

O-141-16

TRADE MARKS ACT 1994


IN THE MATTER OF TRADE MARK REGISTRATION NO

2 111 027  IN THE NAME OF INDIAN
MOTORCYCLES LIMITED

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION
IN THE NAME OF INDIAN MOTORCYCLE INTERNATIONAL
LLC

Background and pleadings

1. Indian Motorcycles Limited is the registered proprietor (RP) of trade mark registration No 2 111 027 consisting of . The trade mark was filed on 24/09/1996 and completed its registration procedure on 21/03/1997. It is registered in respect of Motorcycles; parts and fittings for motorcycles in Class 12.
2. Indian Motorcycle International LLC (IMIL) seek revocation of the trade mark registration on the grounds of non use based upon Section 46(1) (b) of the Trade Marks Act 1994.
3. RP filed a counterstatement denying the claim and asserting that it has made use of the trade mark in respect of the goods for which it is registered.
4. Revocation is sought under Section 46(1)(b) in respect of the time period 20th January 2010 to 19th January 2015. Revocation is therefore sought from 20th January 2015.
5. Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate. Both sides filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision.
6. A Hearing took place on 27th January 2016, with RP represented by Simon Malynicz of Queens Counsel, instructed by Marks and Clerk and IMIL by Guy Tritton of Counsel, instructed by Noerr Alicante IP, S.L.
7. During the proceedings, IMIL made a request to carry out cross examination of Mr Alan Forbes, the Managing Director of RP. This was granted. Analysis of this process is included later in the decision.

Legislation

8. Section 46(1) of the Act states that:

“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) An application for revocation may be made by any person, and may be made to the registrar or to the court, except that –

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

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

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

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

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

9. Section 100 is also relevant, which 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.”

10. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. summarised the case law on genuine use of trade marks. He said:

“I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kameradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29].

(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 to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of

the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving 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. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

11. In *Naazneen Investments Ltd v OHIM*, Case T-250/13, the General Court upheld a decision by the OHIM Board of Appeal that the sale of EUR 800 worth of non-alcoholic beverages under a mark over a 5 year period, which had been accepted was not purely to maintain the trade mark registration, was insufficient, in the economic sector concerned, for the purposes of maintaining or creating market share for the goods covered by that Community trade mark. The use was therefore not genuine use. The relevant part of the judgment of the General Court is as follows:

“46. In the fifth place, the applicant argues that, in accordance with the case-law cited in paragraph 25 above, use of a trade mark is to be regarded as token if its sole purpose is to preserve the rights conferred by the registration of the mark. It claims that the Board of Appeal contradicted itself by stating, on the one hand, in paragraph 31 of the contested decision, that the total amount of transactions over the relevant period seemed to be token, and by stating, on the other hand, in paragraph 42 of the contested decision, that it did not doubt the intention of the proprietor of the mark at issue to make real use of that mark in relation to the goods in question.

47. In this connection, suffice it to point out that the applicant’s argument is based on an incorrect reading of the contested decision. The Board of Appeal used the term ‘token’ to describe the total amount of transactions, approximately EUR 800, and not to categorise the use of the mark at issue.

48. In the sixth place, the applicant claims that the Board of Appeal, by relying solely on the insufficient use made of the mark at issue, did not comply with the case-law according to which there is no quantitative threshold, determined a priori and in the abstract, that must be chosen in order to determine whether use is genuine. The Board of Appeal also failed to comply with the case-law according to which even minimal use may be sufficient in order to be deemed genuine.

49. According to the case-law, the turnover achieved and the volume of sales of the goods under the mark at issue cannot be assessed in absolute terms but must be assessed in relation to other relevant factors, such as the volume of commercial activity, the production or marketing capacities or the degree of diversification of the undertaking using the trade mark and the characteristics of the goods or services on the relevant market. As a result, use of the mark at issue need not always be quantitatively significant in order to be deemed genuine (see, to that effect, judgments in *VITAFRUIT*, cited in paragraph 25 above, EU:T:2004:225, paragraph 42, and *HIPOVITON*, cited in paragraph 27 above, EU:T:2004:223, paragraph 36). Even minimal use can therefore be sufficient in order to be deemed genuine, provided that it is warranted, in the economic sector concerned, to maintain or create market shares for the goods or services protected by the mark. Consequently, it is not possible to determine a priori, and in the abstract, what quantitative threshold should be chosen in order to determine whether use is genuine. A de minimis rule, which would not allow OHIM or, on appeal, the General Court, to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, to that effect, order of 27 January 2004 in *La Mer Technology*, C-259/02, ECR, EU:C:2004:50, paragraphs 25 and 27, and judgment of 11 May 2006 in *Sunrider v OHIM*, C-416/04 P, ECR, EU:C:2006:310, paragraph 72).

50. In the present case, contrary to what the applicant claims, the Board of Appeal did not determine a minimum threshold 'a priori and in the abstract' so as to determine whether the use was genuine. In accordance with the case-law, it examined the volume of sales of the goods in question in relation to other factors, namely the economic sector concerned and the nature of the goods in question.

51. The Board of Appeal accordingly took the view that the market for the goods in question was of a significant size (paragraph 28 of the contested decision). It found also that the goods in question, namely non-alcoholic beverages, were for everyday use, were sold at a very reasonable price and that they were not expensive, luxury goods sold in limited numbers on a narrow market (paragraph 29 of the contested decision). Furthermore, it took the view that the total amount of transactions over the relevant period, an amount of EUR 800, seemed to be so token as to suggest, in the absence of supporting documents or convincing explanations to demonstrate otherwise, that use of the mark at issue could not be regarded as sufficient, in the economic sector concerned, for the purposes of maintaining or creating market shares for the goods covered by that mark (paragraph 31 of the contested decision).

52. It is therefore apparent, contrary to what the applicant claims, that it was in accordance with the case-law cited in paragraph 49 above that the Board of Appeal took the view that, in the present case, minimal use was not sufficient to be deemed genuine."

RP's evidence

12. This is a witness statement from Mr Alan Forbes. As already stated, he is the Managing Director of RP. Exhibit AF1 to the witness statement contains a witness statement made by Mr Forbes in respect of previous proceedings, which culminated in a decision of the Appointed Person¹. It is included as, according to Mr Forbes, it is useful background information. It is noted that the contents of this witness statement have not been challenged by the other side. Further, the reliability of the information contained within this witness statement has been accepted from the decision both of the Registry² and the aforementioned Appointed Person.
13. The witness statement prepared for previous proceedings explains that the INDIAN trade mark has been used by Mr Forbes and/or his Company's in the United Kingdom since 1976 and continuously since 24 September 1996 (the trade mark application date). This use has been in respect of the goods as registered, namely motorcycles; parts and fittings for motorcycles in Class 12. The evidence contained in this witness statement described invoices, customer letters, photographs, advertising and promotional activities, participation in motorcycle rallies, production of DVDs and media exposure was accepted as evidence of genuine use.
14. The pertinent points of the witness statement prepared in respect of these proceedings are:
- Mr Forbes explains that the motorcycles produced are bespoke, made to order and sold to a niche market or motorcycle enthusiasts and collectors. Each motorcycle costs in the region of £20,000 and the motorcycles are luxury items.
 - Approximate turnover figures are provided: 2011 - £120,000; 2013 - £60,000 and 2014 - £50,000.
 - Exhibits AF2-AF6 are a selection of invoices from the years 2010 to 2015 respectively. They contain, according to Mr Forbes information relating to the sale of motorcycles and motorcycle parts. It is noted that not all of the invoices relate to actual motorcycles, though it is noted that Mr Forbes also expressly states that those filed are illustrative and do not constitute all invoices pertaining to use of the INDIAN trade mark during the years 2010 to 2015.
 - Exhibit AF7 contains photographs showing the manner in which the motorcycle parts in question are packaged and tagged for sale.
 - Exhibit AF8 contain copies of a selection of enquiries and requests from potential customers for information, price schedules and catalogues relating to motorcycles and parts under the INDIAN trade mark. During 2010 to 2015, according to Mr Forbes, he received enquiries from all over the UK.

¹ BL O/439/14

² BL O/025/10

- During the relevant period, Mr Forbes explains that he received invitations to a) be in a documentary series produced by Oxford Scientific Films about his company and the motorcycles (April 2012); b) be the subject of an article regarding motorcycles under the INDIAN mark (January 2013) and c) appear at Scotland's biggest outdoor Motorcycle with a demo motorcycle under the INDIAN mark (29th May 2012). Exhibit AF9 contains these invitations.
- Mr Forbes provides details of shows and motorcycle rallies which his company attended during the relevant period. These range from smaller shows in Scotland with around 6,000 attendees to Goodwood Revival in September 2014 which is attended by around 140,000 visitors. Exhibit AF10 is a copy of a flyer for the INDIAN DAKOTA MOTORCYCLE from 2011 which was widely distributed at motorcycle events and shows including those described by Mr Forbes. Exhibit AF11 is an equivalent flyer from 2014.
- Exhibit AF12 is a copy of an article from James May which appeared in the Telegraph newspaper's motoring supplement in May 2010. The article includes a review of the INDIAN DAKOTA MOTORCYCLE produced by Mr Forbes. Further, the supplement includes promotional activity, namely the reader is given the opportunity to enter a competition to win a motorcycle, worth £20,000.
- Exhibit AF13 comprises copies of a motorcycle spark plug applications list for the spark plug supplier company NGK from the years 2012, 2013, 2014 and 2015. This list is included so as to demonstrate that RP is on the list for the aforementioned years as a customer of NGK.
- Exhibit AF15 to 18 are snapshots demonstrating the existence of RP's website for the following dates during the relevant period: 22 February 2010, 26 March 2011, 9 November 2011 and 3 February 2013.

IMIL's Evidence

15. Some of the material filed by IMIL is comprised of submissions which will not be summarised here, but have been taken into account. There is also a witness statement from Becky Sullwold, the Intellectual Property Manager for Polaris Industries Inc, of which IMIL is a subsidiary. Ms Sullwold provides evidence at Exhibit BS1 apparently demonstrating that RP's website is as at 2015, owned by another company. This was put to Mr Forbes during cross examination and which I will come to further below. Further, Ms Sullwold exhibits at BS2 a printout from the "History" section of RP's website describing Mr Forbes as being passionate about the **restoration** of Indian motorcycles. Finally, Ms Sullwold alleges that one of the parts displayed in photographs in RP's evidence, a chromed air cleaner cover, is made exclusively by a company who is a licensee of IMIL. Exhibit BS4 are copies of computerised sales records from 1994 to 2001 allegedly supporting this claim. This issue has also been dealt with during cross examination and will be discussed further below.

Cross examination of Mr Forbes

16. In terms of general observations, it is noted that in response to questioning, Mr Forbes provided additional information regarding individual invoices and photographs filed in evidence, in terms of context and clarity. This has greatly assisted the Tribunal in assessing the exact content of the evidence filed and the weight to which it should be accorded. My impression of Mr Forbes was that he was a straightforward, reliable and credible witness who knows his business and customers well.

17. There were specific sections of the cross examination which require comment:

- Mr Forbes accepted that restoration activities on “old” bikes (i.e. those not built by Mr Forbes) are a “good part” of his company’s business.
- Due to the clarity and additional detail provided during cross examination, it is also clear that RP produce and sell parts for motorcycles and provides them both directly to a customer (for them to fit into a motorcycle) and/or as part of a repair service. As an illustrative example, when Mr Forbes was asked about “complete frame and fork assembly”, this was referring to the part rather than an assembly service. Further, “new” INDIAN motorcycles, built by Mr Forbes are also produced and sold by RP. The invoices mention a DAKOTA model but Mr Forbes evidence during cross examination also referred to a SCOUT model (this was not challenged).
- In response to questioning regarding RP’s website, Mr Forbes explained that it did, in the past, run a website, but that it did not do so any more. His explanation for this was that it created a lot of timewasters and that the nature of his business is such that word of mouth was more effective and less inefficient. In Mr Forbes view, potential customers know who he is and where to find him.
- When being questioned on the content of the invoices, Mr Forbes accepts complete motorcycles were not included in every year of which the relevant period is comprised. However, Mr Forbes ultimate response to this was that the particular invoices provided are only a selection and do not reflect the true extent of the motorcycles and parts produced and sold.
- Mr Forbes was questioned in some detail in respect of photographs of motorcycle parts. During the proceedings, a set of photographs was filed. Following a request from IMIL and the Registry, RP submitted a second, clearer set of photographs. IMIL have indicated that they believe that the second set of photographs do not show the same parts as the first set. Further, the line of questioning employed strongly implied that IMIL believed the photographs were somehow set up to display the motorcycle parts in the most positive light from the perspective of RP. During the cross examination, Mr Forbes was asked to directly compare the first and second set of photographs indicating and cross referencing each part from the first set and explaining where they appeared in the second set. It is noted that he was able to do so with little or no hesitation. I have no reason to believe that this evidence is anything other than reliable in terms of demonstrating that the motorcycle parts produced, used and sold by RP are sold under the Indian

trade mark. Much was also made regarding decals placed on top of fuel tanks for the purpose of the photograph taken. Again, Mr Forbes provided a reasonable explanation: that they were placed there to show what will be fitted to the fuel tanks before they are fitted. It is noted that these decals are also on display in other photographs of complete, finished Indian motorcycles, such as that shown in Exhibit AF12. The evidence of Mr Forbes is therefore considered to be corroborated in this regard.

- As regards the claim by IMIL that one of its licensees had produced parts that the RP claims as its own, Mr Forbes categorically denied this. Further, he provided details of a third party who actually produced the part in question on his behalf.

Submissions of the parties'

18. IMIL accepted that RP had made use of its trade mark. However, it argues that this mainly in respect of restoration services for original Indian motorcycles. In respect of new motorcycles built by RP, it argued that the amounts sold were far too small to be classed as genuine use bearing in mind the size of the relevant market involved, namely motorcycles at large. This is a very large market, with turnover in the region of £5 billion. In respect of motorcycle parts, it argued that this was done as part of its overall repair/restoration service provided. During the hearing, I was referred to the decision in *Reber*³ and also a decision of the Registry in *Memory Opticians*⁴. Both decisions found that there was no genuine use. I was invited to follow suit and find that there is no genuine use of the Indian trade mark in these proceedings.

19. The RP's position was that it accepted that use made of the trade mark had been modest as regards new build motorcycles and motorcycle parts. It further accepted that the market in question was an aspect that must be considered. However, it reminded that the test to be applied is multifactorial and that the whole picture, bearing in mind all of the evidence filed, must be considered in deciding whether or not there is genuine use.

Conclusion – Non use

20. In assessing the evidence in these proceedings, I bear in mind both that filed during the evidence rounds and the information and further clarity provided by Mr Forbes during cross examination. It is clear that the evidence filed does suffer from a number of defects. Turnover figures are provided, but it unclear as to how they should be interpreted. During cross examination, Mr Forbes accepted that restoration services form a "good part" of his business, but was

³ Paul Reber GmbH & Co KG v OHIM C-141/13P

⁴ Decision BL O/539/14

unable to be more specific. It is unclear as to what proportion labour costs form part of the overall figures provided. These are the low points of the evidence from the RP and this has presented difficulties for the Tribunal. What is the use in respect of? Is it restoration services, for which it is not registered or does the evidence convincingly demonstrate use also in respect of motorcycles and parts and fittings thereof in Class 12?

21. What the evidence does achieve is the building of a picture: Mr Forbes and his companies have clearly been using the INDIAN trade mark for a number of years in the United Kingdom. The question is whether the extent of the use made is sufficient to allow the Tribunal to find that it qualifies as genuine use. In terms of the relevant period in these proceedings, namely 20 January 2010 to 19 January 2015, a number of invoices have been provided. Bearing in mind the additional clarity provided during cross examination, it is noted that the invoices are in respect of sales of motorcycle parts and new build motorcycles. In respect of the latter, it is accepted that in a particular year, the selection of invoices provided do not always include a complete motorcycle build. However the testimony of Mr Forbes, in that these are a selection of invoices rather than the total available is also accepted.
22. The evidence provided includes photographic evidence of both motorcycle parts and complete, finished motorcycles (the latter shown in flyers and the Telegraph article). The photographs of the parts was the subject as intense questioning during cross examination as already described. I have already found the answers provided by Mr Forbes to be not unreasonable. As such, these photographs are accepted as being reliable indicators of use.
23. The evidence provided also includes enquiries from customers in respect of price schedules, catalogues and other information.
24. There is evidence of promotion and advertising activity: attendance at motorcycle shows and rallies with copies of flyers distributed (dated 2011 and 2014) included in Exhibits AF10 and AF11. It is noted that one of the rallies attended is Goodwood Revival in September 2014 which attracts a very large attendance of around 140,000 visitors. There is also evidence of promotional activity in the form of offering a complete INDIAN motorcycle as a prize as part of the James May Telegraph article as already described above. That such an article appeared in a national newspaper in 2010 is notable. Not as evidence of genuine use in isolation, but as part of establishing a fuller picture of activity during the relevant period.
25. There is also evidence that at least for some of the relevant period, Mr Forbes did operate a website. This website is not in operation any more but the explanation given during cross examination is not unreasonable. Word of mouth and more traditional methods of drumming up new business are relied upon.
26. In assessing the evidence of use provided, the decisions in *Reber* and *Memory Opticians* have been taken into account. In the former, praline chocolates judged against the chocolate market in Germany as a whole were

considered. This amounted to 40-6- kg per annum, from a single shop. Further, the mark did not appear on the goods themselves. In the latter, claimed use was in respect of spectacles at large. In reality, the sales were in respect of 41 pairs per year in three towns in roughly the same geographical area.

27. It is considered that these cases can be distinguished on their facts from the circumstances in these proceedings. Bearing in mind all the information available to me: most importantly the evidence in these proceedings, but also the witness statement of Mr Forbes from previous proceedings and the resulting decisions, it is clear that the use over a number of years by Mr Forbes and his companies has been significantly greater reaching in duration, extent and geographical scope than that in both *Reber* and *Memory Opticians*. There has also been consistent and regular promotion of the INDIAN motorcycle product in evidence. There is little question that Mr Forbes' business, in the context of the motorcycle industry as a whole is a very small fish. Having said that, the use can also be described as steady. It is also noted that this particular business has never been (and presumably never will be) aimed at the motorcycling market/industry as a whole. Rather, it has always been aimed at enthusiasts for this particular type of vehicle. Further, the relevant industry/market is only one factor to consider. It is considered that the use shown is consistent with the essential function of a trade mark, it is not merely token, it is for real commercial exploitation of the mark. Finally, I am reminded that even minimal use can qualify as genuine use and that the use requirement in trade mark proceedings is not designed to assess commercial success or to restrict protection only to those marks which have been used on a large scale commercially. Indeed such a requirement would be wholly unfair.
28. Bearing in mind all of the aforesaid, it is considered that the use shown by RP is, on balance, sufficient to qualify as genuine use. As to whether the use shown is in respect of restoration services rather than motorcycles and parts thereof, it is considered that the evidence filed demonstrates that services of this nature on the one hand and goods on the other are inextricably linked. To carve up such services and related goods appears to be an inappropriate exercise. During cross examination Mr Forbes described what he does as a "complete service", the nature of which depends on the particular customer requirement. However, it is not unreasonable to conclude, based on the evidence, that restoration of old original motorcycles will include the production and sale of relevant parts. Further, there is evidence both of the build and sale of new motorcycles and the production and sale of motorcycle parts during the relevant period. Even in erring on the side of caution here, it is considered that there is enough evidence filed to conclude that genuine use has been demonstrated in respect of the Class 12 goods.
29. As such, the Application for Revocation fails in its entirety.

COSTS

30. The registered proprietor has been successful and is entitled to a contribution towards its costs. I am minded to apply the usual scale of costs. At the Hearing, the parties indicated that they were each content with this. However, the registered proprietor has fourteen days from the date of this decision to file a schedule of costs in respect of expenses relating to the cross examination only. That is, those costs incurred by Mr Forbes in attending the Hearing: travel, accommodation, food etc.

31. A supplementary decision on costs as a whole will then be issued.

Dated this 16th day of March 2016

**Louise White
For the Registrar,
The Comptroller-General**