Head of Market Development in 1992, he now acts in, inter alia, more of a liaison role. Pobjoy is a family owned British company incorporated in 1952 that produces commemorative legal tender in a range of materials. He adds that Pobjoy also produces and/or sells other products such as jewellery and watches and more recently it has become involved in philately and the production of postage stamps. Mr Smith states that from his own experience:

“11...we have further used the Olympic brand since the early 1990s in relation to at least three specific areas: watches, coins and a range of jewellery.”

Pobjoy's use in relation to precious stones

7. Mr Smith states:

“20. Our Olympic jewellery ranges include jewellery that contains and provides settings for precious stones and this is how [Pobjoy] has used its trade mark for OLYMPIC in relation to precious stones.”

8. Having explained that Pobjoy both manufactured jewellery and purchased wholesale jewellery from third parties (which was then branded and sold to retailers), Mr Smith states that the Olympic range of jewellery started prior to his appointment in 1992 and that it has continued since that time until the recent present. While there were, he says, new ranges approximately every six months, he adds that Pobjoy have recently wound down its activities in wholesale jewellery and intend to re-launch it as a mail order operation supplying consumers rather than wholesalers.

9. Mr Smith explains that the jewellery range has been advertised and used by Pobjoy's agents presenting the goods to retailers and, from 1994, attending specialist jewellery exhibitions. As an example of the latter, Mr Smith states that Pobjoy attended special meetings of The Company of Master Jewellers in Kenilworth on a six monthly basis where it paid to exhibit its Olympic jewellery to trade members. He adds that Pobjoy also sponsored advertising, supported trade advertising and produced its own jewellery catalogues as well as including advertisements for the range in its Priority Collectors News magazine for its mail order coin collectors.

10. Mr Smith explains that while it is not possible to attribute turnover to particular ranges of jewellery, its total turnover for its jewellery division for the years 2006 to 2009 was as follows:

2006 - £1,632,359;
2007 - £1,461,698;

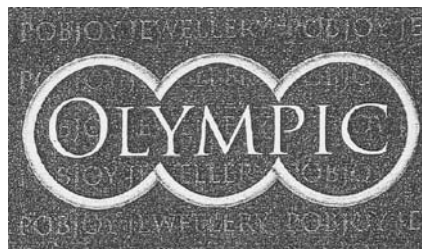
2008 – £1,139, 774;
2009 - £ 804,990.

11. Jewellery catalogues were, he explains, produced every year and were sent with price lists to over 6,000 retail outlets throughout the UK and Ireland with approximately 90% of these catalogues being sent to retail outlets in the UK. Mr Smith states that most of these catalogues (which were on occasion distributed on CD as well as in printed form) promoted the Olympic brand of jewellery, much of which he says featured precious stones. He goes on to say that the Olympic brand has been used in a variety of forms over the years for collections of jewellery featuring, in particular, diamond necklaces, bracelets, earrings and rings as well as sapphire necklaces, sapphire rings and ruby necklaces.

12. Mr Smith states that many of these products were sold under the OLYMPIC trade mark by reference to them being part of the OLYMPIC COLLECTION or OLYMPIC RANGE. Exhibit JCS1 consists, inter alia, of pages taken from Pobjoy's catalogues from 2008 (pages 1 to 15) and 2009 (pages 16 to 25). The front pages of both catalogues contain references to "Pobjoy Jewellery" accompanied by a device. An example from the 2009 catalogue is shown below:



13. The words "Pobjoy Jewellery" and/or the device shown above are to be found on a number of the pages in exhibit JCS1. Insofar as the 2008 catalogue is concerned, I note that the words OLYMPIC COLLECTION appear on all but one of the pages provided (page 2) and that pages 5-13 bear one or more of the following wordings: "18ct Necklaces", "18ct Bracelets", "18ct Pendants", "18ct Earrings", "Black & White Diamonds", "18ct Diamond Rings" and "Diamond Rings". In the 2009 catalogue the word OLYMPIC appears in both upper and title case and with a device in the format shown below:



14. Pages 20-23 refer to necklaces, bracelets and earrings.

15. Page 26 of exhibit JCS1 consists of what Mr Smith explains is a two page flyer from 2008 which he describes as showing:

“...the brand used with high contrast pieces featuring diamonds”.

16. The word OLYMPIC and device (as shown above) appears on both pages of the flyer. Page 27 of exhibit JCS1 consists of an invoice from Nuffield Press to Pobjoy dated 27 November 2008 and relates to an order for 6,300 copies of its 2009 Jewellery Catalogue. Mr Smith goes on to say that Pobjoy’s OLYMPIC range of jewellery with precious stones has also been advertised in its own Priority Collectors News magazine (“PCN”) which (depending on product availability) is issued between two and three times a year and which is now sent to around 1,750 people in the UK as opposed to 3,500 people when circulation of the magazine first began.

17. Pages 28-31 consist of pages taken from PCN from Spring 2007 and Spring 2008 and which contains references to, inter alia, OLYMPIC RANGE, OLYMPIC COLLECTION and “Pobjoy Olympic Jewellery”. Pages 32-33 are taken from the Winter 2008 edition of PCN in which, inter alia, the word OLYMPIC and device mark appears on both pages. As far as I can tell, pages 34 and 35 which are taken from the Winter 2009 edition of PCN, make no mention of the word OLYMPIC in relation to precious stones (although there is a picture on the front cover of a coin upon which the word OLYMPIC appears). Mr Smith concludes this part of his statement in the following terms:

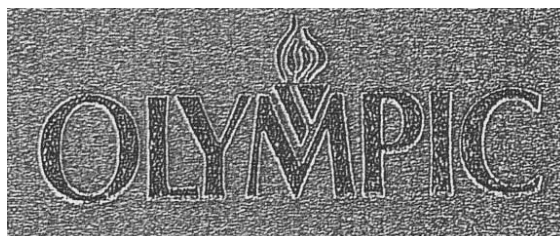
“33. As set out above, we have in the relevant period, used the mark OLYMPIC in relation to precious stones. We have advertised direct to the consumer and we have advertised to retail outlets. In the relevant period we have generated substantial sales from our jewellery ranges and a significant proportion of this will relate to our Olympic range/collection offering precious stones.”

Pobjoy’s use in relation to watches

18. Mr Smith states that during the relevant period its watches were manufactured by a Swiss company under its direction and were branded OLYMPIC. He explains that:

“38...Two of our watches have gold coins set in their faces and these watches (in black and white faces) have been offered to and bought by our mail order customers in some numbers over the years”.

19. Examples of watches on which the word OLYMPIC can be seen (above where the numeral 6 would normally or does appear on the watch face) are to be found on page 36 of exhibit JCS1 and also in the Spring 2007 edition of PCN (page 29 – costing £95). Page 37 consists of photographs of ladies and gentlemen’s bracelet-style watches in which the word OLYMPIC can be seen in the position mentioned above. In all cases above the letter M of the word OLYMPIC a device appears; it looks like this:



20. All of the watches shown also bear the word Pobjoy above which appears the device trade mark shown in paragraph 12 above. Mr Smith states:

“40. We have also used our OLYMPIC watches in promotional activities to publicise our business. I would estimate that we have given over 100 of these watches as promotional gifts during the relevant period.”

21. Finally, pages 38 and 39 consist of an example of a guarantee which Mr Smith explains would accompany the watches. I note the guarantee bears the word OLYMPIC and device shown in paragraph 19 and also contains references to “Pobjoy Olympic Watches International Guarantee”, “Pobjoy Olympic” and “Your Pobjoy Olympic watch...”.

22. That concludes my summary of the evidence filed to the extent that I consider it necessary.

DECISION

The Law

23. Section 46 of the Act reads as follows:

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

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c)

(d)

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

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

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

(4).....

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

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

(a) the date of the application for revocation, or

(b) if the Registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

24. Section 100 of the Act is also relevant and reads:

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

The relevant five year period

25. The applications for revocation are based upon section 46(1)(b) of the Act. LOCOG ask for revocation to take effect from 4 November 2010. The relevant period therefore is 4 November 2005 to 3 November 2010.

The authorities on genuine use

26. The leading authorities on the principles to be applied in determining whether there has been genuine use of a trade mark are: *Ansul BV v Ajax Brandbeveiliging BV* [2003] RPC 40 and *Laboratoire de la Mer Trade Mark* [2006] FSR 5. The general principles were summarised by the Appointed Person in *Pasticceria e Confetteria Sant Ambroeus Srl v G & D Restaurant Associates Ltd (Sant Ambroeus Trade Mark)* [2010] RPC 28 as follows:

“(1) Genuine use means actual use of the mark by the proprietor or third party with authority to use the mark: *Ansul*, [35] and [37].

(2) The use must be more than merely “token”, which means in this context that it must not serve solely to preserve the rights conferred by the registration: *Ansul*, [36].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin: Ansul, [36]; Silberquelle, [17].

(4) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, i.e. exploitation that is aimed at maintaining or creating an outlet for the goods or services or a share in that market: Ansul, [37]-[38]; Silberquelle, [18].

(a) Example that meets this criterion: preparations to put goods or services on the market, such as advertising campaigns: Ansul, [37].

(b) Examples that do not meet this criterion: (i) internal use by the proprietor: Ansul, [37]; (ii) the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle, [20]-[21].

(5) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including in particular, the nature of the goods or services at issue, the characteristics of the market concerned, the scale and frequency of use of the mark, whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them, and the evidence that the proprietor is able to provide: Ansul, [38] and [39]; La Mer, [22] -[23].

(6) Use of the mark need not always be quantitatively significant for it to be deemed genuine. There is no de minimis rule. Even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor: Ansul, [39]; La Mer, [21], [24] and [25].”

27. In relation to determining what constitutes a fair specification, I must keep in mind the guidance in *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32, namely:

“29 I have no doubt that Pumfrey J. was correct to reject the approach advocated in the Premier Brands case. His reasoning in paras [22] and [24] of his judgment is correct. Because of s.10(2), fairness to the proprietor does not require a wide specification of goods or services nor the incentive to apply for a general description of goods and services. As Mr Bloch pointed out, to continue to allow a wide specification can impinge unfairly upon the rights of the public. Take, for instance, a registration for "motor vehicles" only used by the proprietor for motor cars. The registration would provide a right against a user of the trade mark for motor bikes under s.10(1). That might be understandable having regard to the similarity of goods. However, the vice of allowing such a wide specification becomes apparent when it is envisaged that the proprietor

seeks to enforce his trade mark against use in relation to pedal cycles. His chances of success under s.10(2) would be considerably increased if the specification of goods included both motor cars and motor bicycles. That would be unfair when the only use was in relation to motor cars. In my view the court is required in the words of Jacob J. to "dig deeper". But the crucial question is--how deep?

30 Pumfrey J. was, I believe, correct that the starting point must be for the court to find as a fact what use has been made of the trade mark. The next task is to decide how the goods or services should be described. For example, if the trade mark has only been used in relation to a specific variety of apples, say Cox's Orange Pippins, should the registration be for fruit, apples, eating apples, or Cox's Orange Pippins?

31 Pumfrey J. in *Decon* suggested that the court's task was to arrive at a fair specification of goods having regard to the use made. I agree, but the court still has the difficult task of deciding what is fair. In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under s.10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use."

28. The comments of Mr Justice Jacob (as he then was) in *Animal Trade Mark* [2004] FSR 19 are also relevant and read:

"20 The reason for bringing the public perception in this way is because it is the public which uses and relies upon trade marks. I do not think there is anything technical about this: the consumer is not expected to think in a pernicky way because the average consumer does not do so. In coming to a fair description the notional average consumer must, I think, be taken to know the purpose of the description. Otherwise they might choose something too narrow or too wide. Thus, for instance, if there has only been use for threeholed razor blades imported from Venezuela (Mr T.A. Blanco White's brilliant and memorable example of a narrow specification) "three-holed razor blades imported from Venezuela" is an accurate description of the goods. But it is not one which an average consumer would pick for trade mark purposes. He would surely say "razor blades" or just "razors". Thus the "fair description" is one which would be given in the context of trade mark protection. So one must assume that the average consumer is told that the mark will get absolute protection ("the umbra") for use of the identical mark for any goods coming within his description and protection depending on confusability for a similar mark or the same mark on similar goods ("the penumbra"). A lot depends on the nature of the goods--are they specialist or of a more general, everyday nature? Has there been use for just one specific item or for a range of goods? Are the goods on the High Street? And so on. The whole exercise consists in the end of forming a value

judgment as to the appropriate specification having regard to the use which has been made.”

29. Finally, the comments of the Court of First Instance in *Reckitt Benckiser (España), SL v OHIM*, Case T- 126/03 are also relevant where it held that:

“45 It follows from the provisions cited above that, if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of sub-categories capable of being viewed independently, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection, in opposition proceedings, only for the sub-category or subcategories to which the goods or services for which the trade mark has actually been used belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant sub-divisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category for the purposes of the opposition.

46 Although the principle of partial use operates to ensure that trade marks which have not been used for a given category of goods are not rendered unavailable, it must not, however, result in the proprietor of the earlier trade mark being stripped of all protection for goods which, although not strictly identical to those in respect of which he has succeeded in proving genuine use, are not in essence different from them and belong to a single group which cannot be divided other than in an arbitrary manner. The Court observes in that regard that in practice it is impossible for the proprietor of a trade mark to prove that the mark has been used for all conceivable variations of the goods concerned by the registration. Consequently, the concept of ‘part of the goods or services’ cannot be taken to mean all the commercial variations of similar goods or services but merely goods or services which are sufficiently distinct to constitute coherent categories or sub-categories.”

30. In these proceedings only Pobjoy have filed evidence; LOCOG have neither filed evidence nor have they provided written submissions. Consequently, Mr Smith’s evidence stands unchallenged. In *Extreme Trade Mark* (BL-O-167-07) Mr Richard Arnold QC (as he then was) acting as the Appointed Person commented on the issue of unchallenged evidence and cross examination in the following terms:

“Unchallenged evidence

33. *Phipson on Evidence* (16th ed) states at paragraph 12-12:

In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases as it does in criminal. In general the CPR does not alter that position.

This rule [sic] serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficulty in submitting that the evidence should be rejected.

However the rule is not an inflexible one...

34. The authority cited in support of this statement of the law is the decision of the House of Lords in *Browne v Dunn* (1894) 6 R 67. The relevant passages from the speeches are set out in the judgment of Hunt J in *Allied Pastoral Holdings v Federal Commissioner of Taxation* (1983) 44 ALR 607, the material parts of which are quoted in the judgment of the Court of Appeal in *Markem Corp v Zipher Ltd* [205] EWCA Civ 267, [2005] RPC 31 at [59]-[60].

35. In my judgment the learned editors of *Phipson* are correct to say that the rule is not an inflexible one. There are at least two well-established exceptions to it. The first is that, as the speech of Lord Herschell LC in *Browne v Dunn* makes clear, it may not be necessary to cross-examine on a point if the witness has been given full notice of it before making his statement. As I pointed out in *BRUTT Trade Marks* [2007] RPC 19 at [23], this may be significant in registry proceedings where evidence is given sequentially. The second is that a court is not obliged to accept a witness's evidence in the absence of cross-examination if it is obviously incredible: see *National Westminster Bank plc v Daniel* [1993] 1 WLR 1453.

36. Where, however, evidence is given in a witness statement filed on behalf of a party to registry proceedings which is not obviously incredible and the opposing party has neither given the witness advance notice that his evidence is to be challenged nor challenged his evidence in cross-examination nor adduced evidence to contradict the witness's evidence despite having had the opportunity to do so, then I consider that the rule in *Brown v Dunn* applies and it is not open to the opposing party to invite the tribunal to disbelieve the witness's evidence.

37. Despite this, it is not an uncommon experience to find parties in registry hearings making submissions about such unchallenged evidence which amount to cross-examination of the witness in his absence and an invitation to the hearing officer to disbelieve or discount his evidence. There have been a number of cases in which appeals have been allowed against the decisions of hearing officers who have accepted such submissions. Two recent examples where this appears to have happened which were cited by counsel for the proprietor are *Score Draw Ltd v Finch* [2007] EWHC 462 (Ch), [2007] BusLR 864 and *EINSTEIN Trade Mark* (O/068/07). Another recent example is *Scholl Ltd's Application* (O/199/06). I consider that hearing officers should guard themselves against being beguiled by such submissions (which is not, of course, to say that they should assess evidence uncritically)."

31. While in my view there is nothing in Mr Smith's evidence which is obviously incredible, it is equally clear I must not assess his evidence uncritically. Mr Smith has worked for Pobjoy since 1992, first as the Head of Market Development and more recently as its General Manager. He confirms in his statement that unless indicated otherwise the information he provides comes from his own personal knowledge. By the date of his statement (April 2011) Mr Smith had worked for Pobjoy for a little under 19 years, all of which he has spent in senior positions within Pobjoy; Mr Smith is, in my view, clearly well placed to provide the information he does.

32. In view of Pobjoy's admissions regarding the non-use of its OLYMPIC trade mark in the relevant period, the only remaining goods I need to consider are "precious stones" (No. 550174) and "watches" (No. 1427042). The word watches is so well known as to require no further explanation. The Oxford Dictionary of English (2010) defines precious stone as a noun meaning "highly attractive and valuable piece of mineral, used especially in jewellery; a gemstone."

33. Evidence filed in Trade Marks Registry proceedings is rarely perfect and Pobjoy's evidence is no exception. For example, Pobjoy have not provided turnover figures which relate specifically to the remaining goods LOCOG seek to revoke. That is, however, hardly surprising as traders do not as a general rule keep records specifically for use in trade mark proceedings. However, while Mr Smith was only able to provide global figures for Pobjoy's jewellery division, in his statement he says:

"...In the relevant period we have generated substantial sales from our jewellery ranges and a significant proportion of this will relate to our Olympic range/collection offering precious stones."

34. In addition, he says that watches:

"...have been offered to and bought by our mail order customers in some numbers over the years".

35. To its credit the vast majority of the evidence provided by Pobjoy is both dated and falls within the relevant period. When taken as a totality (and reminding myself that Pobjoy's evidence has not been challenged but that I must assess it critically), Pobjoy's evidence demonstrates that within the period 2006-2009 its jewellery division had a turnover of some £5m. It also demonstrates that Pobjoy have used a number of trade marks that consist of or include the word OLYMPIC and that these trade marks have appeared in catalogues directed at the trade and in Pobjoy's own magazine directed at members of the general public; sales have been made to both groups.

36. While one could argue that Pobjoy's use of the word OLYMPIC when accompanied by device elements lends the trade mark a slightly different overall appearance to the word OLYMPIC alone, there is evidence of the use of the word OLYMPIC used alone in both upper and title case. In addition, the word OLYMPIC is also used by Pobjoy together with the words RANGE or COLLECTION, neither of which would, due to their clearly descriptive nature, alter the distinctive character of the word OLYMPIC in the form in which its stands registered.

37. As to the remaining goods which LOCOG seek to revoke, in relation to precious stones Mr Smith says in his statement:

“20. Our Olympic jewellery ranges include jewellery that contains and provides settings for precious stones and this is how [Pobjoy] has used its trade mark for OLYMPIC in relation to precious stones.”

38. While it is clear that Pobjoy do not trade in precious stones per se, it is equally clear from the definition of precious stones mentioned above that there is, in the mind of the average consumer, an inextricable link between precious stones and jewellery. A cursory review of Pobjoy’s evidence shows the word OLYMPIC being used in relation to, for example, items described as: “42cm diamond set wavy link necklet, 1.06ct” (page 5), “41cm blue topaz drop neckchain” (page 5), “Diamond set wavy-link bracelet, 0.48ct” (page 6), “Single stone diamond teardrop pendant 0.10ct” (page 7), “Sapphire & 3 diamond pendant, 0.03ct” (page 8), “Ruby 0.6ct & diamond 0.03ct pendant” (page 8), “Diamond cluster 0.50ct stud earrings” (page 9), “Green amethyst & diamond drop earrings with lever back fittings 0.13ct” (page 10), “Black and White Diamonds” (page 11), “Pink sapphire 0.57ct and diamond 0.17ct ring” (page 13), “19cm diamond set Classico bracelet 1.5ct” (page 26), “...Citrine, Topaz, Peridot and Tourmaline Earrings” (page 31).

39. In the absence of any challenge to Mr Smith’s evidence by LOCOG, the totality of Pobjoy’s evidence, when considered in the context of Mr Smith’s comment to the effect that a significant proportion of the turnover generated by Pobjoy’s jewellery range will relate to Pobjoy’s “Olympic range/collection offering precious stones” and the very close, almost symbiotic, relationship between jewellery and precious stones that I have identified above, is sufficient, in my view, for me to conclude that within the relevant period Pobjoy have made genuine use of its OLYMPIC trade mark, and if asked, the average consumer would consider Pobjoy’s use to be in respect of both jewellery and precious stones. In those circumstances, there is no need for me to consider what constitutes a fair specification and LOCOG’s request to revoke registration No. 550174 under the provisions of section 46(1)(b) of the Act in respect of precious stones is dismissed.

40. Insofar as watches are concerned, Mr Smith explains that during the relevant period watches were manufactured for it by a Swiss company and branded OLYMPIC. He adds that the gold coin watches “have been offered to and bought by our mail order customers in some numbers over the years”. The evidence of use in relation to watches is, however, scant. The examples of the black and white faced gold coin watches on page 36 are undated as are the bracelet-style watches and the guarantee on page 37, 38 and 39. However, there is an example of the black-faced gold coin watch for sale on page 29 of PCN from Spring of 2007 (headed OLYMPIC RANGE) which indicates that watches bearing the word OLYMPIC on their face (albeit with a device) were available for sale in the relevant period. In addition, Mr Smith states that 100 of its OLYMPIC watches have been given as promotional gifts during the relevant period. While none of these factors are compelling when considered in isolation, as Mr Smith is well placed to provide the information he has, as his evidence is obviously not incredible and in the absence of any challenge to Mr Smith’s evidence by LOCOG, I am prepared to infer that when the totality of Pobjoy’s evidence is considered it is sufficient to demonstrate that within the

relevant period it has made genuine use of its OLYMPIC trade mark in relation to watches. Once again there is no need for me to consider what constitutes a fair specification and LOCOG's request to revoke registration No. 1427042 under the provisions of section 46(1)(b) of the Act in respect of watches is dismissed.

Conclusion

No. 550174

41. Pobjoy did not resist LOCOG's request to revoke this registration in respect of all of the goods in classes 6, 8, 9, 15 and 16. Insofar as class 14 of this registration is concerned, LOCOG only sought revocation in respect of precious stones and this request has been dismissed. Consequently, Pobjoy's registration will be revoked for the goods in classes 6, 8, 9, 15 and 16 with effect from 4 November 2010.

No. 1427042

42. As LOCOG's request to revoke this registration in respect of watches has been dismissed, no further action is required.

Costs

43. LOCOG has been successful in relation to those goods where Pobjoy did not resist its request to revoke. In relation to the goods it sought to defend Pobjoy has been successful. While I note from the forms TM26(N) filed on 5 November 2010 that LOCOG notified Pobjoy on 6 August 2010 that it intended to seek revocation of its registrations, I have no further information on what may have transpired before LOCOG filed its applications for revocation in November 2010. In those circumstances, it appears to me that LOCOG have, with the exception of precious stones, been successful in relation to all the goods it sought to revoke in registration No. 550174 (the majority of which were undefended) but have failed in relation to the one item i.e. watches they wished to have removed from registration No. 1427042. Taking the best view I can of the matter, I think that as both parties have achieved a measure of success an award of costs to either would be inappropriate.

Dated this 3rd day of February 2012

C J BOWEN
For the Registrar
the Comptroller-General