

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK REGISTRATION
No. 1518192 IN THE NAME OF NALLI CHINNASAMI
CHETTY (A PARTNERSHIP)**

AND

**IN THE MATTER OF AN APPLICATION FOR REVOCATION
THERE TO UNDER No. 10933 BY NALLI SAMBBASIVAM**

TRADE MARKS ACT 1994

**IN THE MATTER OF Trade Mark Registration No. 1518192
in the name of Nalli Chinnasami Chetty (A Partnership)**

AND

**IN THE MATTER OF an Application for Revocation thereto
under No. 10933 by Nalli Sambbasivam**

BACKGROUND

1. On 24 June 1999, Nalli Sambbasivam of Mumbai, India, applied to revoke registration Nos 1518191 and 1518192 standing in the name of Nalli Chinnasami Chetty (A Partnership) of Madras, India.
2. I note from Trade Marks Registry records that registration No 1518191 (the trade mark registered in respect of the goods set out below in Class 24), was merged with registration No. 1518192. The applicants' pleadings were subsequently amended to take account of that.
3. Thus, the trade mark in suit is as follows:



and it stands registered for specifications of goods reading:

Class 24: Sarees, dhotis, lungies, handkerchiefs, shirtings, suitings, materials for making up into dresses; blankets, shawls, bed and table covers, bed spreads, bed sheets, towels and woollen piece goods; all included in Class 24.

Class 25: Articles of clothing for men and women; all included in Class 25.

4. Registration No 1518191 was filed on 10 November 1992 and the registration procedure completed on 17 December 1993. (Registration No 1518192 was filed on 10 November 1992 and the registration procedure completed on 21 January 1994).

5. The grounds of the application for revocation are set out as follows:

“1. Under Section 46(1)(a) of the Trade Marks Act 1994 that within the period of five years following the date of the completion of the registration procedure it has not been

put to genuine use in the United Kingdom, by the proprietor or with their consent, in relation to the goods for which it is registered and there are no proper reasons for non-use.

2. In view of the merger of registered trade marks Nos 1518191 and 1518192 and in the event that the application for revocation be refused by the registrar, the applicants request part-cancellation in respect of only some of the goods for which the trade mark is registered in accordance with Section 46(5) of the Trade Marks Act 1994.”

6. On 8 October 1999, the registered proprietors filed a counterstatement in which the grounds for revocation are denied. The following extracts from the registered proprietor’s counterstatement are relevant:

“2. Use has been made of the marks the subject of the challenged registrations, on goods with the specification as registered, within the period specified in s. 46(1)(a) and from then to a date 3 months prior to the application for revocation.

3. Use has been made of the marks the subject of the challenged registrations, on goods with the specification as registered, within the terms of s. 46(2) and within the period specified in s 46(1)(a) and from then to a date 3 months prior to the application for revocation.”

7. Both sides seek an award of costs. Both sides filed evidence. The matter came to be heard on 8 January 2002. The registered proprietors were represented by Mr Richard Ashmead of Kilburn & Strode, Trade Mark Attorneys. The applicants for revocation were represented by Mr James Abrahams of Counsel instructed by Kay & Co, Solicitors.

REGISTERED PROPRIETORS’ EVIDENCE

8. This consists of two Statutory Declarations both dated 8 October 1999. The first is by Nalli K Ramanathan. Mr Ramanathan explains that he is a Partner in Nalli Chinnasami Chetty (the Partnership). He confirms that he is authorised to make his declaration on behalf of the Partnership which also includes Nalli Kuppuswami Chetty and Nalli Viswanath. Mr Ramanathan states that he has a detailed knowledge of the sales activities of the Partnership and of its associated business under the NALLI trade mark.

9. Mr Ramanathan gives some background to the Partnerships’ business in India and explains that there are a number of business entities using the NALLI trade mark with the consent of the Partnership. Among them is Nalli Silk International of New Delhi and Nalli Silk Sarees Limited based in the United Kingdom. All of these businesses have, says Mr Ramanathan, the consent of the Partnership to make use of the NALLI trade mark in relation to the goods of, or within, the registration. Nalli Silk Sarees Limited in the United Kingdom is independently owned but uses the NALLI trade mark with the specific agreement of the Partners.

10. Mr Ramanathan explains that although not a large part of the business, they do receive in India a number of enquiries for purchase of NALLI fabric goods (particularly sarees) for

supply direct to customers in the United Kingdom. Enquiries are referred to the regular exhibitions/sales of NALLI products run in England by Nalli Silk Sarees Limited. Mr Ramanathan states that goods under the NALLI trade mark have been sold into the United Kingdom since the date on which the registration in suit was granted and also within the period 24 March 1994 to 24 March 1999. The following exhibits have been filed in support of this contention:

- NKR1 - consists of sample labels bearing prices in Sterling as applied to NALLI sarees sold in the United Kingdom. These labels which bear the term Nalli Silk Sarees are, says Mr Ramanathan, applied to the sarees themselves in the United Kingdom prior to their sale. He adds that when the sarees are exported to the United Kingdom they are sent with a similarly printed label, priced in rupees but also bearing the NALLI trade mark in the stylised form of the registration. These labels are, he says, removed in the United Kingdom and replaced by the labels exhibited prior to sale in this country.
- NKR2 - consists of a range of documentation intended to show sales of sarees and “made ups” (the latter of which Mr Ramanathan explains is a term used in the business to refer to cushion covers, place mats and the like) in the United Kingdom. Mr Ramanathan explains that the various goods were sent by Nalli International Inc of Madras initially to Nalli International Inc in New Malden (that is indeed what the invoices show) and later to Nalli Silk Sarees Ltd.
- NKR3 - consists of photocopies of press advertisements relating to exhibitions and sales conducted in the United Kingdom in September 1997 and March 1998 in relation to sarees sold under the registered trade mark. Also included is a photocopy of an invoice dated 20 September 1997, from the publisher of The Tamil Times newspaper which is published and circulated in the United Kingdom and in which the advertisement for the September event is said to have appeared.
- NKR4 - consists of a selection of photocopies of invoices for made up fabric goods, namely cushion covers, placemats, stoles and scarves sold by Nalli Silk International of New Delhi, to the following companies: The Pier (Retail) in Abingdon, Lester Group Plc in Wembley, The London Scarf Company in Blackfriars London and Cedar Forwarding Services also of London.

11. The second Statutory Declaration is by Mrs Vethy Kailaya-Vasan. Mrs Vasan states that she is the Company Secretary of Nalli Silk Sarees Limited which is an English company. This company is, says Mrs Vasan, authorised by Nalli Chinnasami Chetty of Madras, India (the Partnership) and registered proprietors in these proceedings to trade in the United Kingdom in fabric goods under the NALLI trade mark. She explains that Nalli Silk Sarees Limited is not owned or financially controlled by the Partnership; she is however authorised to make her declaration by the Partnership on behalf of the Partnership and Nalli Silk Sarees Limited.

12. Mrs Vasan states that Nalli Silk Sarees Limited purchases NALLI sarees, dress materials and shawls from the Partnership or its related businesses for sale in the United Kingdom.

Exhibit VKV1 to Mrs Vasan's declaration contains a range of documents, the most relevant of which are copies of a blank page of a sales receipt book used by Nalli Silk Sarees and showing the registered trade mark and advertisements relating to exhibitions/sales of silk and cotton sarees and which show the registered trade mark. The notices relate to events held in New Malden in September 1997, March 1998 and July 1999, in Nesaden in 1997 and Wembley in 1998.

13. Mrs Vasan states that the business of Nalli Silk Sarees Limited is essentially the import and retail sale in the United Kingdom (direct to the public) of NALLI sarees, dress fabrics and shawls. Such sales are made through the company's exhibitions/sales held roughly every six months at various venues in the United Kingdom. She estimates that most of the exhibitions/sales sell approximately £10k of NALLI branded goods. Exhibit VKV2 says Mrs Vasan, consists of sample labels applied to NALLI sarees sold by her company in the United Kingdom. These are similar to the labels exhibited and described by Mr Ramanathan in his evidence.

14. Mrs Vasan says that she has been personally involved with, and attended, most if not all of the NALLI exhibition/sales held in the United Kingdom in the last few years. She says that she was personally involved in and present at the exhibitions and sales to which the advertisements in exhibit VKV1 relate and confirms that the NALLI trade mark appears prominently at the stands/stalls her company uses at these exhibitions/sales. Mrs Vasan estimates that these NALLI exhibitions/sales have attracted approximately 600 customers adding that she has been present when customers have made purchases of NALLI branded goods.

APPLICANT'S EVIDENCE

15. This consists of a Statutory declaration dated 15 May 2000 by the applicant for revocation, Nalli Sambbasivam. Mr Sambbasivam explains that he is the sole proprietor of Messrs Nalli's Silks Sari Centre of Mumbai, India. I do not propose to summarise Mr Sambbasivam's declaration. It outlines the history of the applicant's business and provides information on disputes that have arisen between the respective parties in various jurisdictions (none of which appear to be relevant to these proceedings). It also contains a detailed critique of the evidence provided by Mr Ramanathan and Mrs Kailaya-Vasan.

REGISTERED PROPRIETORS' FURTHER EVIDENCE

16. This consists of a Statutory Declaration dated 2 January 2001 by Dr Nalli Kuppuswami Chetti. Dr Chetti explains that he is a senior partner in Nalli Chinnasami Chetty (the Partnership) adding that he is authorised to make his declaration on the Partnership's behalf. By reference to the declaration of Mr Ramanathan, Dr Chetti confirms that businesses controlled by the registered proprietors have exported goods within the scope of the registration to the United Kingdom during the period March 1994 to March 1999. These goods were, says Dr Chetti, exported to the United Kingdom for onward retail sale by the importers as NALLI branded goods. He confirms that sometimes the goods bear the NALLI trade mark in block capitals, but adds that in most if not all cases the goods are imported into

the United Kingdom with a label and/or supporting documentation showing the stylised version of the NALLI trade mark.

17. Dr Chetti states that he has read the statutory declaration of Mrs Vasan and confirms the contents to be true from his own knowledge of the circumstances of the Partnership's sales of NALLI branded goods in the United Kingdom. Dr Chetti adds that in his view Mrs Vasan's evidence is consistent with and complementary to that of Mr Ramanathan and that together they show that the stylised version of the NALLI trade mark has been put to genuine use in the United Kingdom by the Partnership in relation to the goods for which it is registered through commercial entities which are independent of and have the consent of the Partnership.

18. Dr Chetti provides further documentation in support of the registered proprietors claim to use of the mark. These consist of copies of completed sales receipts (NKC1), a list of cheques he says were received at a typical sale of NALLI branded goods in the United Kingdom (NKC2), a number of pages from an attendance record completed by or on behalf of people attending a NALLI goods sale in the United Kingdom during the relevant period (NKC3), and a copy of a VAT refund made to the Partnership for goods which were unsold and re-exported after one of the sales mentioned above (NKC4). He goes on to say that during the relevant period, sales of NALLI branded goods have taken place in September 1997, June 1998 and September 1998 (July 1999 is also mentioned but is outside the relevant period for the purposes of this action).

19. Dr Chetti confirms that any use made by Nalli Silk Sarees Limited of the NALLI trade mark is and has throughout been with the consent of the Partnership. He adds that there is an agreement in place between himself and Mr G Jagan Mohan permitting the latter to incorporate Nalli Silk Sarees Limited as a limited company in the United Kingdom to enable the development of sales of the Partnership in this country. A copy of the agreement dated 1 March 1997 is provided as exhibit NKC5. The remainder of Dr Chetti's declaration is in answer to the applicant's comments relating to the history of the parties and their disputes in other jurisdictions. I agree with Dr Chetti when he says "I fail to see how this is relevant to this application for revocation....." and do not propose to summarise the remainder of Dr Chetti's declaration.

APPLICANT'S EVIDENCE-IN-REPLY

20. This consists of a further Statutory Declaration dated 9 April 2001 by the same Nalli Sambbasivam mentioned above. It consists of submissions and I do not consider it necessary to summarise the content.

DECISION

21. This action is brought under the provisions of Section 46(1)(a) which states:

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

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

22. Mr Ashmead first of all submitted that as the applicants' case was based upon Section 46(1)(a) and as they had made their application well after the date five years after the completion of the registration period (in respect of each of the two registrations) had expired the attack was bound to fail and should be dismissed. In his view the Act at Section 46(1)(a) and (b) defines two distinct five year periods and thus it is incumbent upon a would be applicant to pick the right one; particularly as to fall within sub-section (a) required very precise timing, ie an application must be filed at the end of the five year period, defined in the Section, as that following the completion of the registration procedure.

23. Mr Abrahams for his part submitted that if he claimed that there has been no use ever, then he was allowed to rely on Section 46(1)(a). Any use of the registered trade mark after the period specified could be taken into account in the application of Section 46(3). There was nothing in the statute which gave any suggestion that Section 46(1)(a) could not be relied upon more than five years after the registration procedure had been completed. If use had commenced after that first five year period, the registered proprietors could avail themselves of the defence set out in Section 46(3).

24. In my view the provisions of Section 46 of the Act, which correspond with Article 12 of the Directive (the only difference being that the Act in Section 46(1)(a) defines the five year period as from the date the registration is completed) are clear. There are two separate periods. The first in sub-section (a) which is the fixed five year period following the date the trade mark is placed on the register. The commencement of that period is determined by the administrative action of actually registering the trade mark and is not the date of registration defined in Section 40(3). The second period, in sub-section (b), is any uninterrupted period of five years, which is usually a period defined by the applicant but is often defined by litigants as the five year period up to the date of the application for revocation.

25. The provisions of Section 46(1)(a) and (b) are of course subject to the provisions of Section 46(3) which states:

"46.- (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.”

26. Taking the provisions of Section 46(1) and (3) as a whole I can see nothing in them which supports Mr Ashmead’s view that an application to revoke on the basis of Section 46(1)(a) may only be made on the fifth anniversary of the date on which the trade mark was placed in the register. Section 46(3) indicates that account may be taken of the situation after that date in determining that a trade mark should not be revoked. If a would-be litigant considers that there has been no use whatsoever of the trade mark on the goods or services for which it is registered (whole or in part) since the trade mark was placed on the register then they are perfectly entitled to use Section 46(1)(a) on its own. If the allegation is proved and there has been no use of the trade mark on the goods and services covered by the registration in that period and subsequently then there is no use upon which the provisions of Section 46(3) can be utilised by the registered proprietor.

27. That is the situation here; the applicants plead that there has been no use of the trade mark at all and therefore Section 46(3) plays no part. I refuse therefore to dismiss the action as sought by Mr Ashmead.

28. I go on to consider the substantive issues and in doing so record that Mr Ashmead on behalf of the registered proprietor was allowed time in which to make written submissions in the light of *Anheuser-Busch Inc v Budejovicky Budvar Narodni Podnik (2002) 25(2)* in IPD 25010 on which he was unsighted at the hearing. He did subsequently provide those and I have taken them into consideration reaching my decision below.

29. The most relevant statutory provisions have already been set out above. However, I do not ignore the provisions of Section 100 which states:

"100. 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."

30. The first issue is whether if there has been any use it was by the registered proprietor or with his consent. Mr Abrahams submitted that it was neither. For my part, having examined the evidence on this point, principally the evidence of Dr Chetti and the agreement he provided and referred to (and not ignoring completely the fact that this is a family dispute) I am prepared to accept that there was a direct relationship between those entities using the trade mark in the United Kingdom, particularly Nalli Silk Sarees Limited, and the registered proprietors such that the first part of the test is satisfied.

31. The questions I need therefore to answer in this case bearing in mind the pleadings of the parties are therefore:

- (i) has there been genuine use of the trade mark in suit in respect of the goods covered by the registration;
- (ii) was this use in the five years commencing 10 November 1992 when

registration number 1518191 (in respect of goods in Class 24) was placed on the register and in the five years commencing 21 January 1994 when registration number 1518192 (in respect of goods in Class 25) was placed on the register;

- (iii) was the trade mark used the one shown on the register, if not, was it nevertheless one which could claim to meet the requirements of Section 46(2).

32. The relevant authority in relation to questions (i) and (ii) is *Laboratoires Goemar v La Mer Technology Inc.* The following comments by Jacob J are relevant:

"Our Act, sensibly, explicitly requires the trade mark owner, to prove use of his mark when non-use is alleged.".

"..... I take the view that provided there is nothing artificial about a transaction under a mark, then it will amount to "genuine" use. There is no lower limit of "negligible." However, the smaller the amount of use, the more carefully must it be proved, and the more important will it be for the trade mark owner to demonstrate that the use was not merely "colourable" or "token", that is to say done with the ulterior motive of validating the registration. Where the use is not actually on the goods or the packaging (for instance it is in advertisement) then one must further inquire whether that advertisement was really directed at customers here. For then the place of use is also called into question, as in *Euromarket*.

30. I think that formulation fits exactly with what I said in *Crate & Barrel*. As a matter of commerce small sales are nonetheless sales under and so uses of the mark. The objective observing trader or consumer would so say. The absence of any purpose, other than trying to sell goods under the mark, would lead him to the conclusion that the uses were genuine."

33. The trade mark the subject of this dispute is shown below.

The image shows the word "Nalli" written in a cursive, script font. The text is slanted upwards to the right, consistent with the 45-degree angle mentioned in the text. A vertical line is drawn to the right of the word, separating it from the rest of the page.

34. It is the word NALLI represented in script form at an angle of something like 45°. The only document that I can see in the evidence which shows use of this trade mark are press advertisements for sales of sarees in New Malden, Surrey, in Neasden, North London and in Wembley in Middlesex in 1997, 1998 and 1999 respectively. In support of that Mr Ramathan has provided documentation showing the importation of sarees from Nalli International Inc in India to Nalli International Inc in the United Kingdom for sales by Nalli Silk Sarees and Dr Chetti has provided attendance records completed by or on behalf of those attending the

sales. He also provides copies of sales bills which show the word NALLI in the form as registered. On the basis of these materials, I believe that the registered proprietor has shown use of the trade mark NALLI as registered (in script form written at an angle) in the five year period following the completion of the registration procedures.

35. In reaching that view I dismiss Mr Abraham's submissions that the press advertisements show the trade mark being used in the context of the provision of a retail service, rather than on goods. In that connection he sought to suggest that terms used within the advertisements eg Mysore and Kashmir were others' trade marks and thus the registered proprietor was simply bringing together others' products for retail sales. I am, however, satisfied (on the basis of my own geographical knowledge) that these terms are descriptive of types of saree. I think this is borne out by the fact that the descriptive term 'wedding' appears in the same list of types of sarees. There has therefore been in my view genuine use of the trade mark. But on what goods?

36. All of the material I have used to establish use of the trade mark shown on the register is use in relation to the offer for and sale of sarees. As for the rest of the goods covered by the specifications of the registration there is no direct evidence that the trade mark, as registered, has been used on or in connection with them. There are the assertions by the witnesses that the trade mark has been used on other items. Mr Ramathan also says:

"There is now produced and shown to me marked Exhibit NKR1 some sample labels (bearing UK Sterling prices) as applied to NALLI sarees sold in the United Kingdom. These labels referring to NALLI silk sarees are applied to the sarees themselves before sale in the UK. Customers do not like the sarees to have a fixed label, and it is our long-established practice where possible to use only sticky printed labels on our NALLI sarees etc of which the labels of NKR1 are a typical example. In the US market we are obliged for legal reasons to stitch fabric labels into the sarees, but customers then remove them before wear."

37. The labels at NKR1 contain the words Nalli Silk Sarees in upper and lower case. The documentation at NKR2 does not show use of the trade mark at all - the word Nalli appears in the title of the exporter - Nalli Silk International. It does however show there were sales into the United Kingdom by Nalli Silk International Inc of place mats with cotton based cushion covers, scarves and stoles.

38. Taking all this information together, it appears that the trade mark in suit as it appears on the register has not been used directly or indirectly on any of the goods for which the trade mark is registered apart from sarees. The use in advertising and on sales receipts is in connection only with the sale of sarees. In reaching this view I do not ignore the assertions made by the registered proprietor's witnesses that the trade mark has been used on all, or other, goods involved in the specifications. However, Section 100 of the Act puts an onus on the registered proprietor to 'show' what use has been made of the trade mark. The only use they have been able to show on this case is that described above.

39. I go on, nevertheless, to consider the other uses that have been made of the word NALLI and to determine if this is sufficient for the registered proprietors to avail themselves of

Section 46(2) which states as follows:

(2) For the purposes 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.

40. This provision requires me to consider whether the use made of the word Nalli in forms other than that registered is sufficient to maintain the registration, in particular for goods other than sarees. In my view it is not. First of all, the label which is applied to all of the imported sarees is not indicating other than it is the firm of Nalli Silk Sarees which is supplying the goods. The word NALLI solus is not obviously a trade mark at all in that context. Secondly, none of the documentation exhibited by Mr Ramathan refers to NALLI goods and therefore does not show use of the trade mark in any form. I nevertheless go on to consider whether the word NALLI or Nalli in capitals or upper and lower case as it used in the evidence (usually in with a company name or in a descriptive way, e.g. Nalli Silk Sarees) could be use of the trade mark. In that connection I draw upon the comments of Mr Simon Thorley QC, acting as a Deputy High Court Judge, in revocation No 10237 by Anheuser-Busch Inc v Budejovicky Budvar Norodini Podnik (2002) 25 (2) IPD 25010. He held that the proper approach in a case such as this was to list those elements of the registered trade mark which contributed to its distinctive character. If any were missing from the trade mark as used then the distinctive character of the trade mark was altered and Section 46(2) did not apply. In particular, I note that in referring to Rule 5(4) of Trade Marks Rules 2000 he made the following observation:

"This rule embodies the truism that assessment of the distinctive character of a word per se will, in general, be different to the assessment of that same word depicted in a particular graphical form. In general the graphical form will vary from standard print such that the distinctiveness of the mark will fall to be assessed not only on the basis of the distinctiveness of the word per se but also on the distinctiveness of the stylisation in which it is sought to register the word."

41. He also stated as follows:

"Next, it is to be noted that the language of Section 46(2) does not use a comparative when defining alterations that can be accepted. It does not state that the alteration must not "substantially" alter the distinctive character. The requirement is that the alternative form may only differ in elements which do not alter the distinctive character of the mark. In my judgment this is indicative that the subsection is of narrow scope. Alterations which would be immaterial for the purpose of infringement, in that the alleged infringing mark was confusingly similar to the registered mark, are irrelevant. It is thus necessary for any Tribunal seeking to apply Section 46(2) to determine what is the distinctive character of the mark and which are the elements that, in combination, contribute to that distinctive character. Thereafter it must enquire whether any alteration to any of those elements is of sufficient immateriality as not to alter that overall distinctive character."

42. In this case the trade mark as shown registered is as follows:



the terms used by the registered proprietors and on which they claim Section 46(2) bites are Nalli Silk Sarees, and NALLI.

43. In my view the registered trade mark has the following elements to it:

1. the word Nalli
2. the script in which the word appears
3. the representation of the word at an angle of approximately 45%

44. The word Nalli, as far as I am aware, is inherently distinctive. From my own observations I would have said it was highly distinctive. The script itself is of a common character but the representation of the word at an angle is unusual and therefore a distinctive feature of the trade mark.

45. All of the individual elements, in combination, contribute to the distinctive character of the registered trade mark. Therefore the distinctive character of the trade mark as a totality derives from the word NALLI itself together with the script in which it is written and the angle of representation. The trade marks, or words, that I have to look at, NALLI and Nalli Silk Sarees do not encompass either the script or the angle of representation. Therefore, as in the above decided case, the terms used differ in elements which do alter the distinctive character of the trade mark in the form in which it was registered. Section 42(2) can not therefore be preyed in aid in this case.

46. In response to the questions I posed earlier I find the following:

- Question: Has there been genuine use of the trade mark in suit in respect of the goods covered by the registration?
- Answer: There has been genuine use of the trade mark in suit, but only in respect of sarees.
- Question: Was this use in the five years commencing 17 December 1993 when registration number 1518191 (in respect of goods in Class 24) was placed on the register and in the five years commencing 21 January 1994 when registration number 1518192 (in respect of goods in Class 25) was placed on the register?

Answer: This use was within the five years following the placing of the trade marks on the register.

Question: Was the trade mark used the one shown on the register, if not, was it nevertheless one which could claim to meet the requirements of Section 46(2)?

Answer: The trade mark shown on the register was used but only in relation to sarees. The other terms used were ones which differed in elements which altered the distinct character of the trade mark as registered. They did not meet the provisions of Section 46(2).

47. In summary, I find that this trade mark has been used, but only in relation to sarees thus the provisions of Section 46(5) apply and the registration is revoked for all other goods.

48. The registration, as will be noted, covers sarees in Class 24, but they also fall into Class 25 as articles of clothing for women. Indeed, the latter is the Class into which since 1 January 1997 such goods invariably fall. Therefore, the effect of this decision will be that the Class 24 specification will be removed and the registration reduced to one in Class 25 for sarees.

49. The applicants for revocation have been successful and therefore are entitled to an award of costs. I order the registered proprietor to pay to the applicants for revocation the sum of £1000. This sum is 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 02 day of August 2002

**M KNIGHT
For the Registrar
the Comptroller-General**