

**TRADEMARK ACT 1938 (AS AMENDED)  
AND TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 1589440 BY  
T & R GENERATORS LIMITED (TRADING AS CRUSADER POWER LIMITED)  
TO REGISTER THE MARK CRUSADER IN CLASS 7**

**and**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 43736 BY KOYWA ENGINEERING LTD**

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**DECISION**

On 28 October 1994 Crusader Power Ltd applied to register the mark CRUSADER for a specification of goods reading "electric generators and parts and fittings therefor; all included in Class 7". The application is numbered 1589440. The application was subsequently assigned to T & R Generators Ltd (trading as Crusader Power Ltd). The circumstances underlying this assignment are explained in the decision.

On 15 December 1995 Koywa Engineering Ltd filed notice of opposition to this application. In an accompanying statement the opponents say

"The application based on the honest concurrent use from 1980 of the name 'CRUSADER' is basically flawed and invalid.

Crusader Power Ltd, company registration number 1780671 changed its name from Burnett & Co (Hull) Limited on 18 March 1993 and was therefore not entitled to use the name 'CRUSADER' prior to this date."

The applicants filed a counterstatement suggesting that the above statement contained no valid grounds of opposition and indicating that they would adduce evidence of use of the mark. The applicants also ask for an award of costs in their favour.

Both sides filed evidence but neither side has asked to be heard. Acting on behalf of the Registrar and after a careful study of the papers I give this decision.

By the time this matter came to be decided, the Trade Marks Act 1938 had been repealed in accordance with Section 106(2) and Schedule 5 of the Trade Marks Act 1994. In accordance with the transitional provisions set out in Schedule 3 to that Act however, I must continue to apply the relevant provisions of the old law to these proceedings. Accordingly all references in the later parts of this decision are references to the provisions of the old law.

## Opponents' evidence

The opponents filed two statutory declarations by Simon Lau Chi Tak and Victor Thomas Mercer. Mr Tak is the Managing Director of Koywa Engineering Ltd. From 1987 to 1989 he was employed by Hutchinson Boag Ltd who acted as agents for Crusader Generators Ltd in Hong Kong. His present company (Koywa) acted as agents for Crusader Generators Ltd from 1989. He describes the background to this dispute in the following terms:-

“Crusader Generators Limited [referred to by Mr Tak as “The Company”] was incorporated in 1976. The Company operated in the field of sales of diesel powered generation sets. The Company successfully operated in the United Kingdom and overseas. A proportion of such equipment was exported from the UK to Hong Kong, invariably under the trade mark CRUSADER. My Company and Hutchinson Boag acted as agents in respect of the equipment in the UK. To the best of my knowledge and belief, in the course of this business The Company ordered equipment from other separate companies whose area of specialisation lay in the field of assembling diesel generating equipment in [as?] specifically ordered by the trade.

One such company with whom The Company placed orders for assembled diesel generating equipment was T & R Generators Limited of Keens Lanes, Guildford, Surrey GU1 1BJ. This company manufactures generating sets to order. Equipment of a particular specification was manufactured and/or assembled on behalf of the company placing the order. The ordering company's data plate would be affixed to the equipment, together with any trade marks and/or logos. The equipment manufactured and/or assembled by T & R Generators Limited would carry all the necessary identifying marks/features of the ordering company and not those of the company who assembled the equipment.

In 1982 The Company placed its first order for assembled diesel generating equipment with T & R Generators Limited. The Company continued to place orders with this company until 1992. During this period, The Company sourced such equipment from other suppliers in addition to T & R Generators Limited. During this time all equipment assembled on behalf of The Company, by T & R Generators Limited, had the trade mark of The Company, namely CRUSADER, applied to it to indicate it was equipment obtained from The Company. At no time during this period in which The Company were doing business with T & R Generators Limited were T & R Generators Limited entitled to use the mark CRUSADER except in relation to equipment manufactured and/or assembled in response to an order placed by The Company.

In 1992 The Company encountered cash flow difficulties, and a petition for a Winding Up order was made. At the first meeting of creditors on 9 January 1993 Touche Ross & Company were appointed as liquidators.

Also in January 1992, [1993?] T & R Generators Limited put forward an offer to the liquidator to buy some of the assets of The Company, namely the customer list of The Company which was in the possession of the liquidators. The customer list amounted to a collection of invoices from the previous two years. This offer to purchase some of

the assets was amended by the liquidator on 4 February 1993 to include future use of the name CRUSADER. The proposed purchase did not include the entire business of The Company, and accordingly did not include the goodwill of the business. The purchase was concluded prior to March 1993.

In March 1993, T & R Generators Limited changed the name of one of their subsidiary companies from Burnett (Hull) Limited to Crusader Power Limited. In May 1993, Crusader Power Limited undertook a direct mailing exercise to target previous customers of The Company in an effort to generate business. To the best of my knowledge this “mail shot” was the first use by Crusader Power Limited of the mark CRUSADER.

Crusader Power Limited (hereinafter called “The Applicant”) filed an application for registration of the mark CRUSADER on 28 October 1994, (hereinafter called the “Application”). The Application was advertised in Journal No. 6093 on page 7401 and claimed honest concurrent use of the mark since 1980 with prior UK trade mark registration number 1266693. As a result of my knowledge of the trade and the history of the mark CRUSADER as used in relation to generating equipment I dispute the claim made by the Applicants that they have used the mark CRUSADER honestly and concurrently since 1980 as to the best of my knowledge and belief such use did not commence until 1993, with first use being in the form of a “mail shot”. As The Company, and the goodwill associated therewith had not been purchased by the Applicant, nor by the parent company T & R Generators Limited, the Applicant cannot claim to have acquired the goodwill and reputation attached to the mark CRUSADER generated by The Company’s use of the mark, and therefore are not in a position to claim benefit from the prior use made of the mark CRUSADER by The Company. I therefore submit that the Application offends against Section 12 of the Trade Marks Act 1938 by virtue of the existence of registration number 1266693. Furthermore, I submit the Application was not filed in good faith and is therefore not entitled to the protection of the Courts nor should it be recognised by the Registrar of Trade Marks.”

Mr Mercer, the second declarant, is a Director of Delta Power Ltd and formerly a Director of Crusader Generators Ltd. His evidence largely repeats Mr Tak's evidence. I do not, therefore, need to summarise it here though I should record the fact that the following documents are exhibited to his declaration:

- VTM1 - an acknowledgement for an equipment order placed by Crusader Generators with T & R Generators Ltd in March 1982
- VTM2 - a copy of a letter from the liquidators of Crusader Generators relating to T & R Generators’ purchase of assets of Crusader
- VTM3 - a copy of the change of name certificate when Burnett & Co (Hull) Ltd changed its name to Crusader Power Limited
- VTM4 - a copy of a Crusader Power Ltd letter used in mailshotting previous customers of Crusader Generators Ltd

### Applicants' evidence

The applicants filed a statutory declaration by Frederick Thomas Cowley, a director of Crusader Power Ltd, T & R Holdings Ltd and T & R Generators Ltd

The following paragraph from Mr Cowley's declaration suggests that there is a large measure of agreement as to the background circumstances -

“Between 1982 and 1993 T & R Generators Limited manufactured electrical generators for Crusader Generators Limited. At Crusader Generators Limited's instructions T & R Generators Limited applied labels and plates to the generators using the mark CRUSADER. The generators were then sold by T & R Generators Limited to Crusader Generators Limited and thereafter the generators were sold by Crusader Generators Limited, principally to the export market of Hong Kong and China, but also elsewhere including, for example, Pakistan. The mark CRUSADER was synonymous with a generator manufactured by T & R Generators Limited and then sold to Crusader Generators Limited. No issue is taken that between 1982 and 1993 the mark CRUSADER was the property of Crusader Generators Limited.”

He provides further information as follows on the circumstances surrounding the winding up of Crusader Generators Ltd.

“By way of an order of the Birmingham County Court dated 9 November 1992 it was ordered that Crusader Generators Limited be wound up under the provisions of the Insolvency Act 1986. There is now produced and shown to me marked “FTC 2” a copy of the Court order. The liquidator appointed in respect of Crusader Generators Limited was Touche Ross. By an agreement between T & R Generators Limited and the Liquidator, evidenced in writing by an invoice dated 17 March 1993 and a letter dated 17 March 1993 (both of which were exhibited as JWC1 to the Statutory Declaration of John Clinkske dated 23 May 1995), and a further letter dated 4 February 1993 which is now produced and shown to me marked “FTC 3” it was agreed that the liquidator would transfer such rights as Crusader Generators Limited (in liquidation) had to use the mark CRUSADER throughout the world. Those rights were purchased and accordingly transferred to T & R Generators Limited.”

Subsequently Crusader Power Ltd (previously Burnett & Co (Hull) Ltd) commenced exporting electrical generators manufactured by T & G Generators Ltd to, inter alia, Hong Kong and China.

Mr Cowley also exhibits (FTC 4) a bundle of purchase orders dated between 2 August and 22 December 1993 placed by Koywa Engineering (the opponents) to Crusader Power for the supply of CRUSADER generators. As a result he says that Mr Tak has sworn a declaration in opposition to the application for registration of the mark which his (the opponents) own company uses to order goods. In a separate declaration Mr Cowley exhibits a copy of the statutory declaration filed (during the examination process) by John William Clinkske in support of the application and the claim to honest concurrent use.

I will refer to this evidence to the extent necessary in reaching my decision.

### Opponents' evidence in reply

The opponents again filed evidence by Victor Thomas Mercer. To a certain extent this evidence reiterates points already made and I do not intend to repeat it. He comments also on Mr Cowley's declaration. His main points are

- the application of a third party's trade mark to manufactured goods gives no rights to T & R to the goodwill under that mark
- he exhibits further copy correspondence from the liquidator (VTM3 and 4). He points out that no mention is made of goodwill being transferred
- he says that researches at Companies House suggest that Crusader Power Ltd has not traded in the four years up to 31 December 1996
- in relation to the orders placed by Koywa Engineering Ltd with Crusader Power Ltd he says that this was honouring existing tenders. Moreover, the orders were placed by an employee of Koywa who subsequently set up a company to act as agents for Crusader Power. No further orders have been placed by Koywa since 22 December 1993

In relation to Mr Clinkskel's declaration he makes a number of observations. Briefly

- he questions the basis on which Mr Clinkskel was able to make his declaration as the only copy of the 'full records' of Crusader Generators Ltd are in his (Mr Mercer's possession). Separately (VTM2) he exhibits his own analysis of purchases by Crusader Generators from T & R
- he comments particularly on Mr Clinkskel's suggestion that Crusader Power Ltd is successor in title to Crusader Generators and acquired the goodwill in the mark CRUSADER. Also exhibited (VTM5) is a copy of a letter from the liquidator stating that there has been no sale of the company (Crusader Generator). As a result he says that previous use of the mark by Crusader Generators cannot be relied upon to support an honest concurrent use claim.
- he denies that the directors of Crusader Generators continued trading as the same company under the name Crusader Power Ltd (this is a different company to that within the T & R Group). He adds that a company named Viking Generators Limited changed its name to Crusader Power Limited on 26 June 1992 and commenced trading in August 1992. Due to the winding up order against Crusader Generators Limited, the directors could not continue using a company with the name "Crusader" and therefore on 27 October 1992, Crusader Power Limited underwent a name change to Delta Power Limited and that company continues to trade to date.
- he provides (VTM6) copies of further correspondence with the liquidator suggesting

that the sale of Crusader Generators' assets to T & R did not include the goodwill of this business

- he refers to a copy of a purchase order referred to in Exhibit JWC3 to Mr Clinkske's declaration and suggests by reference to the dates that it cannot be relied upon or used as evidence to demonstrate use because it is in fact an order issued by Crusader Power (the forerunner of Delta Power Ltd and not the T & R company)

- in summary Mr Mercer suggests that the inconsistencies appearing in Mr Clinkske's evidence are such that it must cast serious doubt on the evidence and it should be disregarded

#### Applicants' further evidence

Mr Cowley filed a further declaration. The purpose of the declaration is to comment on the claim that Crusader Power Ltd (the T & R company) did not trade in the four years up to 31 December 1996. He accepts that this is the case but says that T & R Generators Ltd has been trading as and under the name Crusader Power Ltd. He exhibits (FTC3) a schedule of invoices in confirmation of the point and (FTC4) a copy of the audited accounts for the year to 3 December 1997 setting out the position. Steps have been taken to assign this application to T & R Generator Ltd (trading as Crusader Power Ltd).

That completes my review of the evidence.

This is a somewhat unusual case as can be seen from the statement of grounds and evidence. Objection was raised to the application under Section 12(1) at the examination stage on the basis of an existing registered mark as indicated in Mr Tak's declaration. That registration (no. 1266693) is for the mark CRUSADER PRODUCTS and device (of a crusader) and stands in the name of Mark Anthony Pemberton. The specification covers a range of electrical goods (wires, cables, connectors etc) in Class 9. In response to the raising of the Section 12(1) objection the applicants filed evidence to establish honest concurrent use and allow the application to proceed under Section 12(2). That evidence (Mr Clinkske's declaration) has been refiled in the opposition proceedings under cover of Mr Cowley's declaration of 9 January 1998.

In line with standard Registry practice when an application is proceeding under Section 12(2), the applicants were required to send 'notice' to the registered proprietor of no. 1266693. I am not aware of any opposition having been lodged by the proprietor of that registration as a result of this process. The opposition before me has been filed by the Hong Kong company which acted as agents for Crusader Generators Ltd from 1989. In addition to Mr Tak's evidence on behalf of the Hong Kong company supporting evidence has been filed by Mr Mercer, a director of Crusader Generators Ltd. This latter company applied the mark CRUSADER to generating sets some of which were manufactured on its behalf by third parties. T & R Generators Ltd was one such supplier. In 1992 T & R petitioned for a winding up order against Crusader Generators when the latter encountered cash flow difficulties. Subsequently T & R purchased certain assets of the company from the liquidators. As a result of all this the opponents say that T & R Generators cannot pray in aid of their

honest concurrent use claim Crusader Generators' use up to 1992 because T & R had not acquired the goodwill of that business. That at least seems to me to be the nub of the objection encapsulated in the statement of grounds. I note that Mr Tak at the end of his declaration also claims bad faith on the part of the applicants in filing their application. I cannot see that bad faith was expressly pleaded or in practice that it raises any different issues than are already before me in relation to the challenge to the validity of the applicant's Section 12(2) claim.

Section 12(2) reads:

“12. - (2) In the case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the Court or the Registrar may permit the registration by more than one proprietor in respect of:-

- a. the same goods
- b. the same description of goods or
- c. goods and services or descriptions of goods and services which are associated with each other,

of marks that are identical or nearly resemble each other, subject to such conditions and limitations, if any, as the Court or Registrar, as the case may be, may think it right to impose.

The main matters for consideration under Section 12(2) were laid down by Lord Tomlin in the PIRIE case 1933 RPC 147. They are:

- (i) the extent of use in time and quantity and the area of trade;
- (ii) the degree of confusion likely to ensue from the resemblance of the marks, which is, to a large extent, indicative of the measure of public inconvenience;
- (iii) the honesty of the concurrent use;
- (iv) whether any instances of confusion have been proved;
- (v) the relative inconvenience which would be caused if the mark in suit was registered, subject if necessary to any conditions and limitations.

In the normal course of events an applicants' use will be tested against the opponents' position using the PIRIE criteria. As the proprietor of the registration in the face of which honest concurrent use is claimed is not a party to these proceedings I have no information before me in relation to no. 1266693. Thus I cannot apply the PIRIE test in the normal fashion. The opponents' objections can, however, best be described as bearing on points (i) and (iii).

On the basis of the evidence I regard it as common ground between the parties that the applicants manufactured goods for Crusader Generators to which the CRUSADER mark was applied at the instigation of Crusader Generators. The mark was thus the property of Crusader Generators until such time as it was disposed of by the liquidator. Precisely what was acquired from the liquidator by T & R and the position in law that arises are disputed.

The correspondence with the liquidator emerges in a piecemeal fashion in the evidence. It seems that the liquidator was appointed on 6 January 1993 and set about securing the sale of



Crusader Generator's assets. The CRUSADER name and customer list were part of these assets and by letters dated 29 January 1993 and 4 February 1993 the liquidator invited bids from interested parties. I note that the letter of 4 February (Exhibit FTC3) contains the following:-

"I refer to my letter dated 29 January 1993 in relation to the above addressed to all interested parties. It has quite reasonably been pointed out to me that the customer list alone may be of only limited value, bearing in mind that the products have been marketed under the name "Crusader" in many parts of the world. Accordingly any successful purchaser will be accorded such rights as the company had to the [words obscured in photocopied exhibit] Crusader name throughout the world."

By means of a letter dated 17 March 1993 to the Registrar of Companies (exhibited as part of FTC2) the liquidator confirms that

"I have now sold certain of the company's assets to T & R Generators Limited and as part of the sale I hereby confirm that I have no objection to that company or any of its subsidiary or associated companies changing their name to Crusader Power Limited."

In response to an enquiry from Koywa the liquidator later indicated (in his letter of 1 November 1994) that

"I would confirm that T & R Generators Limited, having provided the highest bid by the set deadline, purchased the rights for the use of the above company's customer list and use of the name "Crusader" insofar as the company in Liquidation was able to provide this."

In a further letter to Koywa dated 22 November 1994 the liquidator says

"No mention of the word goodwill is included in the sales document which refers only to "the rights for the use of the company's customer list and the use of the name "Crusader" insofar as the company in liquidation is able to provide these."

It is thus reasonably clear that T & R Generators purchased the CRUSADER name and customer list. The correspondence from the liquidator leaves me in some doubt as to the position in relation to the goodwill of the business of which the name or sign CRUSADER was the outward manifestation. I assume that the "sales document" referred to in the evidence is the liquidator's invoice L001. If there are other sale or transfer documents they are not before me. Given the apparent absence of any express reference to goodwill and, absent clarification of the position, it seems to me that the new proprietors (T & R) needed to exercise some care in how they represented their position. References in the evidence to predecessors in title do not always properly distinguish between the name, the business and the company itself. That the name CRUSADER was purchased is not, I think, in doubt. It is equally clear that there was no sale of the company, Crusader Generators Ltd (the liquidator's letter of 12 September 1995). Mr Cowley appears to suggest that T & R did acquire the goodwill of the business. He says that "the opposition in the Registry is currently incorrectly formulated in that the proper applicant for registration ought to be the true owner of the

goodwill in the mark CRUSADER which, on Crusader Power Limited's case, must be the purchaser of the goodwill in the CRUSADER trade mark or name". On the face of it this seems difficult to reconcile with the statement in the liquidator's letter of 22 November 1994 recorded above and requires further consideration.

Under Section 22 of the Trade Marks Act 1938 registered trade marks may be assigned or transmitted either with or without the goodwill of a business. Section 22(3) of the Act deals with the position of an unregistered trade mark where it is being used in the same business as a registered trade mark and is to be assigned or transmitted at the same time. Kerly's Law of Trade Marks (Twelfth Edition) contrasts this position with that of an unregistered trade mark which is not linked to a transfer involving a registered mark (the position with the CRUSADER mark)

13-12 "Unregistered marks are assignable with the same freedom as registered if, and only if, they are assigned together with - at the same time and to the same assignee as - registered marks, in the conditions laid down by section 22(3). In other cases, the common law rules (corresponding, as has been observed, to those of the 1905 Act for registered marks) continue to apply."

The reference to the continuation of the common law rules and the position under the earlier Act is dealt with in the following extracts from 13-02 and 13-06 respectively

"Thus, under the previous Acts and at common law, a trade mark and the goodwill of the business concerned had to be assigned together."

and

"Under the 1905 and earlier Acts, the rules for assignment were assimilated to those for common law marks; that is, a registered trade mark was made assignable or transmissible only in connection with the goodwill in the business concerned in the goods for which it had been registered."

As the CRUSADER mark was a common law mark it seems to me that, on the strength of the above passages from Kerlys, (and in the absence of any challenge to the effectiveness of the sale transaction itself) that sale must have been with the goodwill of the business and that this was impliedly the case notwithstanding the absence of any reference in the sale document. (I note that in *The Law of Passing-Off* by Christopher Wadlow it is said at 2-66 in relation to the transmissibility of goodwill that "an assignment of goodwill does not have to be in writing or any particular form, and need not mention goodwill by name"). If that is the case then the liquidator's letter of 22 November 1994 must be read as a simple statement of fact (ie that it was not specifically mentioned) rather than meaning that goodwill was not included in the transaction. As this case has not been the subject of a hearing no authorities have been brought to my attention or submissions made that suggest I should take a contrary view. On the other hand there is support for the proposition that goodwill was transferred in as much as the applicants purchased not merely the name CRUSADER but the customer list that formed part of the business conducted under the mark. The extract from the liquidator's letter of 4 February 1993 referred to above acknowledges the importance of the customer list and the

fact that the name CRUSADER would be of limited value in itself if not linked in this way to the underlying business. To the extent therefore that the issue of goodwill is relevant (or that it is the subject of further consideration in the event of an appeal) I take the view that the goodwill of the Crusader Generators business did pass to T & R Generators along with the name CRUSADER.

I go on to consider the effect of the transfer of ownership on the honest concurrent use claim. Kerly's Law of Trade Marks says in relation to Section 12(2) at 10.17

“In deciding cases under this section, the tribunal will consider the public interest as well as the rights of the applicants *inter se*, and, unless the public are protected, will not give effect to an agreement for concurrent registrations of identical marks, at all events in the absence of special circumstances.”

The Section is thus concerned not just with the rights of the respective parties but also the public interest. The PIRIE criteria ((ii) and (iv)) confirm that actual confusion or the potential scope for confusion are key considerations. The purchasing public, however, does not generally concern itself with issues of underlying ownership of marks and in fact will often be unaware of the identity of the owner of a brand name. It is for that reason that the Registry has long taken the view that it is the fact of use that is important. The point is brought out in the following extract from Chapter 12 of the Work Manual (relating to the 1938 Act) which sets out guidance for Registry examination staff when considering evidence of use

“12-23 Change of ownership during period of use

If there have been changes in the ownership of the mark during the period of use these should be stated in the main declaration together with the dates of assignment. Where a mark is shown to have been assigned without the whole of the goodwill of the business in which it was in use, the use by the predecessor in title cannot be taken into account for the purpose of proving factual distinctiveness, since it could well be that the reputation for the goods still rests with the Assignor (see the 4711 case, 70 RPC 254, lines 27 - 28). *However, where evidence is filed purely to prove concurrent user under Section 12(2) changes in ownership of a mark are not material since it is the fact of continuous use which is important, not by whom that use has been made.*” (my emphasis)

Accepting, as I do, that T & R are successors in title to the name CRUSADER and the goodwill of the business it seems to me that they are entitled to have use of that name by the previous owners taken into account for the purposes of assessing their claim under Section 12(2). The fact is that the purchasing public have become familiar with the mark in relation to the goods at issue such that there is no tangible risk of confusion with the cited mark (No. 1266693) - the circumstance which prompted the filing of evidence in the first place.

There is a further reason why I consider the applicants' claim to be valid. In his evidence for the opponents Mr Mercer exhibited at VTM4 a copy of a letter issued by Crusader Power Ltd (the T & R company) to previous customers of Crusader Generators. The letter is reproduced for convenience in the Annex to this decision. It seems to me to be a perfectly fair and frank statement of the position and would quite properly be construed as indicating an intention to

keep an established mark in the public eye. In all the circumstances, therefore, I see no reason in principle why the applicants should not be entitled to benefit from the honest concurrent use provisions of Section 12(2). Even if on appeal I am found to be wrong in relation to the issue of goodwill it seems to me that the letter in the Annex to this decision is a very clear public statement that the applicants intend to continue a trade which had previously been conducted by Crusader Generators Ltd. There is no indication that there was ever any confusion between the Crusader Generator business and that of the cited mark. In practice that mark is registered in a different Class in respect of goods for which there is in my view only a marginal risk of confusion in the first place. I see no reason why there should be any greater risk of confusion as a result of a continuation of that trade by a different company. Taking these factors into account I would hold that, even if goodwill did not pass, the past trade by Crusader Generators Ltd represents an "other special circumstance" within the meaning of the Section that entitles the applicants to registration.

The opponents' objections have centred on the issues of goodwill and transfer of ownership of the name dealt with above. I must also, of course, be satisfied that the claim has been substantiated in terms of the details of use. Apart from the issues dealt with above the opponents have challenged one particular piece of evidence contained within Mr Clinkske's declaration, namely the 11 September 1992 order to F G Wilson (Engineering) Ltd placed by Crusader Power Ltd (the forerunner of Delta Power Ltd). As the document predates the winding up order against Crusader Generators I cannot see what connection it has with Mr Clinkske's company or for that matter on what basis Crusader Power Ltd (later Delta) issued the order. No further explanation has been offered by either side. Insofar as it is intended to support the applicants' use claim I give it no weight. More relevantly perhaps, Mr Mercer suggested in his evidence that the applicants may not have shown the full sales records and produced his own version of Crusader Generators' sales both in terms of goods purchased from T & R and from other sources. In my view nothing of substance turns on the point. Both sides agree that Crusader Generators made substantial sales under the mark CRUSADER amounting to £2.5 million for the years 1982 to 1992 according to Mr Clinkske's figures or £2.7 million (from T&R) if Mr Mercer's figures for the same period are taken. In the circumstances I do not find it necessary to give a full breakdown of the figures or an analysis of Mr Clinkske's declaration in support of the application. I am satisfied too that, allowing for the period when the liquidator was involved, use has been continuous. Although it would appear that much of the output goes to export markets, Exhibit JWC2 and the liquidator's statement in Exhibit VTM3 confirm that UK sales have taken place as well. In short I find that the honest concurrent use claim has been substantiated (strictly from 1982 rather than 1980) and the application should be allowed to proceed to registration.

As the applicants have been successful they are entitled to a contribution towards their costs.  
I order the opponents to pay the applicants the sum of £535.

Dated this 15 day of September 1999.

M REYNOLDS  
For the Registrar  
the Comptroller General



ANNEX



## CRUSADER POWER LTD.

Kenris Lane, Guildford, Surrey GU1 3JS, England  
Telephone: Guildford (0493) 236666/7 Telex: 859228 Fax: (0493) 236610

Date: May 1993

Your Ref:

Our Ref: JWC/mh

Dear Sirs

### CRUSADER GENERATORS LTD

At a meeting of the Creditors (6th January 1993) the above company was declared insolvent by the "Official Receiver". Only two assets were identified, one of which was the name "Crusader" with the customer list.

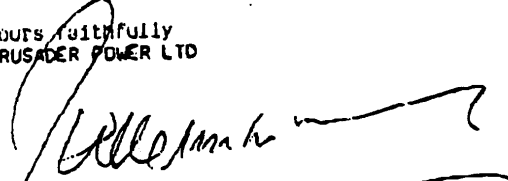
T & R Generators Ltd a member of this group - have for several years built and supplied generating sets to "Crusader" for re-sale. As we know the product we believe the name CRUSADER will be of importance to those customers who may wish to continue promoting the name in their markets.

For that purpose we purchased the name with the list so that we can now offer you continuity of product and supplies.

We are pleased to enclose a copy of the T & R brochure and data sheets. As you would expect prices will be competitive as a "direct" relationship which you may now wish to pursue with us, will exclude a "middle" trade profit margin.

In due course literature in the name "Crusader" will be printed, meantime we shall welcome your enquiries and trust that we can be of service to you.

Yours faithfully  
CRUSADER POWER LTD

  
John Clinkscales

Eric

A member of the T&R Group of Companies  
Manufacturing Electrical Engineers  
Registered Office: Woodbridge Meadows, Guildford, Surrey GU1 1BJ, England  
Registered No. 1780671