

O-272-13

**TRADE MARKS ACT 1994
SUPPLEMENTARY DECISION
IN THE MATTER OF REGISTRATION No. 2111027
STANDING IN THE NAME OF
INDIAN MOTORCYCLES LIMITED**

AND

**IN THE MATTER OF A REQUEST FOR A DECLARATION
OF INVALIDITY THERETO UNDER NO. 82788
AND A REQUEST FOR REVOCATION UNDER NO. 82896
BY INDIAN MOTORCYCLE INTERNATIONAL LLC**

BACKGROUND

1) On 25 January 2010 I issued a decision on the above case. The invalidity action was based upon sections 5(1), 5(2)(a), 5(2)(b) and 5(4)(a) of the Act. In my original decision I found that the ground under Section 5(4)(a) failed. I found that the marks were identical and that the goods were identical and/or very similar and hence the invalidity under Section 5(1) / 5(2)(a) succeeded. However, the registered proprietor sought to rely upon the defence of acquiescence. I determined:

“81) I accept that there is no evidence that CMAC were aware of the activities of the registered proprietor. However, I note that there is no information provided on what CMAC or the applicant knew regarding use of the marks they were purchasing or any issues surrounding their use, such as use of identical marks by other parties. The silence on this issue from the applicant is surprising. The registered proprietor’s defence of acquiescence will succeed if the ECJ confirms that the five year acquiescence period can start prior to the date of registration. If the ECJ confirms this then the invalidity action under Section 5(1) fails. This finding will also determine the grounds under Sections 5(2)(a) and 5(2)(b) which will also fail. Alternatively, if the ECJ determine that the acquiescence period cannot start prior to the date of registration then the opposition must succeed.”

2) The case that I was referring to in the above paragraph was that of *Budejovicky Budvar, narodni podnik v. Anheuser-Busch Inc.* in Case C-482/09. The Court of Justice of the European Union (CJEU) ruled:

- “1. Acquiescence, within the meaning of Article 9(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, is a concept of European Union law and the proprietor of an earlier trade mark cannot be held to have acquiesced in the long and well-established honest use, of which he has long been aware, by a third party of a later trade mark which is identical with that of the proprietor if that proprietor was not in any position to oppose that use.
2. Registration of the earlier trade mark in the Member State concerned does not constitute a prerequisite for the running of the period of limitation in consequence of acquiescence prescribed in Article 9(1) of Directive 89/104. The prerequisites for the running of that period of limitation, which it is for the national court to determine, are, first, registration of the later trade mark in the Member State concerned, second, the application for registration of that mark being made in good faith, third, use of the later trade mark by its proprietor in the Member State where it has been registered and, fourth, knowledge by the proprietor of the earlier trade mark that the later trade mark has been registered and used after its registration.
3. Article 4(1)(a) of Directive 89/104 must be interpreted as meaning that the proprietor of an earlier trade mark cannot obtain the cancellation of an identical later trade mark designating identical goods where there has been a long period of honest concurrent use of those two trade marks where, in circumstances such as those in the main proceedings, that use neither has nor

is liable to have an adverse effect on the essential function of the trade mark which is to guarantee to consumers the origin of the goods or services.”

3) The parties were afforded an opportunity to make submissions on the above finding and its effect on the instant case. The registered proprietor contended:

“The pre-requisites for the running of the period of acquiescence as set out above by the CJEU have all been fulfilled in this case as follows:

1. Registration of the later trade mark in the member state concerned-i.e. the UK Trade Mark registration in suit No. 2111027 in respect of which the registration formalities were completed on 21 March 1997.
2. The application for registration of that mark being made in good faith – there is no indication in the evidence filed in these consolidated cases or in Mr Salthouse’s decision that Registration No.2111027 was filed other than in good faith.
3. Use of the later mark by its proprietor in the Member State where it has been registered – this has been sufficiently demonstrated in the Registered Proprietor’s evidence. Further, Mr Salthouse considered that the Registered Proprietor had been using its mark since 1967 and further that the Registered Proprietor had established its own reputation and goodwill under the mark (paragraph 72 of the decision at page 33).
4. Knowledge by the proprietor of the earlier trade mark that the trade mark has been registered and used after its registration – again this has been sufficiently demonstrated in the Registered Proprietor’s evidence and Mr Salthouse determined that such knowledge on behalf of the applicant for Invalidity’s predecessors in title fulfils this condition. Mr Salthouse took into account the comments in Kerly’s that acquiescence should apply even where the earlier right had been assigned (paragraph 74 of the Decision at page 33). Further reference is made to Mr Salthouse’s comments in paragraphs 77,78, 79,80 and 81 of the Decision at pages 34 and 35 including that the Applicant for Invalidity’s predecessors were aware as at the date of the opposition to the CTM application on 4 May 1999 at the latest that the Registered Proprietor was using the mark in suit on motorcycles manufactured in the UK. Mr Salthouse noted that IMCOA assigned its marks to CMAC on 12 May 2004 and prior to that assignment the five years acquiescence period would be deemed to have elapsed *if the ECJ agree that the period can start prior to registration.*”

4) The applicant for invalidity submitted extensive submissions. **The applicant accepts that the first of the prerequisites set out by the CJEU in paragraph 2 of its decision above is met.** However, with regard to the second prerequisite, that the mark be made in good faith, they contend the following:

“7. The UK Trade Marks Act, the Directive and case law have made much of what constitutes “bad faith” and this term is used readily in the Act and the Directive, but the term used by the CJEU in this decision is not “lack of bad faith” but “good faith”. The purposeful use of the wording “good faith” suggests that this is intended by the

CJEU to be something more than simply a lack of bad faith. Indeed it could be argued to be the polar opposite of bad faith, suggesting that the Registered Proprietor would need to have some clear expectation that the trade mark should belong to him and that there is not an otherwise legitimate claim to ownership. It is apparent from the Registered Proprietor's evidence comprising various news pieces about the Registered Proprietor's owner, Mr Alan Forbes, that Mr Forbes has become recognised as a well informed and respected enthusiast and knowledgeable individual concerning Indian branded motorcycles and their history, and that Mr Forbes, being a separate legal person to the registered proprietor, developed what is clearly an admired skill by other enthusiasts for his ability to refurbish and restore old neglected Indian brand motorcycles. As such, Mr Forbes has over the years become associated with the Indian brand, not as the owner of the brand, or the origin of those branded goods, but as a specialist knowledge source and mechanic who has built up a niche business in refurbishment and restoration and the supply of spare parts. Whilst Mr Forbes has apparently established such a reputation, that is not to say that there are no other individuals who have a good working knowledge of Indian branded motorcycles and are in a position to work on such motorcycles. Furthermore, there are numerous sources of material on Indian motorcycles around the world and it would seem strange that an enthusiast would wish for there to be any ownership of the brand other than a true single ownership which would have the ability to nurture and restore the Indian brand to its former glory on a worldwide basis. It is also commented that whilst there has been much discussion of the question of goodwill being assigned to the present applicant and the applicant's predecessor in title no evidence of goodwill or reputation being assigned to the registered proprietor with the registration by Mr Forbes has been given, and there is no copy of the assignment from Mr Forbes to the registered proprietor on public record for review or comment.

8. If we take one possible scenario for a moment, it could be argued that perhaps Mr Forbes was acting as a "trustee" for the brand, but it would seem somewhat unusual that once there was a business back up and running, with whom Mr Forbes had a dialogue, and having been given trust and ownership of the brands around the world by US courts with the goal of being the one true owner of the brand and to bring it back to its former glory, that such a "trustee" would not feel it to be in the long term interests of the Indian brand to ensure that everything was cared for and taken forward in a consistent manner and to continue to be part of that. Surely this would be the expectation given that there was a dialogue between Mr Forbes and the applicant's predecessors in title. Instead Mr Forbes assigned the trade mark to a separate legal entity, the registered proprietor. Mr Forbes's witness statements have of course made no suggestion that he was acting in any form of trusteeship for this historical brand, and it would surely be an expectation of enthusiasts that with the original Hendee business having been a US business responsible for the mighty Indian cruisers that it would not be anything other than a US business which would pick up and move the brand forward, true to its original US heritage. Therefore whilst the original invalidity action has not included a claim of bad faith, the good faith of the Registered Proprietor in owning what is shown to be a historical brand of repute, does call into question the true intentions of Mr Forbes when he registered and then subsequently assigned the registration and whether it can be truly said that the Registered Proprietor or its predecessor in title, sought registration of the later trade mark in "good faith", to use the wording of the CJEU. Has the Registered

Proprietor in fact appropriated property belonging to another with the intention of permanently depriving them of that property? Mr Forbes has used his reputation as a specialist and knowledgeable enthusiast of a particular branded product to build up his own business off the back of a combination of his knowledge and the recognition of a third party brand, its heritage and cult status. Mr Forbes would not have been in a position to build such a reputation and business if it were not for the reputation of the Indian brand and its following in the first place. It is also worthy of note that a number of articles attached to the witness statement of Nigel Hackney at exhibit NJH8 include foreign language and non-US articles from countries as diverse as Norway, Holland, France, Spain, Portugal, Japan, Australia and the UK, showing that there was continued interest in the heritage and continuance of the cult Indian brand outside the activities of Mr Forbes. It is therefore considered that the second of the prerequisites is not met.”

5) In determining the issue of “good faith” I look to the case of *Adnan Shaaban Abou-Rahmah, Khalid Al-Fulaij & Sons General Trading & Contracting Co v Al-Haji Abdul Kadir Abacha, Kumar Bello, Aboubakar Mohammed Maiga, City Express Bank of Lagos & Profile Chemical Limited* [2006] EWCA civ 1492 Rix LJ commented upon the concept of good faith:

“48 The content of this requirement of good faith, or what Lord Goff in *Lipkin Gorman* had expressed by reference to it being “inequitable” for the defendant to be made to repay, was considered further in *Niru Battery*. There the defendant bank relied on change of position where its manager had authorised payment out in questionable circumstances, where he had good reason to believe that the inwards payment had been made under a mistake. The trial judge had (a) acquitted the manager of dishonesty in the *Twinsectra* or *Barlow Clowes* sense on a claim of knowing assistance in breach of trust, but (b) concluded that the defence of change of position had failed. On appeal the defendant bank said that, in the absence of dishonesty, its change of position defence should have succeeded. After a consideration of numerous authorities, this court disagreed and adopted the trial judge’s broader test, cited above. Clarke LJ quoted with approval (at paras 164/5) the following passages in Moore-Bick J’s judgment:

“I do not think that it is desirable to attempt to define the limits of good faith; it is a broad concept, the definition of which, in so far as it is capable of definition at all, will have to be worked out through the cases. In my view it is capable of embracing a failure to act in a commercially acceptable way and sharp practice of a kind that falls short of outright dishonesty as well as dishonesty itself.”

6) I also take into account *Barlow Clowes International Ltd. (in liquidation), Nigel James Hamilton and Michael Anthony Jordon v Eurotrust International Limited, Peter Stephen William Henwood and Andrew George Sebastian* [2006] 1 W.L.R. 1476 where the Privy Council considered the ambiguity in the *Twinsectra Ltd v Yardley* [2002] 2 AC 164 judgment. The former case clarified that there was a combined test for considering the behaviour of a party: what the party knew at the time of a transaction and how that party’s action would be viewed by applying normally acceptable standards of honest conduct.

7) Further, I note that in *Harrisons Trade Mark Application (“Chinawhite”)* [2004] FSR 13 Pumfrey J commented:

“14 Mr Engelman's argument was a direct challenge to the hearing officer's approach to the question of good faith, but he also objected that it was not open to the hearing officer to infer bad faith from the facts, which he maintained was contrary to the decision of the Court of Appeal in *Davy v Garrett* (1878) 7 Ch D 473 at 489. This I think is a misapprehension as to the scope of the decision in *Davy v Garrett*. That case was dealing with fraud in a different context. In this field context is everything. The words "*bona fide*" or "good faith" are what are sometimes called chameleon words and take their content and their colour from their surroundings. Once the hearing officer had decided that the correct approach was that which I think he may well have been bound to accept, it was open to him to find that objectively the behaviour of the application did not satisfy the second half of the formulation. The word "inference" itself has a wide meaning, as Robert Walker L.J. demonstrates in *REEF Trade Mark* [2003] R.P.C. 5. This was not a question of drawing an inference at all. It was a question of coming to a secondary finding of fact on all the material. I do not consider that the hearing officer's decision is open to challenge on this ground and the appeal must accordingly be dismissed.”

8) In *Zurich Insurance Co v Zurich Investments Ltd* [2001] RPC 6, the adjudicators dealt with the good faith defence in circumstances where the company name the subject of the complaint was also the name of earlier companies registered by the same controlling minds:

“54) The good faith defence relates to the registration of the company name in 1999, however, it is relevant to take into account the previous companies that have been incorporated under the name. This is because the earlier circumstances may assist in informing as to the motivation of the respondent when registering the company name in 1999. Investments claims that it has a succession in title with regard to the company name going back to 1989. Insurance argues that this is not proven because there is no evidence of common directorship and that, in any event, the existence of the earlier companies is not evidence of good faith. In relation to the former argument, whilst there is no specific evidence of common directorship, there is evidence which shows the names of Messrs Pereira and Kennedy in relation to the abandonment of the Isle of Man company. There is also evidence showing the name of Mr Pereira in relation to the business activity undertaken by the company registered in 1995. On the basis of this evidence, and the unchallenged evidence that Messrs Pereira and Kennedy are the directors of the respondent company, it can be accepted that they are the controlling minds behind not only the respondent company, but also behind the Isle of Man company and the company registered in 1995. The narrative they give in evidence supports all of this.

55) In its counterstatement Investments denies knowing of Insurance and its sign ZURICH when it first registered the company in 1989. Although not specifically repeated in evidence, Messrs Pereira and Kennedy are clear when they state that there has never been an intention to misappropriate the goodwill of Insurance. They do not, though, explain how they came upon the choice of the company name. It appears that the first company, the Isle of Man company, was a shelf company. A shelf company is normally already named when purchased by a business. The name can, of course, be changed but there is no suggestion that this has been done. Messrs Pereira and Kennedy appear, therefore, to have taken the shelf

company and run with it. Irrespective of this, the taking of a shelf company registered under a particular name which would obviously have traded off a well known business' reputation would be unlikely to equate to an act made in good faith. However, the nature of Insurance's goodwill at this point also needs to be borne in mind. Whilst it clearly had a business with goodwill in the United Kingdom in 1989, many of the key milestones had not occurred at this point. Neither had the high profile advertising activities referred to in Insurance's evidence taken place. At this point in time, whilst some parts of the public will have heard of Insurance and its business conducted under the Zurich sign, to many others the word Zurich would, instead, have simply meant the city in Switzerland, known as a financial centre. On the basis of the evidence before the tribunal, there is no reason to believe that the initial purchase of the Isle of Man shelf company under the name Zurich Investments Limited was anything other than something done in good faith.

56) The situation is similar in 1995 when the second Zurich Investments Limited (company 03027313) was incorporated. Although by this time further milestones had been reached in the history of Insurance (such as the acquisition of Municipal Mutual Insurance), the incorporation of this second company is directly linked to the loss of the Isle of Man company. Again, there is nothing in this to suggest that this incorporation was anything other than in good faith. This company went on to trade, albeit for a short time. The company filed accounts and the evidence shows some documentation to illustrate its trading activity. There is nothing in any of this that suggests that the company was attempting to trade off the reputation of Insurance.

57) Irrespective of the above, even if the Isle of Man company name and the 1995 company name were adopted in good faith, its re-adoption in 1999 by the controlling minds behind the respondent could still amount to something other than good faith. By 1999 Insurance would likely have had a greater degree of public awareness given the creation of the Zurich Financial Services Group. Some of its advertising activities would also have taken place, but some of its high profile sponsorship and advertisement activities were yet to come. However, it is clear from the evidence that the incorporation on change of name in 1999 was part of a swap around of two company names. Company 03027313 changed its name from Zurich Investments Limited to African Metals Limited, whilst company 030325539 (the respondent) changed its name from Perimex to Zurich Investments Limited. This appears more of an administrative process relating to the names of two companies under common control. The exact reason for the swap around is not altogether clear, the evidence refers to the desire to re-register the name to protect the goodwill it had built-up. That being said, it is clear that Messrs Pereira and Kennedy regarded it as important and that they regarded it as simply a continuation of their business interests.

58) The incorporation of Investments' company name in 1999, which is similar to a sign in which Insurance has a goodwill, seems more coincidence than conspiracy. The motivation behind the incorporation is the continuance of a company name which the controlling minds behind the respondent had held (at the material date) for over ten years. Even though at the material date Insurance was more widely known than it was in 1988, there is nothing to suggest that the motivations in 1999 were anything other than proper. The trading that has been conducted (albeit by a previous company) in 1996 does not seem anything other than proper. The

respondent has a defence as the company name was adopted in good faith. In accordance with section 69(6) of the Act the objection to Investments' registered name is dismissed."

9) The suggestion that because Mr Forbes assigned the mark to a company of which he is the Managing Director somehow calls into question whether the mark was applied for in good faith lacks any basis. Even if he had no connection with the company to whom he assigned the mark I do not understand how this can be regarded as "not in good faith" when assignments are a perfectly normal part of business life. Indeed I note that the applicant in this case acquired their trade marks by assignment, so does this mean that they are guilty of acquiring the marks in something other than good faith? The evidence is very clear that the single guiding/controlling mind behind the use has been Mr Forbes and customers will refer to him by name as the supplier even when writing a cheque to his company. It is a natural "mistake" which occurs when an individual is identified as the company.

10) I fully accept that Mr Forbes originally started out as an enthusiast restoring Indian motorcycles which were built up until 1953. After this date no-one was producing Indian motorcycles apart from one or two spluttering attempts in the USA which soon petered out and which did not export to the UK. Mr Forbes would have been aware that the mark had been abandoned, certainly within the UK. I also accept that there are a number of individuals around the world who also have an extensive knowledge of Indian motorcycles built until 1953. However, it is clear from the evidence that he expanded from simple restoration to manufacturing motorcycles which paid homage to the old Indian motorcycles in style, but were new bikes which were required to be registered. The applicant claims that the US courts have granted them world-wide rights to the trade mark. The court system in the USA does not have jurisdiction world-wide. The implication that the registered proprietor was a "trustee" of the mark until such time that a "proper" US company took over is pure poppycock. The mark had been abandoned; no-one had used it in the UK for almost forty years until the registered proprietor began his use. I do not understand the contention that consumers would expect the mark to be resurrected by a US company. It is well known that trade marks are bought and sold and goods produced under those marks may be made in a country other than that where the goods were initially made. Further, in an age of increasing globalisation no-one thinks it strange that a BMW can be made in South Africa, an MG made in China or a Honda made in Swindon. It is well known that parts are manufactured globally and then shipped to a plant and put together.

11) It was contended that the words "good faith" would denote that an applicant for a trade mark would have "some clear expectation that the trade mark should belong to him and that there is not an otherwise legitimate claim to ownership". Of course this is exactly the position that the Registered Proprietor was in when applying. There was no other entity with a legitimate claim to ownership of the mark in the UK. **It is clear that the registered proprietor easily meets the requirements of the second prerequisite.**

12) I now move onto consider the issue of the third prerequisite set out by the CJEU namely "use of the later trade mark by its proprietor in the Member State where it has been registered". Although the original decision had within it a decision on a revocation action which found that the registered proprietor had used its mark on motor cycles and parts and fittings for motorcycles, the applicant has sought to use the submissions on the

CJEU finding to reopen this aspect of the case. They have sought to file new evidence on the issue. It would appear that they now believe that in the original opposition to their trade mark in OHIM, the registered proprietor only claimed to be manufacturing spare parts and refurbishing motorcycles, not manufacturing new motorcycles. When this decision was appealed the registered proprietor changed its position to include the manufacture of motorcycles as part of its activities. Even if I accept that the applicant's predecessors in business took the wording of the opposition at face value and did not carry out any enquiries of its own into the activities of the registered proprietor, it does not fatally undermine the registered proprietor's case. In my earlier decision I carefully examined and sifted the evidence provided for the case before me. At paragraphs 51 and 52 of my original decision I make it clear that I excluded any evidence where there was a possibility that it related solely to refurbishment. Whether the statement of use filed by the registered proprietor in its opposition filed at OHIM was made tactically or simply by mistake is not something I can comment upon, nor do I have to. The matter has been considered by the evidence filed in the instant case. **The registered proprietor meets the requirements of the third prerequisite.**

13) I now turn to the fourth prerequisite set out by the CJEU which was "knowledge by the proprietor of the earlier trade mark that the later trade mark has been registered and used after its registration". In the instant case the registered proprietor's mark was filed on 24 September 1996 and registered on 21 March 1997. The applicant's mark was filed on 11 July 1996 and registered on 8 July 2004. Therefore, any use by the registered proprietor after registration on 21 March 1997 can be taken into account and the question that remains is whether the applicant was aware of the activities of the registered proprietor. In my earlier decision I used the date of the original opposition in OHIM to state that the applicant would have been aware of the activities of the registered proprietor. I note that in paragraph 79 of my decision I set out evidence that the applicant's predecessor in business was aware of the new Dakota 4 motorcycle being offered for sale by the registered proprietor and according to an independent witness even entered discussions with them. The registered proprietor had exhibited its new motorcycle at a major exhibition of historical Indian motorcycles in Ohio. Therefore, even if I accept that the date of the opposition in OHIM can no longer be relied upon, the discussions and exhibition in 2001 would have alerted the applicant to the manufacturing activity of the registered proprietor. This would still be over five years prior to the filing of the invalidity action in March 2007.

14) For its part the applicant contends that the presence of a new Indian Dakota 4 bike at the exhibition would not alert the applicant to the fact that the registered proprietor was offering new motorcycles for sale. The applicant contends that I have assumed that they visited the exhibition and thus were aware. In the evidence of the independent witness Mr Meyers who worked for IMC (a predecessor in business to the applicant) and states that IMC were aware of Mr Forbes making a new Indian four cylinder motorcycle from 1999 and met with him in the USA and UK. The applicant has contended that some of Mr Myers statements were supposition beyond his knowledge of company issues. However, it has never been denied that they met with the registered proprietor on at least two occasions, including one in the UK. The applicant now contends that newspaper reports provided by the registered proprietor were all UK based and therefore would not be seen by the applicant. To my mind, I find it hard to accept that a business will meet another company on at least two occasions, including a meeting which involved travelling to the UK but would not carry out basic checks on that company, such as the extent of its

operations, its actual business etc. A simple press search would be very simple to arrange; further one has to wonder quite what these meetings could have been about if not about motorcycles, the activities and plans of both parties and possible collaboration.

15) The applicant also contends that it was not in a position to oppose. Firstly, it claims, broadly speaking, that its predecessors in business were in such a chaotic state having to raise finance, re-engineer a proposed new product, laying off workers that they were unable to consider anything outside the day to day fire-fighting required to try and make the company produce a motorcycle. Clearly, they were unsuccessful as the company went into administration. However, should the registered proprietor be penalised simply because the applicant's predecessors were having difficulties, and lacked the common sense to realise that the registered proprietor was using the Indian mark on new motorcycles in the UK, even though they met with the registered proprietor on a number of occasions and had seen the new four cylinder motorcycle with the Indian mark prominently displayed. It is clearly a modern machine and could not possibly be mistaken for a restored old model. These are not reasons which can be seriously considered as meaning the applicant's predecessors were not in a position to oppose.

16) The applicant also contends that once it acquired its marks it had to review the position and assess what had been acquired. It rejects that this could have been carried out prior to acquisition. It points out that it took action within five years of its acquisition. The implied contention that the period for acquiescence should be reset following an assignment is not justified. The applicant further contends that because of the opposition to its mark in OHIM by the registered proprietor it was not sure if it had a mark to protect and so it did not have the ability to prevent use of the registered proprietor's mark. This again is nonsense. It is perfectly normal for parties whose mark is being opposed to file actions relying upon the mark as an earlier mark, and the action is then suspended pending the outcome of the original action. Such an action would clearly signify that the party does not acquiesce to the use of a later trade mark. It is virtually cost free to do this and cannot be used as a reason for inaction. **The registered proprietor meets the requirements of the fourth prerequisite.**

17) Finally, the applicant draws attention to the element of the CJEU decision which mentions whether honest concurrent use "neither has nor is liable to have an adverse effect on the essential function of the trade mark which is to guarantee to consumers the origin of the goods or services." Motorcycles are not items which are purchased without a considerable amount of consideration and research. They are, even in their most basic form, expensive. The average consumer has to consider a number of technical factors, as well as aesthetic issues. The availability of servicing, spares and accessories will also be taken into account. To my mind, the use of the marks in question by both parties will not affect adversely their essential function of guaranteeing to consumers the origin of the goods or services.

CONCLUSION

18) The invalidity action fails on all grounds pleaded. In my earlier decision I also found that the revocation action failed.

COSTS

19) As Indian Motorcycles Ltd has been successful it is entitled to a contribution towards its costs.

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| Preparing a statement and considering the other side's statement x 2 | £500 |
| Preparing evidence and considering the other side's evidence | £800 |
| Preparing for and attending a hearing | £1200 |
| Submissions following the CJEU | £300 |
| TOTAL | £2800 |

20) I order Indian Motorcycle International LLC to pay Indian Motorcycles Ltd the sum of £2800. This sum 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 3rd day of July 2013

**G W Salthouse
For the Registrar
the Comptroller-General**