

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2161562B IN CLASSES 3, 14, 18 AND 25 IN
THE NAME OF CONTINENTAL SHELF 128 LIMITED**

AND

**IN THE MATTER OF AN OPPOSITION THERETO
UNDER No. 49342 BY ELIZABETH FLORENCE EMANUEL**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application No. 2161562B
in Classes 3, 14, 18 and 25
in the name of Continental Shelf 128 Limited**

AND

**IN THE MATTER OF an Opposition thereto
under No. 49342 by Elizabeth Florence Emanuel**

BACKGROUND

1. On 18 March 1998, Oakridge Trading Limited of Manchester, England, applied to register a series of four marks in Classes 3, 14, 18 and 25. The application was allocated No. 2161562. At the time the application for registration was filed, it stood in the name of Oakridge Trading Limited. I note however that the application now stands in the name of Continental Shelf 128 Limited of 18-24 Bury New Road, Manchester; the name of the opponent in these proceedings has also been changed from Anthony Drew to Elizabeth Florence Emanuel; nothing appears to turn on these points and I make no further mention of them.

2. Following examination, application No. 2161562 was divided and three of the four trade marks (for the signature versions of the words Elizabeth Emanuel) were transferred to application No. 2161562A. That application was subsequently withdrawn following publication.

3. The trade mark in question in these proceedings is **ELIZABETH EMANUEL** in block capital letters and which proceeded to publication under No. 2161562B. The application was published for the following specifications of goods:

Class 3 - Perfume, cosmetics, soaps, essential oils and hair lotions.

Class 14 - Jewellery and watches.

Class 18 - Baggage.

Class 25 - Clothing, footwear and headgear.

4. On 7 January 1999, a notice of opposition was filed. The basis of the attack (in so far as it is relevant) contained in the opponent's statement of grounds is reproduced verbatim below:

"1. Contrary to Section 3(1) of the Trade Marks Act 1994, the mark applied for is not capable of distinguishing goods or services of the applicant from the goods and services of other undertakings, because it consists of the name **ELIZABETH EMANUEL** simpliciter. The well known fashion designer named Elizabeth Emanuel

is not the applicant, nor is she associated in any way with the applicant.

2. Contrary to Section 3(2)(b) the mark applied for is of such a nature as to deceive the public.

3. Contrary to Section 3(6) the mark is applied for in bad faith in that the applicant is seeking to obtain an unjustified monopoly in the name ELIZABETH EMANUEL.

4. Contrary to Section 5(4)(a) of the Trade Marks Act 1994 use of the mark by the applicant is liable to be prevented by the law of passing off in that the public associate the name ELIZABETH EMANUEL with the well known fashion designer of that name and not with the applicant.

5. The mark is not being used by the applicant and there is no bona fide intention to use the mark.”

5. On 8 April 1999, the applicant filed a counterstatement in which the grounds of opposition are denied. In their counter statement (the paragraph numbers of which correspond to those in the opponent’s Statement of Grounds), the applicant makes the following comments:

“1.....The applicant, its licensees and predecessors in title have used the mark “Elizabeth Emanuel” and device (registered number B1586464) since 28 September 1994. The marks applied for are an evolution of that brand.

2.....The applicant, its licensees and predecessors in title have used the mark “Elizabeth Emanuel” (registered number B1586464) since 28 September 1994. The marks applied for are an evolution of that brand.

3.The applicant, its authorised licensees and predecessors in title have used the mark “Elizabeth Emanuel” and device (registered number B1586464) since 28 September 1994. The marks applied for are an evolution of that brand. The applicant and its authorised licensees intend to use the marks applied for once they are granted.

4.The applicant, its authorised licensees and successors in title, have used the mark “Elizabeth Emanuel” and device (registered number B1586464) since 28 September 1994. Elizabeth Emanuel the fashion designer, assigned that mark to the applicant’s predecessors in title. The marks applied for are an evolution of that brand.

5. The contention made in paragraph 5 of the Statement of Grounds of opposition is denied. The applicant intends to use the marks following grant.”

6. Both parties filed evidence in these proceedings and both seek an award of costs. The matter came to be heard on 18 April 2002. At the Hearing, the applicant for registration was represented by Mr Richard Hacon of Counsel instructed by McNeight & Lawrence, Trade Mark Attorneys; the opponent was represented by Mr Simon Thorley of Her Majesty’s Counsel instructed by Collyer Bristow, Solicitors.

THE EVIDENCE

7. The parties to these proceedings are the same as those in the related revocation action No. 11105 (an action based solely upon Section 46(1)(d) of the Act) ie. the post-registration equivalent of Section 3(3)(b) of the Act pleaded in these proceedings. The evidence filed is also, for the most part, common to both sets of proceedings and a single Hearing was held in which Counsel made composite submissions. My summary of the evidence provided by the parties is attached as an Annex to this decision.

DECISION

8. In his skeleton argument and at the Hearing, Mr Thorley indicated that the opponent only intended to pursue the opposition on the basis of the objections in paragraphs 2, 4 and 5 of the Statement of Grounds (reproduced above); he pointed out that the reference to Section 3(2)(b) appearing in paragraph 2 was a typing error and should have read Section 3(3)(b); Mr Hacon did not take any issue with this clarification and as such I need make no further mention of it. Thus the proceedings are based upon objections said to be founded under Section 3(3)(b), Section 3(6) and Section 5(4)(a).

9. At the outset Mr Thorley indicated that it was the objection based on Section 3(3)(b) of the Act which was, in his view, the most significant ground of objection. He characterised the remaining grounds as:

“.....the perhaps less significant issues of passing off and no bona fide intention to use.”

With this in mind, I will deal with the objection based on Section 3(3)(b) of the Act first. The relevant section reads as follows:

“3.- (3) A trade mark shall not be registered if it is -

(b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).”

10. Mr Thorley drew my attention to the comments in paragraphs 7-164 and 7-165 of Kerly's Law of Trade Marks and Trade Names (13th edition) as being an accurate statement of the law. The paragraphs in question read as follows:

“7-164 - Section 3(3)(b) of the 1994 Act prevents the registration of deceptive marks, a notion familiar from section 11 of the 1938 Act. The paragraph itself cites some non-exhaustive examples: trade marks which are of such a nature as to deceive the public as to nature, quality or geographical origin of the goods or services. In general, if a mark gives rise to an expectation which will not be fulfilled, then registration will be refused. The expectation (and hence the objection) must be a real one, as opposed to something obscure or fanciful, arising from the mark itself.

7-165 - There are two features of this provision to note. First, it is an absolute and not a relative ground for refusal. It is concerned with deceptiveness which is inherent in the mark itself, as opposed to deception caused by the similarity of the mark to another. The latter type of objection arises under the relative grounds in section 5. Likewise, an objection that use of a mark would result in passing off arises under section 5(4)(a) and not under section 3(3)(b). Secondly, the paragraph refers expressly to deception caused by the nature of the mark itself. This does not mean that the mark has to be considered in a vacuum. It must be considered against the goods or services applied for and in the general context of the relevant trade.”

Mr Thorley framed the opponent’s objection under Section 3(3)(b) in his skeleton argument in the following terms:

“Section 3(3)(b)

12. This is an objection which is not frequently raised in opposition proceedings but is clear both as a matter of language and intent. We would draw the Hearing Officer’s attention to the passage in Kerly (13th edition) at paragraphs 7-164 and 7165 which we commend as being an accurate statement of the law and of the approach to the law under this issue. The question of deceptiveness inherent in the mark itself has to be considered against the goods or services applied for and in the general context of the relevant trade.

13. Here the relevant trade is primarily that of dress designers and in the general context the standing of Miss Emanuel as a dress designer at the date of the application for this mark (18th March 1998). The fact that Elizabeth Emanuel is known as a fashion designer is not disputed by Mr Ahmed (see paragraph 3 of his statement) but it is necessary to take into account the extent of that reputation which underlies this application. We invite the Hearing Officer to have regard to the totality of Miss Emanuel’s evidence on this subject, particularly paragraphs 9-32 of Emanuel I and the exhibits there referred to. It is suggested that Exhibit EFE5 provides a good synopsis of the extent of the reputation. Reference should also be made to the evidence of Blair (para 4), Brandon (para 2), Hilary (para 3) and Schulman (para 4).

14. We do not believe that it is an under estimate of that reputation to say that by March 1998 the name Elizabeth Emanuel had become a household name in this country. It was a name which was identified with Miss Emanuel (initially together with her former husband) as the designer of fashion clothes not least because of her involvement with the design of the wedding dress of the Princess of Wales. Her name was truly world famous as being synonymous with her design skills.

15. We invite the Hearing Officer to make a finding of fact to that effect and it is that finding of fact which underlies the objection based under Section 3(3)(b). The proposition is a simple one: where a name has become a world famous household name synonymous with an individual as being the designer of the products in question, use of that trade name upon goods which are not designed by that person is liable to lead to deception.

16. Indeed, this is what has happened, as can be seen by reference to the evidence. We would invite the Hearing Officer to pay particular regard to paragraphs 30-50 of Emanuel I and paragraphs 20-30 of Emanuel II. The position is encapsulated in the documents shown at Exhibit EFE13 pages 15, 21, 26, 28, 29, 36, 37, 39 and 44 and in the Exhibit EFE22, pages 1,3, 4, 20 and 23.

17. In assessing the likelihood of deception, regard must be had to the average consumer of the product who is reasonably well informed, and reasonably observant and circumspect. In the present case, there are actual examples of the reaction of such consumers. See Blair, Brandon, Hilary, Derby, Bracken and King as well as Emanuel II paras 26-30 (referred to above) and Boughton.

18. We submit that this is overwhelming evidence which proves the inevitable, namely; that people seeing the words Elizabeth Emanuel on clothing immediately associate that name with Miss Emanuel and assume that she has played some part in the design of the clothing and buy the clothing on the faith of the assumption.

19. Oakridge apparently raise two arguments against this conclusion. (i) First, in paragraph 4 of Ahmed's statement it appears to be suggested that Oakridge has the exclusive right to hold itself as carrying on business in succession to Elizabeth Emanuel Plc. This is not accepted but is irrelevant to the question in issue. There is no question of Oakridge having the right falsely to represent that Miss Emanuel has played a part in the design of clothing when she has not. Whether or not Oakridge are successors in title to Elizabeth Emanuel Plc does not assist in answering the question whether its use of the trade mark Elizabeth Emanuel on dresses which were not designed by Elizabeth Emanuel is going to be deceptive.

20. Secondly, in paragraphs 6 and 7 of his statement, it is suggested, by reference to other well known designers, that the public can become educated to the fact that the goods sold no longer have any degree of input from the original designer, whether through death or otherwise. This is a question of fact to be decided on the basis of each case. In the present case the facts point only to the conclusion that the relevant public have not become educated in this way. Mr Ahmed suggests that the fact that Miss Emanuel had left the employ of Oakridge was widely publicised. The facts do not support this. There was some publicity but plainly it was not sufficient to alert the average consumer to the fact that goods bearing the mark Elizabeth Emanuel had no connection with Miss Emanuel (see paragraph 17 above).

21. For all these reasons it is submitted that the registration in Class 25 should not be permitted having regard to the provisions of Section 3(3)(b). This is a clear case."

11. In relation to the goods in Classes 3, 14 and 18 of the application, in paragraph 21 of his skeleton argument Mr Thorley said:

".....it is submitted that, by parity of reasoning to the above, the registration of the mark in those classes would also be contrary to section 3(3)(b). It is apparent that there is propensity in this industry for successful clothes designers to branch out into

licencing or approving other goods and allowing their name to be used on those goods (see paragraph 6 of Ahmed). Indeed, this has been done by Elizabeth Emanuel in the past (see paragraph 14 Emanuel I and exhibit EFE5).

22. Accordingly, just as the public have assumed that Miss Emanuel is in some way responsible for dresses marketed under the Elizabeth Emanuel name so also it is inevitable that were an Elizabeth Emanuel perfume to be marketed, the public would consider that this was something for which Miss Emanuel was responsible.”

12. In his skeleton argument, Mr Hacon commented on the ground of objection based on Section 3(3)(b) in the following terms:

“*Section 3(3)(b)*

16. This is an absolute ground of refusal and is therefore concerned with deception arising because of an *inherent* quality of the mark itself. Potential examples sometimes cited, taken from the old Act, are ORLWOOLA in relation to material not made from wool or METALBOX in relation to boxes not made from metal.

17. Section 3(3)(b) was a ground relied on in the counterstatement in *Scandecor*, but little is said about it in judgements at any stage of the proceedings. That case was concerned with a mark that had been used with the consent of the proprietor under a bare licence, where the proprietor had no control over the goods concerned. In fact, *Scandecor*, seems to have gone ahead on the basis that there was nothing inherently deceptive about the mark, but that it was the behaviour of the proprietor in granting the bare licence that led to deception.”

And at paragraph 55 when he says:

“*Section 3(3)(b)*

55. Mrs Emanuel’s case under section 3(3)(b) is weaker still. She bears the burden of showing that the “deception” she relies upon is a product of an inherent quality of the mark. Self-evidently, there is nothing deceptive about the mark as used for the various goods specified in the application. Her own intent to use the mark for the same purposes proves as much.”

13. In his skeleton argument Mr Hacon set out a chronology of the main events leading up to these current proceedings. At the Hearing, Mr Thorley did not suggest that this chronology was incorrect; that being the case, I gratefully adopt it for the purposes of my decision; it is reproduced below:

“**Chronology**

7. The main events are as follows:

1977 Elizabeth and David Emanuel graduate from Royal College of

- Art. Partnership set up designing and selling garments under the name EMANUEL.
- December 1986 Emanuel shop opened in Chelsea.
- 1990 Elizabeth and David separate. Shop closed. Elizabeth Emanuel begins trading under the name ELIZABETH EMANUEL from address in Brook Street. Sometimes a device used above ELIZABETH EMANUEL in the form of a bow (see EFE-8)
- 1994 Elizabeth Emanuel starts to use a new “back-to-back Es” device above the name ELIZABETH EMANUEL. Application to register a mark comprising ELIZABETH EMANUEL with the new device above it.
- April 1996 Elizabeth Emanuel in search of financial backing. She enters into an arrangement with Hamlet. Under this arrangement EE plc is set up, jointly owned by Elizabeth Emanuel (52%) and Hamlet (48%). The arrangement includes in particular the Hamlet Agreement of 26 April 1996. The Hamlet Agreement includes the assignment by Elizabeth Emanuel to EE plc of the following:
- (i) the business of dress design and sale of garments formerly run by Elizabeth Emanuel under the name ELIZABETH EMANUEL (clause 1.1);
 - (ii) all assets of the business (save for certain minor items such as fabrics relating to the royal wedding) (clause 2.1);
 - (iii) the Registered Mark (bundle page 7);
 - (iv) the brand name and goodwill of the business (bundle page 7);
 - (v) the exclusive right to use existing designs of Elizabeth Emanuel (bundle page 7);
 - (vi) the right by EE plc to franchise the brand name ELIZABETH EMANUEL and all other trade marks and labels formerly held by Elizabeth Emanuel to third parties (clause 1.1).
- 1997 The mark comprising ELIZABETH EMANUEL with back-to-back Es device above it registered (the Registered Mark).
- 23 September 1997 Elizabeth Emanuel in financial difficulties and causes EE plc to enter into the Frostsprint Agreement. Under the Agreement, Frostsprint paid EE plc £65,000. EE plc assigned to Frostsprint the following:
- (i) the business of EE plc as a going concern (clause 2.1);
 - (ii) the Registered Mark (clause 2.1.3);
 - (iii) all other IP rights including existing designs in the possession of or available to EE plc (clause 2.1.4);
 - (iv) the goodwill in the business (including the business name or names under which the business is carried on to the extent they are capable of transference) and the

	exclusive right for Frostsprint to hold itself out as carrying on the business in succession to EE plc (clause 2.1.5)
23 September 1997	Frostsprint changes its name to Elizabeth Emanuel International Limited (“International”). Elizabeth Emanuel is employed by International.
October 1997	Elizabeth Emanuel leaves the employment of International and claims that she has continued since to trade from home, though limited by being bankrupt (Emanuel I, §30).
5 November 1997	International assigns the Registered Mark to Oakridge.
18 March 1998	Application 2161562B made by Oakridge for ELIZABETH EMANUEL word mark.
31 August 2000	Oakridge assigns the Application and the Registered Mark to CSL.”

14. From this chronology one can see that in April 1996, Elizabeth Emanuel entered into a business arrangement with Hamlet International Plc (the Hamlet agreement). As a result of that agreement a new company was formed called Elizabeth Emanuel Plc (hereafter EE PLC) to “carry on designing, making and distribution of articles connected with the fashion wear trade with an emphasis on wedding wear”. The agreement goes on to say that: “the company will also franchise the brand name of Elizabeth Emanuel together with all other trade marks and labels formerly held by EE against payment of royalties to the company.” The Hamlet agreement resulted in a range of assets which included “the brand name and goodwill factor” being transferred to EE PLC and the following registered trade mark
No: 1586464



15. Following the demise of Hamlet International Plc in August 1997, Elizabeth Emanuel approached Mr Shami Ahmed for financial assistance. The result of this approach was the agreement between EE PLC and Frostsprint Limited of September 1997 (the Frostsprint agreement). As a result of that agreement, Frostsprint Limited acquired from EE PLC the business of EE PLC as a going concern, the Registered Trade Mark (reproduced above), all other IP rights including existing designs in the possession of or available to EE PLC, the goodwill in the business (including the business name or names under which the business was carried on to the extent they are capable of transference) and the exclusive right for Frostsprint to hold itself out as carrying on the business in succession to EE PLC. At the same time Frostsprint Limited changed its name to Elizabeth Emanuel International Limited

(EE International); Elizabeth Emanuel only worked for EE International until October 1997. In his witness statement Mr Ahmed explains that following her departure from International there was a period of about two months during which negotiations were in progress with a view to Elizabeth Emanuel's possible re-engagement. He adds that during this period staff at the Dorset Street shop had been instructed to be circumspect when responding to enquiries for Elizabeth Emanuel or her whereabouts.

16. From the above, it is clear that the rights in the registered trade mark (and the subject of the related revocation proceedings) in which the words ELIZABETH EMANUEL are, in my view a dominant feature, were sold by Elizabeth Emanuel in the first instance (in 1996) to EE PLC (following the Hamlet agreement) and then in September 1997 by EE PLC to EE International (following the Frostprint agreement) along with the transfer of the business of designing and selling garments and the goodwill in that business.

17. There is no dispute that the agreements and contracts entered into by Elizabeth Emanuel and the entities with which she was involved were legitimate. Similarly, there is no dispute that Elizabeth Emanuel was a well known fashion designer and had a reputation accordingly.

18. Both Counsel agreed that in considering matters under Section 3(3)(b) I must have regard to the public's perception of the trade mark in question at the date of the application for registration (*Bach Flower Remedies Ltd v Healing Herbs Limited* [2000] RPC 513). For his part, Mr Thorley submitted that at the relevant date, the public would expect that clothing bearing the ELIZABETH EMANUEL trade mark to have been designed by Elizabeth Emanuel. This was because the goods sold under the trade mark because of her fame, with whom Elizabeth Emanuel was no longer connected became freighted with her reputation. If the applicant for registration therefore used the trade mark in suit deception would follow.

19. Mr Hacon, for his part denied that this was so. He submitted that Elizabeth Emanuel had sold the goodwill in the business of designing and manufacturing garments, along with a trade mark which included her name. Thus, any deception would be short lived and similar to that which arose in any assignment of a trade mark from one person to another.

20. My attention was drawn first of all to *Scandecor Development AB v Scandecor Marketing AB* [2002] FSR 7 (p. 122) (HL), at 21-22 where Lord Nicholls said:

“A trade mark is not usually to be understood as a representation regarding the identity of the source, namely, who is in control of the business in which the mark is being used. Rather, with changes in the trade, a trade mark can “fairly be held to be” only a representation that the goods were manufactured in the course of the business using the mark, without any representation as to “the persons by whom that business was being carried on”: see Romer LJ in *Thornloe v Hill* [1894] Ch 569, 574. This approach accords with business reality and customers' everyday expectations. Customers realise there is always the prospect that, unbeknown to them, the management of a business may change. To confine the use of a trade mark to the original owner of a business would be to give the concept of a business origin or business source an unrealistically narrow and impractical meaning. Of course, the new management, the new owners, may not adhere to the same standards as the

original owner. But the risk of an unannounced change of standards is ever present, even when there has been no change in management. An owner may always decide to change his quality standards. As already noted, customers rely on it being in the owner's self-interest to maintain the value of his mark. The self-interest of the owner of a trade mark in maintaining its value applies as much to a purchaser of the mark as it does to the original owner."

and at para 42-44:

" Before proceeding further I must mention some of the practical implications of the view expressed above, starting with the position which exists while an exclusive licence is in operation. The mere fact that, during this period, some customers may associate the trade mark with the exclusive licensee does not mean that it has become deceptive or that it lacks distinctiveness. During the licence period the goods come from only one source, namely the licensee, and the mark is distinctive of that source.

The position after the licence has ended is different. Then the right to use the mark reverts to the proprietor of the mark. He can then apply the mark to his goods. The position is, indeed, comparable to the position which arises when a trade mark is assigned without any assignment of the assignor's business. Whether this change in the person entitled to use the mark gives rise to deception will depend primarily on what then happens to the erstwhile licensee's business. If the former licensee ceases to carry on the business in which he used the mark, no question of deception due to lack of distinctiveness will normally arise. Henceforward the mark will be distinctive of one source, namely the proprietor of the mark. This will be a different source from the source during the licence period, but this change in the source is not itself inherently deceptive. Such a change occurs whenever a trade mark changes hands.

What happens if, after the licence has ended, the former licensee continues to carry on the same business as he did during the licence period? Suppose he continues to manufacture the same goods and deal with the same customers, but without using the licensed mark. In such a case there may be scope for confusion and deception. Any customers who were aware of the identity of the source during the licence period may continue to associate goods bearing the mark with the former licensee and his continuing business. When that is the position, the mark may no longer be distinctive of one business source. Whether that is so will depend on the facts of the case."

21. From these statements, neither of which were directed at Section 3(3)(b) of the Act with which I have to deal, but which nevertheless contain pertinent comments on the position of trade mark proprietors and the public, I draw the simple conclusion that confusion and deception as a result of any change must be determined on the particular facts of the case in hand.

22. I also note the following comment by Mr Hacon in his skeleton argument:

"9. A business, together with its associated trading name and/or registered trade mark and goodwill, may be sold without notice to the public dealing with the business.

After such assignment, the purchaser is of course entitled to represent himself to be the successor to the business. But he is not obliged to inform the public that there has been a change of ownership. The public may well assume that the goods are still being made by the assignor. In that regard they are now deceived, but there is nothing unlawful in that. It is what Dankwerts J. called “lawful deception” in *Reuter v Mulhens* (1953) RPC 102 at 121 (affirmed by the Court of Appeal at (1953) RPC 235).”

The relevant page is as follows:

“The only way in which the goodwill of a business can be preserved in the hands of a purchaser is by inducing the public to believe that the purchaser is still carrying on the business which the transferor owned and carried on, and that the public may, therefore, expect to receive the same attention and satisfaction and the same type and quality of goods. This, as I remarked in the course of the argument, is lawful deception. The argument that the use by the purchaser of the old firm name was a fraud was summarily rejected by *Shadwell, V.C.*, in *Lewis v. Langdon* (1835) 7 Simons R. 421 at 424. It is, in my view, in the absence of special circumstances, perfectly legitimate for the purchaser of the goodwill of the business to use the get-up and appearance of the goods previously sold in the course of that business. What, after all, is the real ground of the passing-off action? It is to prevent a trader, by imitating the goods of another trader, stealing part of the goodwill built up in connection with those goods. But, if the goodwill so built up is the property of the trader who is using the get-up and appearance in connection with his goods, this method of trading cannot be wrongful and must be justified.”

“10. The effect of the assignment of a business together with its goodwill, is that the assignee will be the only party entitled to exercise the rights generated by the goodwill - the right to prevent others from using the trading name in relation to the relevant type of business. That right may be exercised against any other party, including the assignor. That is so even if the assignor is an individual who built up the goodwill using his or her own name - see *Mrs Pomeryoy v Scale* (1907) RPC 177, at 187-8.”

The relevant part in the judgement is set out below:

“I can conceive cases (though there is no satisfactory evidence that this is one of those cases) where the trade name has become so identified with the individual carrying on the business, that the user by the purchaser of such name *simpliciter* and without explanation might expose the vendor to some personal liability. Different considerations apply where the trade name is the name of the person who carried on and is selling the business. In such a case the use by the purchaser of the trade name would probably impose on the vendor some personal liability, and, therefore, the use of such name *simpliciter* and without explanation is no doubt unlawful; and, conversely, inasmuch as the trade name is the name of the individual, and every person is taken to have some sort of proprietary right in his own name, the purchaser cannot, unless

there be some bargain to that effect, prevent the vendor from continuing to use what is his own name, and therefore his own property, for the purpose of carrying on a similar business, notwithstanding the assignment of the goodwill. The vendor, however, may by express bargain confer on the purchaser of the goodwill the right to carry on the business under the vendor's own name, and may preclude himself in like manner from using his own name for business purposes. It has been suggested that a trade name may have become so associated with the particular individual who carries on the trade that for all practical purposes it has become his own name, and that in such cases it must be treated, in considering the effect of an assignment of the goodwill, as if it were really the individual name of the vendor."

23. That there has been confusion and deception there is no doubt. There is ample evidence that the trade and the public believed that Elizabeth Emanuel was still with the applicant's business after she had left.

24. The evidence of instances of so called confusion relied upon by the opponent comes from a range of different sources and covers a period of some three years. The relevant dates at which the instances of so called confusion are said to have occurred are as follows:

Vogue magazine entries - February, April, May and June 1998
The Mail on Sunday - 18 January 1998
Manchester Evening News - January 1998
Harrogate Bridal Fair - September 1998; - Mary Blair, Christina Brandon, Shirley Hilary
London Lighthouse - July 1999 (but relating to events in 1998)
This Morning - January and June 1999
Jewish Chronicle - April 1998
Maria Carvainis agency - January 1998
Susan Martin - January 1998
Anna Pukas - January 29th (or 30th) 1998
Maureen Cawt - February 1998
Jane Kerr - March 1998
Diane Clehane - January 1998.
Andrew Walker - 29 October 1998

Telephone calls to: the "Wedding Shop" - November 1998; Pandora's dresses July 1999; Jacques Vert - August 1999; John Lewis - April 2000; Gisonni - April 2001 and Grazyna - April 2001.

Shirley Darby - May 2000
Elisabeth King - 9 September 2000
Angela Bracken - 26 October 2000

25. If one looks carefully at the instances of confusion, one notes immediately that a significant number of the instances relied upon by the opponent occurred at the time of the breakdown in the business relationship between Elizabeth Emanuel and Mr Ahmed or shortly

thereafter, whilst others are not examples of confusion at all. It is I think accepted that the possibility of Elizabeth Emanuel being re-engaged by Mr Ahmed was a “live” possibility until (probably) the beginning of 1998. That being the case, the fact that the applicant placed advertisements in a publication such as Vogue in the following terms:

“ELIZABETH EMANUEL, 49 Dorset Street, London W1H 3SH. 0171 224 4522

Designer of the world’s most famous wedding gown, Elizabeth Emanuel bridal gowns are highly acclaimed for the exquisite design and tailoring, from the extremely theatrical to the simple and understated, using the highest quality silks, beadwork, and lace. Ready-to-wear evening and day-wear and exclusive accessories are available in our boutique. By appointment.”

is hardly surprising; although there is no evidence on this point, I assume that publications such as Vogue require advertisements to be provided some time in advance of their actual publication. The affidavit of Anna Pukas is clearly not evidence of confusion; in my view it merely indicated that at the time of the phone call ie. the end of January 1998, the shop assistant answering the telephone was uncertain as to the status of Elizabeth Emanuel within the company; similar considerations apply to the affidavits of Maureen Cawt and Jane Kerr.

26. Although strictly after the material date in these proceedings, the instances of confusion occurring at the Harrogate Bridal Fair which took place in September 1998 and commented on in the affidavits of Mary Blair, Christina Brandon and Shirley Hilary are of interest, they shed light on what the public perception of the words ELIZABETH EMANUEL would have been at the material date. These ladies assumed from the use of the name ELIZABETH EMANUEL on the applicant’s stand that Elizabeth Emanuel was still involved in the business. Given the nature of the business conducted under the ELIZABETH EMANUEL name prior to its sale to the applicant, the assumption the three ladies arrived at was understandable. However, in my view, it is this type of confusion that it is inevitable when a business is sold; it is the “lawful deception” referred to by Dankwert’s J. The same applies to the various telephone calls made to stores which sold clothing under the ELIZABETH EMANUEL name and also to the conclusions reached by Shirley Darby, Elisabeth King and Angela Bracken.

27. Mr Thorley submitted nevertheless that deception occurred because of the change in the nature of the business following the departure from it of Elizabeth Emanuel herself. The business the applicant argued was one engaged in retailing garments designed by Elizabeth Emanuel. After her departure, the business could not be one which sold such garments. Therefore, as a matter of fact the business had changed, the trade mark became deceptive and the conditions were in place for a finding for the opponent under Section 3(3)(b).

28. For his part Mr Hacon, by reference to the agreements, submitted that the applicant was the owner of a trade mark (shown earlier) which consists primarily of the words ELIZABETH EMANUEL (which was not disputed). The applicant was also the owner of the goodwill associated with that trade mark and the business of designing and selling garments under it. It could not therefore be deceptive to use virtually the same trade mark, ELIZABETH EMANUEL, alone. He also went on to state:

“Mrs Emanuel’s “personal goodwill”

50. In her evidence Mrs Emanuel makes what is apparently a separate point. It seems to be that in any event she has a distinct and personal goodwill associated with her name; that goodwill has never been assigned to anyone; therefore, and because of its existence:(i) the public are now deceived by International’s use of the name ELIZABETH EMANUEL into thinking she is associated with International’s business, as a designer or otherwise; and (ii) she was on 18 March 1998 entitled to stop International from using the name.

51. This reasoning is flawed in law. There is no such thing as a distinction between “personal” goodwill and trading goodwill. Goodwill can only exist in a business. If that business is conducted under a particular name then the goodwill is associated in the public mind with that name. If another person uses the same name for the same business, they are passing off. It makes no difference even if that other person is an individual trading under his or her own name.

52. Mrs Emanuel’s reference to her personal reputation is just another way of saying that the goodwill she first developed when trading under her own name remains closely associated with her personally. But she assigned that goodwill in April 1996 to EE PLC and in September 1997 caused it to be assigned to Frostprint. From September 1997 only Frostprint and its successors in title to the goodwill and the registered mark were entitled to sue third parties who traded under the name ELIZABETH EMANUEL in relation to garments and related goods or services. Mrs Emanuel no longer had that right. Moreover, the inevitable confusion that followed about her continued involvement with the business was not unlawful.”

29. It appears to me that as a result of first the Hamlet agreement and second the Frostprint agreement, that the opponent in these proceedings Elizabeth Emanuel sold all of the rights to the registered trade mark reproduced above together with the goodwill in the business known as Elizabeth Emanuel Plc to the applicant in these proceedings; had the business relationship between Elizabeth Emanuel and Mr Ahmed endured and had Elizabeth Emanuel retained an active involvement in Elizabeth Emanuel International, there is little doubt that these proceedings would not have been necessary. However that is not the case; Elizabeth Emanuel left the new business in October 1997 and it is this change in the nature of the business ie. the non-involvement of Elizabeth Emanuel that, in Mr Thorley’s view gives rise to an objection under Section 3(3)(b) of the Act.

30. The authorities state and common sense suggests that where a business and goodwill are sold it is inevitable that some or all the relevant public will not know that there has been a change. And if that business has been undertaken under the proprietors own name, it is bound to be the case that at least some of the public will assume that the business is still being conducted by that person, it seems to me. But that must be the “lawful deception” referred to by Dankwerts J.

31. As indicated, the evidence in this case shows, unsurprisingly, that confusion occurred following the assignment of the business from EE PLC to the current proprietors and

following the departure of Elizabeth Emanuel from International's employment.

32. There is, however, the allegation that International actively told customers or potential customers that she was still involved with the company. In my view the evidence does not support that allegation. There must have been the need for a degree of circumspection in the period while discussions between the applicant and Elizabeth Emanuel took place. There is also the fact that through articles in the press and television programmes the split between the two parties to the dispute before me was publicised.

33. The material date in these proceedings is 18 March 1998. It is clear from the foregoing that in September 1997, Elizabeth Emanuel, through EE PLC sold to the applicant (amongst other things) the rights to the registered trade mark shown above together with the goodwill in the business (including the business name or names under which the business is carried on to the extent they are capable of transference) and the exclusive right for the purchaser to hold itself out as carrying on the business in succession to the vendor to EE International. Elizabeth Emanuel left EE International in October 1997 and the possibility of her re-engagement by the applicant ceased in either late December 1997 or early January 1998. The breakdown of the business relationship between Elizabeth Emanuel and Mr Ahmed was reported in the national press; as a result of this national press coverage it is I think reasonable to infer that a not insignificant number of people would have become aware of the rift. Clearly not all of the relevant public had become aware of the "parting of the ways"; this is particularly true of the visitors to the Harrogate Bridal Fair, to the recipients of the various telephone calls made by Elizabeth Emanuel, Mr Drew and Mr Boughton and to Ms Darby, King and Bracken. Although these instances were after the material date in these proceedings, if the individuals concerned held the views they did after the material date, it is reasonable to infer that they would have held the same view at the time the application in suit was filed. However, notwithstanding the evidence of these individuals, their confusion as to Elizabeth Emanuel's involvement in the applicant's business, amounts, in my view, to the "lawful deception" referred to by Dankwert J which inevitably occurs in the transitional period following the sale of a business. At the Hearing, Counsel's submissions were principally in the context of use of the application in relation to articles of clothing. For the reasons indicated above, the objection based on section 3(3)(b) in relation to goods in Class 25 fails; I do not see how in the light of that finding the opponent can be in any better position in relation to the goods in Classes 3, 14 and 18 and the objection based on section 3(3)(b) to those classes also fails.

34. I go on to consider the objection based upon Section 3(6).

35. Mr Thorley submitted that the opponent was challenging the applicant's intention to use the trade mark in suit across the range of goods covered by the application. In that respect he referred me to Sections 32, 37, 38 and 100 of the Act to state that there was an onus upon an applicant, when challenged, to provide evidence of their intention to use the trade mark in respect of the goods (and services) covered by the application. The applicant's had not provided any such evidence in respect of Classes 3, 14 and 18 and therefore these should be struck out from the application. For his part Mr Hacon referred me to the opponents pleading and said that "the way the case was pleaded, the way the case was understood, was that it was saying it was not being used at all and there was no bona fide intention to use the mark at all.

Plainly there is evidence conceded that it is being used and every intention to use it. There was no suggestion in the pleading that somehow this has been put on a rather narrower basis and so it is unsurprising that no evidence was forthcoming on that.” Insofar as Section 100 was concerned he pointed out that it dealt with the use to which a registered trade mark was put and it was for the proprietor to show what use has been made of it. It was only about registered trade marks and proprietors. There was no equivalent section which said that “In the event of somebody applying for a mark, the burden is on the applicant to show what he intends to do with it”.

36. As Mr Thorley indicated at the Hearing, the *Demon Ale* trade mark case [2000] RPC 345 (decided by the Appointed Person Mr Geoffrey Hobbs QC), does provide useful guidance on how the question of an applicants’ “intention to use” a trade mark should be approached. In these proceedings, the opponent is not challenging the breadth of the specifications claimed in Classes 3, 14 and 18; what they are challenging however, is the applicant’s bona fide intention to use the mark applied for on the goods for which registration is sought in those Classes.

37. This objection was framed in the opponent’s statement of grounds in the following terms:

“5. The mark is not being used by the applicant and there is no bona fide intention to use the mark.”

38. Mr Hacon was critical of this pleading, criticisms which are, in my view, justified. Paragraph 6 of the head notes in the *Demon Ale* trade mark case mentioned above, reads as follows:

“(6) Considerations of justice, fairness, efficiency and economy combined to make it necessary for the parties in Registry proceedings to provide a focussed statement of the grounds upon which they intended to maintain that the tribunal should or should not do what it has been asked to do. The statement should have been full but not prolix.”

39. From this it is clear that those opposing applications for registration should make it clear exactly what their objections to the application in suit are; in this case this was not done. The opponent simply alleged (in general terms) that the applicants were not using the trade mark nor had they any bona fide intention to do so; no specific classes of goods were specified. Given that the applicant had used the mark, it is not then surprising that they chose to simply deny the allegation in their counter-statement and then to rely on comments in their evidence to the effect that the mark had indeed been used. Had they been aware that the challenge was being made specifically in relation to the goods sought in Classes 3, 14 and 18, it may have been possible for them to file evidence to show their future trading intentions in this regard; the allegation of no use and/or no bona fide intention to use made by the opponent was not specifically targeted at Classes 3,14 and 18, and I do not think the applicant can be criticised for not responding to it.

40. At the Hearing Mr Thorley said:

“Even if you were against me on that, the 3(3)(b) case still comes along. There is a slight gloss on it to the extent that one has to ask you to assume that famous dress designers may well franchise their name into fields like perfumes and luggage, but I do not suppose I have to go very far to do that.”

41. In the light of Mr Thorley’s comments above and having acquired the right to use the registered trade mark in which the words ELIZABETH EMANUEL are a distinctive and dominant component it is not, in my view, surprising that the applicant chose to seek to register the application in suit in respect of a range of goods for it is well established that fashion designers are known to diversify. It is doubtful therefore even if the opponent’s objection had been particularised if they could have succeeded under this head given what Mr Thorley accepts is the established trade practice in this area. The objection under Section 3(6) is dismissed.

42. The final objection is based on Section 5(4)(a) of the Act. This reads as follows:

“5.- (4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or.”

43. The law on the common law tort of passing off is clearly set out by Geoffrey Hobbs QC, acting as the Appointed Person, in *Wild Child* [1998] 14 RPC, 455:

"A helpful summary of the element of an action for passing off can be found in Halsbury's Laws of England 4th Edition Vol 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v Borden Inc* [1990] RPC 341 and *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] ACT 731 is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

- (a) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (b) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the plaintiff; and
- (c) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation."

The restatement of the elements of passing off in the form of this classical trinity has been referred to as providing greater assistance in analysis and decision than the

formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition of 'passing off', and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House."

44. Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

- (1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action."

45. Thus, to succeed in a passing off action, it is necessary for the opponent to establish that at the relevant date 18 March 1998 (i) she had acquired goodwill under her mark, (ii) that use of the applicant's mark would amount to a misrepresentation likely to lead to confusion as to

the origin of their goods; and (iii) that such confusion is likely to cause real damage to her goodwill.

46. In their skeleton arguments the parties framed their positions in the following terms:

Mr Thorley

“Section 5(4)(a) - passing Off

24. Dealing with each of the relevant factors in turn.

(i) Miss Emanuel has for many years generated and maintained an extensive reputation as a designer of clothing. In that field she is known under her name, Elizabeth Emanuel.

(ii) Oakridge are making a representation by using the mark Elizabeth Emanuel which is likely to lead to the belief that the goods offered by them are something for which Miss Emanuel is responsible and which will be bought upon the faith of her reputation (see e.g. *Bulmer v Bollinger* (1978) RPC 79 at 117).

(iii) Damage is inevitable, even if it is only by way of dilution of the exclusivity that Miss Emanuel has hitherto enjoyed in her reputation as a designer of clothing. It also appears from the evidence that the quality of clothes produced by Oakridge has been inferior. See Emanuel I para 53 and Blair para 5, Brandon para 4, Hilary para 5 and Bracken paras 4,6 and 7.”

Mr Hacon

“Section 5(4)(a)

56. Mrs Emanuel’s case under Section 5(4)(a) fails because on 18 March 1998 all goodwill in the business of the design and sale of garments under the name ELIZABETH EMANUEL was owned by International. Mrs Emanuel claims that between the date that she left International (October 1997) she has traded, though limited by being bankrupt. She gives two examples (Emanuel I at 30) but no dates save that these items of trading occurred some time between February 1998 and August 1999. If she traded at all as she claims, she did so unlawfully because she was passing off. But the important point is that such trading, and any personal reputation she had from past glories, did not give her any cause of action for passing off against International or Oakridge. She had no goodwill in law on which to found such an action. That goodwill had been sold.

57. Further, the “deception” she relies as the second element of a cause of action for passing off, was the inevitable and lawful deception flowing from the assignment of the business and goodwill.

58. On the other hand, if Mrs Emanuel says that she could have brought an action for

passing off in March 1998 to stop International from saying that its dresses were still designed by her, then even success in such an action would not have prevented International or Oakridge from using the name ELIZABETH EMANUEL. At best it would have stopped International from making the statements complained of, but of course left International free to use the ELIZABETH EMANUEL trading name they had paid good money to use.”

47. The outcome of the objection based on Section 5(4)(a) of the Act turns on who owns the goodwill in the words ELIZABETH EMANUEL. Earlier in this decision I concluded that the opponent’s objection based on section 3(3)(b) of the Act failed because the opponent had in October 1997 assigned the rights to her name and the goodwill associated with it in respect of the business of designing and selling garments to the applicant’s predecessors in title ie. Frostprint. That being the case, at the material date in these proceedings, the opponent was not the owner of the goodwill in the words ELIZABETH EMANUEL and as such is not in a position to satisfy the first leg of the passing off test reproduced above. Accordingly the objection based on Section 5(4)(a) of the Act is dismissed.

Costs

48. At the conclusion of the Hearing I said:

“In terms of costs, I have to say that I do not think I have seen anything in the case that suggests it was off the scale, but if you believe there are circumstances in this case which would require me to at least consider doing that, now is your opportunity to make them.”

49. To which Mr Hacon and Mr Thorley replied: “No, is the short answer” and “No” respectively.

50. The opposition has failed; as such the applicant is entitled to a contribution towards their costs. I order the opponent to pay to them the sum of £1600. 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 17th day of October 2002

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

EVIDENCE OF THE APPLICANT FOR REVOCATION (OPPONENT)

This consists of fourteen affidavits. The first affidavit dated 12 April 2000 is by Elizabeth Florence Emanuel who is the opponent/applicant for revocation in these proceedings. Elizabeth Emanuel's affidavit runs to some twenty three pages and contains fifty four numbered paragraphs; attached to the affidavit are fifteen exhibits. Elizabeth Emanuel divides her affidavit into a number of categories. I do not propose to summarise all of Elizabeth Emanuel's affidavit here. Instead I have chosen those paragraphs which in my view convey a picture of the totality of Elizabeth Emanuel's evidence under the various headings and these are reproduced verbatim below together with the paragraph number and the category to which they relate.

In paragraph 1 of her affidavit Elizabeth Emanuel says:

“.....Save where the contrary appears, the contents of this affidavit are derived from facts and matters within my own knowledge or within the records I have retained. I verily believe all the facts and matters herein set out to be true.”

Having explained that Oakridge Limited (hereafter Oakridge) are the registered proprietors of the trade mark registration the subject of the revocation proceedings, Elizabeth Emanuel says:

“4. The proprietor acquired the EE logo as a result of an agreement between Elizabeth Emanuel PLC ("plc") and Frostsprint Limited ("the Frostsprint agreement"). There is now produced and shown to me marked Exhibit **EFE-2**" a copy of the Frostsprint agreement dated 23rd September 1997. The business of plc was sold to Frostsprint as a going concern together with the business assets of plc. Plc was the company set up on 26th April 1996 as a result of an agreement ("the Hamlet agreement") between myself and Hamlet International PLC ("Hamlet"). There is now produced and shown to me marked Exhibit **EFE-3**" a copy of the agreement between myself and Hamlet, and a copy of the agreement between plc and Hamlet. I was appointed Chief Executive of plc under the Hamlet agreement. Certain business assets were transferred into plc under the agreement between Hamlet and myself and listed as one of the assets was "the brand name and goodwill factor". At that time the "brand name and goodwill" related to (and which appears in the schedule to the agreement between myself and Hamlet at page 7 of Exhibit **EFE-3**) the logo which became UK trade mark number 1,586,464 (the EE logo), now registered in the name of Oakridge Trading Limited ("Oakridge"). I will elaborate on the reasons for entering into the agreements later in this affidavit, but I should say at this stage that both agreements were entered into to provide me with financial support. A list of the existing assets transferred is set out at page 7 of **EFE-3**.”

Brand name and Goodwill ultimately acquired by Oakridge

5. Under the Hamlet agreement I transferred into plc the brand name under the EE logo and the "goodwill factor" contained therein. Expressly not transferred were all fabrics relating to the Royal Wedding, and I expressly stated that all of my old designs were "on loan for exclusive use of new company". All new designs created by me whilst I was employed by plc belonged to plc (page 8 of **EFE-3**). The intention under the agreement was therefore to keep all of my old work in my personal ownership but it would be "on loan" to plc. All of my old goodwill remained just that - my goodwill. I expressly transferred existing contracts to plc and these can be seen at page 7 of **EFE-3**.

6. Under the Frostsprint agreement Frostsprint purchased plc as a going concern, and as part of that agreement the EE logo was transferred. At paragraph 2.1.5 of the agreement there is stated to be transferred to Frostsprint "the goodwill of the business (including the business name or names under which the business [of plc] is carried out to the extent that they are capable of transference and the exclusive right for the purchaser to hold itself out as carrying on the Business in succession to the vendor". Frostsprint therefore acquired the right to use the EE logo, and it is also acquired the goodwill which was transferred to plc under the Hamlet agreement. I refer to my comments above in paragraph 6 in relation to what was transferred under the Hamlet agreement. Frostsprint therefore acquired the rights which were transferred by me into plc and also the goodwill built up and developed by plc through its trading.....

7. What Frostsprint did not get the right to do was to stop me continuing to trade under my own name as a designer. Such a prohibition would have been completely contrary to the whole spirit of the agreement. I was trading as a designer before the agreement and I would be trading as a designer after the agreement using my name, and with the benefit of many years of my reputation. International/Frostsprint did not obtain the right to represent that I designed the clothes which they (and later Oakridge) are selling now under the EE logo. Frostsprint also did not and could not acquire my personal goodwill as a designer, a media personality and fashion authority. The agreement with Frostsprint transpired to be a very bad arrangement from my point of view. I am not seeking to challenge the agreement in these proceedings but I have been advised to reserve my rights in that regard generally."

Elizabeth Emanuel then provides information on the history, background and reputation. She says:

"History, Background and Reputation

8. I am now the fashion designer and creative director at Elizabeth Emanuel Enterprises Limited ("Enterprises"). Enterprises recognise the importance of my creative control and input, and my personal endorsement of clothes. I have been involved in fashion since I received a Diploma in fashion (with honours) from the Harrow School of Art in 1975. From there I gained a place at the Royal College of Art ("RCA") from which I graduated in 1977. I have been actively involved as a designer

in the fashion industry since leaving the RCA.

9. At the Harrow School of art I met my ex-husband David. We married prior to our entering the RCA. When we graduated from the RCA in 1977 we set up in partnership trading under the name "Emanuel". There is now produced and shown to me marked Exhibit **'EFE-4'** a book entitled "David & Elizabeth Emanuel - Style for All Seasons" ("the book"). The book, published in 1983, provides an insight into some of our early designs, and our inspirations and motivations which under-pinned our design style at that time.

10. Even at this early stage of my career it can be seen from the book that an impressive list of celebrities were wearing our designs. It is also true to say that I was individually responsible for a significant percentage of the designs at Emanuel. Some of the people we were designing for were: HRH Princess Ann; HRH Princess Michael of Kent; HRH The Duchess of Kent; Lady Sarah Armstrong Jones; the actresses Elizabeth Taylor, Helena Bonham-Carter, Joan Collins, Jane Seymour; Patricia Hodge; Claire Bloom; Patsy Kensit and Faye Dunaway; the model, Jerry Hall; the soloist with the Royal Ballet Company Bryony Brind; other famous celebrities such as Ivana Trump, Bianca Jagger and Shakira Caine, and most famously of all HRH Princess Diana, The Princess of Wales. There is now produced and shown to me marked "Exhibit **'EFE-5'**" pages of my web-site which lists some of the people for whom I have designed and it also provides a short history of my career to date.

11. It is true to say that my career took off, and people's knowledge of me and the designs we were creating increased dramatically because of the publicity and huge public interest in the wedding of HRH Prince Charles to Lady Diana Spencer. Through our design of Princess Diana's wedding dress, we became, overnight, two of the most recognisable and well-known designers in the world. Certainly we were the designers most in the public eye as over 700 million television viewers watched the Royal Wedding in 1981, which helped to establish us as celebrity designers with a goodwill and notoriety separate from our work as designers of fashion garments and couture. It was not simply the wedding dress we designed, but I also designed other dresses for Princess Diana, including the famous black dress which Princess Diana wore at her first public outing with Prince Charles at Goldsmith Hall in London. Every dress that Princess Diana wore attracted a massive amount of attention, and as this was her first public appearance, this dress was seen as a milestone. There is now produced and shown to me marked Exhibit **'EFE-6'** a file containing examples of some of the press cuttings, magazines and other reports relating to my work with David including many references to and photographs of our designs.

15. In 1990 the shop closed for financial reasons and because I separated from my husband David. I immediately commenced trading under my own ELIZABETH EMANUEL name and label. There is now produced and shown to me marked Exhibit **'EFE-8'** an example of the logo I was using from 1990 - 1995. In relation to logos I used at the time, I experimented with the logo "Liz.E" with the same triple bow above the L as appears in the logo shown at **'EFE-8'** but this logo was not used extensively in the course of trade, although I did use it on a very small number of

my dresses.....

18. I should say something about the development of the EE logo. I developed the logo, I believe, after I split with David. The idea was to find a logo which would help to differentiate myself from David. Initially I came up with the design (shown at Exhibit **EFE-8**) which encompassed the words ELIZABETH EMANUEL and which had a bow with three knots above the name. I continued to work out of Brook Street after the split with David. I later moved to a studio in St Johns Wood from where I was trading as a sole trader under the name "Sew Forth Productions". In or around 1993, I was experimenting with certain logos, one of which was the EE logo, to try and come up with a shortened version. I didn't start using the EE logo above my name as a packaged logo until I was advised by my newly appointed business manager David Godfrey to register the logo as a trade mark, which was in 1994. The trade mark "EE Elizabeth Emanuel" was applied for in 1994, it was registered in 1997, and as I have said above, it is the trade mark which Oakridge is now using. In or around the beginning of 1994 I contacted Berketex with a view to designing a licensed collection for them. The early designs bore the old label shown above at **EFE-8**. However, we did use the EE logo instead for the Berketex designs after the trade mark application went in.

Hamlet

20. Following the split from David I was actively looking for a financial backer, and this continued whilst I was trading as a sole trader from Brook Street and from St Johns Wood as Sew Forth Productions. I was trying to further enhance my profile as much as possible and this was an ongoing process up until the time I entered into the agreement with Hamlet. As a result of that work and because of my high profile I found a backer (which was Hamlet), and as I have said under paragraph 5 above, on 26th April 1996 the agreement with Hamlet was signed. Under the plc company set up, we only used the EE logo. It was used on swingtags, buttons, labels within the dresses, stationery and press releases. It was used generally in the course of trade. It was also used on stickers where we used the EE logo on its own. As far as I can recall, it was used in relation to garments such as skirts, jackets, trousers and coats. Plc never used my signature as a trade mark. I received a salary under the service contract with Hamlet.

21. Even when I was with Hamlet I was doing interviews and media appearances. I have done many since Hamlet went into administration. There is now produced and shown to me marked Exhibit "**EFE-12**" (at pages 1 - 35) photographs, press cuttings, articles and other editorials relating to my work and other personal promotional activities I was doing in the period 1995 - 1999.

22. I was devastated to discover in August 1997 that Hamlet had gone into administration. This spelt disaster for plc and the staff of 14 people. Hamlet was my major backer, and I had no idea that it was going to collapse. When I entered into the agreement with Hamlet a year previously it looked like a healthy company with a turnover in excess of £200 million. It has taken a 48% stake in plc, and had invested a

substantial amount of money into the company, and I was dependent on Hamlet for financial support.

Frostsprint

23. I therefore began an immediate and urgent search for a new backer, and my search led me to approach Shami Ahmed who had set up the substantial "Joe Bloggs" casual and sportswear label in the 80s, and who appeared to be keen to invest money into the business. I very hastily, and rather naively, entered into an agreement with Shami Ahmed under the Frostsprint agreement referred to in paragraph 6 above, under which a company was set up called Elizabeth Emanuel International ("International"). Frostsprint and Oakridge (the proprietor) are companies under the control of Shami Ahmed.

24. I am very worried that the general public, press and people within the industry believe the company operated by Shami Ahmed - International, is a company in which I am involved as a designer, or that I have endorsed or approved the designs they are selling. I refer below to evidence that this is the case, and there is also evidence that the public have been, and are being led to believe by those employed by the proprietor that I am still involved in the company as a designer or that the designs they are selling are my designs.

25. In relation to my design work, I should explain that there is a huge difference between a design drawing and the garment which results from that drawing. There is also a difference between working drawings and sketches. Working drawings are detailed drawings which would set out technical aspects of a design, and are used as blueprints by the pattern cutters and machinists to create the garment. I had little or no cause to produce working drawings because I had an experienced team who knew what I wanted to achieve from a sketch and they knew, through experience with me, exactly what result I wanted to achieve in a dress. A sketch will have very little technical detail such as fabrics, structure and interlining instructions. A sketch therefore has insufficient detail to be accurately interpreted, save by a highly experienced staff liaising directly with the designer. It was such sketches that would have been left with International when I left. As my workroom team have left International, the team at International would not know what I had intended to be the finished product from the simple finished sketches that were left. Even where Oakridge are producing garments from drawings I produced at plc, therefore, it does not mean the final garment is a creation of mine. If you were to give a sketch to different workrooms to interpret they would all ultimately arrive at a different garment. For a dress to be labelled an Elizabeth Emanuel dress, I would need to oversee not only the design, but also the making of the dress. As I have said, none of my team is now working with the design team at International.

27. There is another point to consider. It is not just the design and approval of a dress that is important. It is also the promotion of a dress which goes towards the perceived image and quality and the whole experience of owning an Elizabeth Emanuel dress. Whenever a garment is promoted as an Elizabeth Emanuel garment, I would oversee

the marketing and promotion aspect so that the accessories are correct, and that it is modelled suitably. International is not able to do this on my behalf, and moreover they are operating at shows and exhibitions at which I would not promote my garments because they would not be supporting the correct image. Examples of the shows are set out at Exhibit **EFE-13**.

29. After the break-up of the relationship with Shami Ahmed, I traded from home for around a year and a half. Since February 1999 I have been Creative Director of Enterprises which now has the backing of Richard Thompson and Thompson Holdings. The new operation has been operating out of Studio One 10a Belmont Street, London NW1 since September 1999. Enterprises has received substantial sums by way of investment through Thompson Holdings over the course of the last year. It is true to say that we have been hampered because of the confusion being caused by International's use of the EE logo.”

Elizabeth Emanuel then refers to a range of affidavits which have been filed to support (i) her claim to reputation and (ii) her assertion that people have been misled and confused into believing that she is still involved with International when that is not the case. Here again I have chosen those paragraphs which in my view convey a picture of Elizabeth Emanuel’s evidence under the heading “Evidence” and these are reproduced verbatim below together with the paragraph number and category to which they relate.

“Evidence

32..... There is now produced and shown to me marked "**EFE-13**" at pages 1 - 11, extracts from Vogue Magazine for the months February, April, May and June of 1998. The extracts are taken from the "Bridal Address Book" section of the magazine in which there appear advertisements for the design, and sale of bridal wear. Under the heading "Fashion" there is reference to ELIZABETH EMANUEL. This is an advertisement placed by International after I had left the company. It states in the advertisement, under the name ELIZABETH EMANUEL and the address International was working from, "Designer of the world's most famous wedding gown, Elizabeth Emanuel bridal gowns are highly acclaimed for the exquisite design and tailoring...". This clearly relies on the goodwill in my name as a designer, and invites the reader to believe that I am a designer with the company, when I was not. I had left International in October 1997, and the advertisement should have been removed or amended to delete the reference to me as a designer. The advertisement was placed for a number of months commencing in February 1998, with the same wording which is an indication that International sought to rely on the goodwill in my name.

33. Other examples where International continued to hold out I was involved with the company and to rely on my individual goodwill are now produced and shown to me at pages 12 and 13 of Exhibit **EFE-13**. At page 12 is an article which appeared in the Mail on Sunday newspaper on 18th January 1998 relating to the potential purchase by Shami Ahmed of the Knickerbox lingerie chain of shops. The article specifically refers to "Elizabeth Emanuel the designer". The newspaper was published 3 months after I had left International. At page 13 is an article which appeared in the

Manchester Evening News in January 1998. The article states "Joe Bloggs jeans guru Shami Ahmed is reported to be interested in Buying the stricken Knickerbox lingerie chain to revive the fortunes of royal dress designer Elizabeth Emanuel". Several months after I had left International they are continuing to refer to the Royal Wedding dress which is not related to, or the property of International at all. By doing so they are seeking to rely on my personal goodwill and reputation, which I am advised is outside of the bounds of fair use under the EE logo.

34. International had a stand at 1998's annual Bridal wear show run by RAS in Harrogate from 13-15 September 1998. Following that show, I was contacted by three separate buyers all of whom purchased gowns at the exhibition in the mistaken belief that I was involved with the company. Because International were using the address, 26 Chiltern Street, London W1M, from which I had operated under plc, and from where I am known to design, the first of the "confused" buyers, **Chloe**, wrote to that address and a copy of the letter dated 2nd February 1999 is now produced and shown to me at page 14 of Exhibit **EFE-13**. The letter was opened by Anthony Drew (who is also referred to on occasions in correspondence and in this affidavit as "Tony Drew"), who subsequently contacted the buyer at Chloe, Mary Blair. I refer to the affidavit of Mary Blair sworn in these proceedings. At page 15 of **EFE-13** is a letter written to Elizabeth Emanuel by Mary Blair. The first paragraph of that letter shows how Mary Blair and her daughter were clearly led to believe that I was the designer with International. Of further concern to me is that Chloe have also complained about the quality of the dresses they received from International, as can be seen from the correspondence exhibited at pages 14 - 21 of **EFE-13**. I have referred above to my reputation as a designer, and each of the companies with which I have been involved has always supplied garments of the highest quality, and this quite clearly cannot be said of the garments supplied under the ELIZABETH EMANUEL name by International. Therefore, there is the potential of irreparable harm being caused to my reputation as a designer, and as a supplier of the highest quality bridal and occasion wear if International are producing clothes of such quality under the EE logo.

35. At page 21 of Exhibit **EFE-13** there is a letter from "Maid in Heaven" to Tony Drew of Enterprises. In that letter Christina Brandon explains that she was led to believe that I was the designer of the dresses in respect of which an order was placed at the Harrogate Show. I also attach correspondence (at pages 22 - 25 of **EFE-13**) between Christina Brandon and International which once again complains at the quality of the dresses supplied by International under the ELIZABETH EMANUEL name. I refer to the affidavit of Christina Brandon sworn herein.

36. At page 26 of Exhibit **EFE-13**, is a letter from Marie Hilary of "Belle Du Jour" to Tony Drew of Enterprises. She and her colleagues, placed an order for three gowns at the Harrogate exhibition. The three ladies referred to in Marie Hilary's letter had worked with me at plc though not in the design team, although Isobel was one of several machinists. Paula was the shop manageress and Analisa was her assistant. Marie was led to believe that the three ladies at the stand had worked with myself in a team. As I have said, I had worked with the three ladies referred to at plc but the inclination was clearly that I was still with the team. Of the third [sic] ladies referred

to two of them are shop staff, and not even part of my design team. Such statements were obviously intended to indicate that I was the designer of the dresses, and it is clear that Marie Hilary and her colleagues were misled and confused into thinking I was the designer of the dresses. Once again complaint is made at the quality of the dresses supplied by plc.

37. At page 28 of Exhibit **EFE-13** there is a letter to Tony Drew of Enterprises from the Aids charity "London Lighthouse". I had discovered that London Lighthouse had planned to include an International ELIZABETH EMANUEL dress in its "Designs for Life" fashion show on 21st September 1998. It was a show specifically for "named" designers. I contacted them, and the person I spoke to indicated that he had assumed the dress they planned to show was designed and produced by me personally. I was told by a representative of London Lighthouse named Matthew that they had discussions with International about this, and as it is a "named" designer show, International misled London Lighthouse that I was involved in the design of the dress. Once they discovered I was not the designer of the dress they received from International, they immediately dropped the dress from the show and accepted one of my personal designs for the show instead.

38. At page 29 of Exhibit **EFE-13** is a letter to me from Karen Smith who is the Deputy Editor of "This Morning". This Morning is a very well known daytime television programme screened by Granada. On 18th March 1998 I appeared on This Morning as a celebrity guest, and I discussed with Richard Madeley, the host, a number of issues such as Princess Diana, and my split with International. On 13th January 1999 This Morning profiled a collection of wedding dresses, and among the dresses was a dress by ELIZABETH EMANUEL. Again on 1st July 1999 another collection of dresses was featured which again included a design attributed to ELIZABETH EMANUEL. It is possible that, with regard to the first dress shown on 13th January, I had completed the dress during my time with Hamlet. I did not oversee the design of the second dress shown on 1st July 1999. Anthony Drew of Enterprises contacted Nicola McNeelis, the fashion consultant of the show who confirmed she was always under the impression that the dress in question was directly produced by me. Unfortunately we have not been able to contact Nicola to obtain evidence from her. In the letter from Karen Smith, she confirms that the dresses were presented on the show as being my dresses. They are not able to confirm the exact circumstances under which the dresses were provided to the show, because the fashion team working on the programme at the time are no longer with the show. The implication is that they were misled by International.

39. At page 30 of Exhibit **EFE-13** are two pages from the bride's supplement of the Jewish Chronicle of 24th April 1998. In the article, entitled "Shop Assistance" it says "Elizabeth Emanuel is holding bridal evenings at her west-end shop on...." It must be remembered that I left International in October of the previous year. In the same edition of the Jewish Chronicle is an advertisement for International. At page 31 of Exhibit **EFE-13** is a correction included at my request in which readers are informed that I was not part of International. The article was formed on the basis of a Press Release distributed by International. I know this because I spoke with the Jewish

Chronicle who confirmed they had received a Press Release from International and thought that I was personally involved. I cannot remember the name of the person I spoke to at The Jewish Chronicle. Clearly, International did not inform the Jewish Chronicle that I was no longer involved at the company, and it is likely that they were actively misled judging by my telephone conversation with the representative of the Jewish Chronicle.

40. At page 32 - 36 of Exhibit **EFE-13** is correspondence in relation to the Maria Carvainis Agency Inc. of New York. I had met up with Maria Carvainis when I was in New York when we discussed certain book proposals. The letter at page 33 of **EFE-13** is a letter from Maria to myself which was sent to 26 Chiltern Street. At the time the letter was sent (October 1997), International was opening and retaining my post, and that was what happened in this instance. As a result of International's lawyers writing to Maria Carvainis, Maria sent the correspondence to my home address. The letter from International's solicitors, Henderson Boyd Jackson at page 36 of **EFE-13**, misleadingly states in the second paragraph "Elizabeth Emanuel, an employee of plc transferred to the new business." This indicates that I was still involved with the company when I had left the company two months previously. In the fourth paragraph of the letter it states "Please note that Elizabeth Emanuel International Limited owns all the designs and other intellectual property rights relating to the designs of Elizabeth Emanuel while she was an employee of plc. Any book that you intend to publish or print and develop will require the consent of this company which, depending on the type of book prepared and its contents, may be granted." I fail to see why International must give its consent to books which were to be produced on my behalf, and which were to be titled "Elizabeth Emanuel's Inspired Weddings" and "Elizabeth Emanuel's Royal Weddings". It is an indication that International is seeking to control the use of the name ELIZABETH EMANUEL when it does not have the right to do so and to continue to seek to draw references to myself in my independent capacity as a designer. As I have said above, I had developed a reputation which is distinct and separate to the use by International under the EE logo. The royal wedding dress is something that I am personally known for, and I refer to the press articles and media interviews at Exhibit **EFE-6** and **EFE-11** in that regard. The dress was designed in 1981, and it has nothing at all to do with International.

41. At page 37 of Exhibit **EFE-13** is a letter from Susan Martin to me. Susan Martin had spoken, and met Danni Martin of International on a number of occasions. Danni Martin was the PA to Shami Ahmed. The conversations between Danni Martin and Susan Martin concerned a gala tribute to Diana Princess of Wales on Friday 29th May 1998, and Susan Martin was trying to obtain the wedding dress I designed for Diana for the display. At no time in their conversation was it explained that International did not own the wedding dress I had made for the Princess nor had nothing at all to do with International. This is another example where International are seeking to rely on my reputation as the designer of the Royal Wedding dress. Danni Martin, on a number of occasions, confused Susan Martin into believing that International was the "Elizabeth Emanuel" responsible for the Princess Diana wedding dress. Not only was no attempt made to dispel this misconception, but Danni Martin did, as can be seen from the letter, mislead Susan Martin into believing that International was the

company responsible for designing the dress, when that was not the case. By indicating that they are responsible for the design and production of the Princess Diana wedding gown, International are actively misleading the public, and are seeking to rely on the goodwill in my name and reputation.

42. At page 39 of Exhibit **EFE-13** is a letter to me dated 1st May 1998 from Anna Pukas of The Express newspaper. Anna Pukas contacted International at the end of January 1998 to discuss the break-up of the relationship between myself and Shami Ahmed. She telephoned the shop to speak to me not knowing that I was no longer able to work from the shop. Once again, it can be seen from the letter that International actively misled people into believing that I was still involved with the company. The impression given was that I was temporarily out of the office but that I would be back later. I refer to the affidavit of Anna Pukas sworn herein.

43. At page 40 of Exhibit **EFE-13** is a letter to me dated 20 February 1998 from Maureen Cawt of "Success" Appointments. I had previously spoken with Maureen in relation to a number of matters concerning staff and Maureen had in fact placed key staff with me on a number of occasions. She contacted International on my behalf to ascertain what people were being told following my departure. She asked for me personally and was told that I was not available. Maureen was never told that I was no longer there. I refer to the affidavit of Maureen Cawt sworn herein.

44. At page 41 of Exhibit **EFE-8** is a letter to Tony Drew and myself dated 12 March 1998 from Jane Kerr who is the royal reporter of "The Mirror" newspaper. As can be seen from the letter, when Ms Kerr telephoned International the first time, she was led to believe that I was not there at the moment but, in the words of the representative from International, "she will be here on Monday". There was no mention that I had left the company over five months ago. I refer to the affidavit of Jane Kerr sworn herein.

45. At page 43 of Exhibit **EFE-13** is a hand written fax to me from Diane Clehane. Diane was writing a book about Diana Princess of Wales. She contacted International because she wanted to interview me for the book. Ms Clehane telephoned International "at least four times" to be told that I would contact her back. Naturally, I was unable to do so because I was no longer there and none of the messages were passed on to me which, in itself, was hampering my ability to trade.

46. At page 44 of Exhibit **EFE-13** is a statement in the form of a letter from Andrew Walker on behalf of his wife Rebecca Walker who has co-signed the statement. Rebecca Walker had tried on a dress from the ELIZABETH EMANUEL shop on 29th October 1998. As can be seen from the statement Ms Walker was under the impression that I owned and worked from the shop. It can be seen from paragraph 1 of the statement that Ms Walker was actively misled, and she states "I chose a dress that I believed to have been designed by Elizabeth Emanuel herself and this was confirmed by the staff working in the shop". October 1998 was a year after I had left International.

47. I refer to the Affidavit of Anthony Drew sworn in relation to these proceedings and to the tape recording of a conversation between Tony and a sales assistant at "the Wedding Shop" in Fulham Road, South Kensington in London on 11th November 1998. The transcript of the conversation is now produced and shown to me marked **EFE-14**. On 12th November 1998 I spoke to Karen Pocock, the manager of the Wedding Shop who indicated to me that she had been led to believe by International that there was some kind of licensing agreement in place between myself and International in relation to the dresses they had supplied. There was no licensing agreement.

49. There is now produced and shown to me marked Exhibit **EFE-15** a copy of a video tape made by Tony Drew of Enterprises on the occasion that I was allowed by the landlord to return to the shop at Dorset Street to view the premises. The tape shows that there were a number of my dresses on display in the shop, available for the public to view. Those dresses were designed by me over a period of years, and are my personal possessions. Each dress is an example of the goodwill I have built up over the years which is separate to the goodwill obtained by the proprietor under the Frostsprint agreement. I should explain that International had been evicted from the shop in December 1998 at the landlord's request, and the video shows how the shop was left once International had been evicted. I refer to the book displaying my old gowns which is referred to in the video. International must have taken the photographs and made up that book after I had left because I had never seen them before. The book is clearly on display in the shop together with the dresses. I had previously been told by Paula, the shop manageress of International (although I cannot remember the exact date of the conversation) that the book and dresses were on display in the shop. Because some of the dresses were quite theatrical, I understand that the idea was to hire out some of the gowns. In any event, they were clearly on display in the shop and as they are my old private designs, International were holding out my personal gowns as originating from International when that is not the case. The dresses have since been returned to me. I did have some trouble getting the dresses back and the return of my personal possessions from International was the subject of legal proceedings. International returned the dresses in the video to my trustee-in-bankruptcy, and they have since been returned to me.

50. It is evident that the EE logo continues to be used in a manner which is liable to mislead the public. Enterprises contacted John Lewis Department Store in Oxford Street, London in April 2000 and made enquiries concerning the EE Logo in the Ladieswear Department. The Assistants of John Lewis are under the impression that the clothing supplied under the EE Logo is designed by myself. Enterprises has obtained transcripts of the discussions with the sales staff and the transcripts can be disclosed if the Registry requires.

51. It is clear from the examples given above that, as a result of my reputation in the fashion industry and generally, there is confusion evident among the relevant public arising out of the use by International of the EE logo. It would seem that International have conspired to mislead the public by not only not explaining that I am no longer involved with the company, but actively misleading the public by indicating I am still

involved with the company. In the event that goods under the trade mark application are to be sold it will inevitably involve a misrepresentation that I am involved in the course of trade with International, or that I endorse the clothes, select designs or create designs for International, none of which is the case.”

The second affidavit dated 12 April 2000 is by Anthony Drew. Mr Drew confirms that:

“.....Save for where the contrary appears, the contents of this affidavit are derived from facts and matters within my own knowledge or within the records I have retained. I verily believe all the facts and matters herein set out to be true”,

adding:

“I have read and refer to the affidavit of Elizabeth Florence Emanuel sworn herein. I can confirm that I agree with the contents of that affidavit, and confirm that the references to action carried out by me, and the events referred to involving me in that affidavit are true.”

The remainder of Mr Drew’s affidavit (in so far as it is pertinent) is reproduced verbatim below:

“3. I work for Elizabeth Emanuel Enterprises (Enterprises), and I have known Elizabeth Emanuel since 1993. I have been directly involved in dealing with most of the people who have contacted Enterprises, and I have collected together a substantial amount of information in relation to Elizabeth’s reputation and in relation to the people who have been misled and deceived by Elizabeth Emanuel International (International). As is referred to in the affidavit of Elizabeth Emanuel, International is the trading company of the proprietor. I have personally dealt with a great number of the people giving evidence referred to in the affidavit of Elizabeth Emanuel, and I can confirm that there seem to be a great number of people who have been deceived and misled by International, but who have not been prepared to get involved in the proceedings.

4. From my experience in dealing with the people referred to in the affidavit of Elizabeth Emanuel I know that there has been a great deal of confusion caused by International’s use of the ELIZABETH EMANUEL name UK trade mark number 1586464 (the EE logo). It has become clear to me from contacting the above mentioned people that not only has International not denied Elizabeth’s continuing involvement with them after she was barred from the premises in October 1997, but that International seems to have actively misled people into believing that Elizabeth is involved with that company when it is not the case. I refer to the evidence given at Exhibit EFE-13 of the affidavit of Elizabeth Emanuel and to the affidavits of Mary Blair, Christina Brandon, Maree Hilary, Jane Keer and Anna Pukas sworn herein in that regard.”

The third affidavit dated 23 February 2000 is by Mary Blair. Having confirmed that the contents of her affidavit are true to the best of her knowledge, information and belief, Ms

Blair explains that she is the Director of Chloe Bridal Wear Limited (Chloe) a position she has held since 1993, adding that she co-owns Chloe with her daughter Claire Bartlett. Ms Blair continues that as a qualified Management Account she deals predominantly with the financial accounting and strategy development aspect of the business adding that since the company's inception in 1993 they have achieved a turnover of £500k and expanded to incorporate four shops retailing bridal, occasion and evening wear. The company is, explains, Ms Blair, a member of Retail Bride Association which she says is the industry watchdog. The remainder of Ms Blair's affidavit is reproduced verbatim below:

“4. I have known of Elizabeth Emanuel since she came to prominence after designing the dress worn by Princess Diana in 1981. Although I have no direct business dealings with Elizabeth Emanuel I can say without hesitation that her reputation for quality and professionalism within the industry is taken as read. In my opinion it can safely be said that she has achieved the peak of her profession.

5. In September 1998 I visited the Harrogate Bridal Exhibition with my daughter Claire with a view to sourcing new bridal gowns. The exhibition is very well know to those in the Bridal Wear Industry. We noticed that Elizabeth Emanuel was showing a collection of gowns and we decided to speak with the staff on the stand. We spoke at some length with the staff and we discussed Elizabeth Emanuel herself, her designs and inevitably the later Princess Diana. I asked many questions relating to the Designer Elizabeth Emanuel and at all times I felt that Elizabeth Emanuel herself was involved. At no time was I informed that Elizabeth Emanuel was not involved in the Company. In my and my daughter's eyes, the name above the stand together with the promotional materials on display clearly implied that Elizabeth Emanuel would have been actively involved in the design, manufacture and quality supervision of the designs on display.

6. We liked the designs on display and the workmanship of the gowns appeared to reflect the high standard one would have expected of such a high profile designer as Elizabeth Emanuel. Unfortunately the gowns we received from Elizabeth Emanuel International Limited (International) in February 1999 are unsaleable. There is now produced and shown to me marked MB1 a letter from myself to International dated 2nd February 1999 in which I wrote to International complaining of the quality of the gowns provided. Chloe, has a very high reputation, and I was not prepared to jeopardise the excellent reputation built up by Chloe by offering for sale gowns of such poor quality.

7. I am annoyed at the manner in which the complaint was dealt with. I am also annoyed that I was led to believe that Elizabeth Emanuel the designer was actively involved in the design and production of the gowns and I have since found out that this is not the case. I wrote to Mr Drew of Elizabeth Emanuel on the 14th of July 1999 after I had spoken to him and a copy of that letter is now produced and shown to me at page 2 of MB1.”

The fourth affidavit dated 28 February 2000 is by Christina Brandon MBE. Having confirmed that the contents of her affidavit are true to the best of her knowledge, information and belief,

Ms Brandon explains that she is the Managing Director of Maid in Heaven a position she has held since May 1995. Maid in Heaven is, explains Ms Brandon, a retail bridal shop who were founder members of the Retail Bridalwear Association. The remainder of Ms Brandon's affidavit is reproduced verbatim below:

“3. I attended the Harrogate Bridal Exhibition in September 1998. This Bridal exhibition is the most important buying exhibition of the year for the retail bridal traders, when we buy the sample gowns which will form the basis of our business for the oncoming 12 months. I placed an order with Elizabeth Emanuel London, because I was under the impression that Elizabeth Emanuel herself was the designer of the gowns. Being in the bridal wear business, I was aware of the first class reputation that Elizabeth Emanuel has as a designer, and because of her personal reputation I was influenced to make an order. To most women Elizabeth Emanuel epitomises what is the best in British wedding gown design. Her name suggests quality and flair and I was very aware that her image would enhance the image that Maid in Heaven endeavours to achieve.

4. When I was at the Elizabeth Emanuel stand in Harrogate at no time was I informed that Elizabeth herself was not involved with the company. I told the young ladies on the stand that it must be exciting for them to be working in bridal with someone like Elizabeth Emanuel. They agreed that it was. Had I been told that she was not involved in the Company I would not have made the order and I therefore feel that I was misled by the representatives at the stand.

5. I had ordered four gowns. It was not until January 1999 when we began to experience problems with the poor quality of samples received from Elizabeth Emanuel London that we began to realise that something might be amiss. I was very unhappy with the quality of the gowns received and could not believe that such poor standards of workmanship could arise in gowns which had come from somebody with a reputation as impressive as that of Elizabeth Emanuel. I had paid on a pro-forma invoice for the first two of the four gowns I had ordered, thus it was not possible to return them. The quality of the two gowns I had purchased was such that I decided not to go ahead with the rest of the order. I subsequently discovered that Izabella Michalak of Elizabeth Emanuel International designed and made the dresses of which we bought two samples. I have made complaint of the quality of the dresses to International, but at the time of preparing this affidavit the dispute is not resolved.”

The fifth affidavit dated 24 February 2000 is by Shirley Hilary. Having confirmed that the contents of her affidavit are true to the best of her knowledge, information and belief, Ms Hilary explains that she is the Buyer of Belle du Jour a position she has held since May 1996. The remainder of Ms Hilary's affidavit is reproduced verbatim below:

“3. I attended the Bridal Exhibition at Harrogate in 1998, where I visited the stand and viewed gowns by Elizabeth Emanuel International Limited (International). The Harrogate Exhibition is an important exhibition for those in the industry and it is very well attended. I placed an order for three gowns under order confirmation number 6. A copy of the order confirmation is now produced and shown to me marked SH1.

4. At the stand, I together with Maree Hilary and Paula McCaughey met three representatives of International and we discussed, quite naturally, the gowns on display. Although I cannot recall exactly who said what, during our conversation reference was made by the representatives to having worked with Elizabeth Emanuel within a team, and I naturally assumed that Elizabeth Emanuel was involved in the designs of the gowns on display. I later discovered from Bridal Buyer magazine that Elizabeth Emanuel had transferred her trade name.

5. The gowns were of a good quality, they were well presented and as a result of the prestige and reputation associated with Elizabeth Emanuel as a designer an order for the gowns was placed.

6. Once the gowns were delivered we were very disappointed with the workmanship, and felt it was not of the standard expected from somebody with the excellent reputation of Elizabeth Emanuel. I tried to contact International, but could get no reply from the contact number that I had. I telephoned Directory Enquiries, who gave me a few numbers for Elizabeth Emanuel. At one of these numbers, I contacted Elizabeth Emanuel Enterprises Ltd. I spoke to Tony Drew of Elizabeth Emanuel Enterprises Ltd and told him about the situation with the dresses Belle du Jour had bought; I saw the letter Maree Hilary wrote to Elizabeth Emanuel. There is now produced and shown to me at page 2 of SH1 a copy of that letter.”

The sixth affidavit dated 18 February 2000 is by Jane Kerr. Having confirmed that the contents of her affidavit are true to the best of her knowledge, information and belief, Ms Kerr explains that she is the Royal Reporter with The Mirror a position she has held since October 1997, prior to which she worked with the sister company The Sunday Mirror since 1991. The remainder of Ms Kerr’s affidavit is reproduced verbatim below:

“3. On or about 4th March 1998, with James Whitaker, a former Royal Correspondent, I arranged to interview Elizabeth Emanuel about her fears that she might have to sell offcuts of the Princess Diana wedding dress in view of her financial situation. She had been keeping these offcuts in a bank vault, and had hoped that they would be family heirlooms. Mr Whitaker and I wrote a front page article on the basis of this interview. I knew of Elizabeth Emanuel as one of the designers of Princess Diana’s wedding dress, and haven’t heard anything to contradict that she is an extremely competent designer.

4. I had previously spoken to Elizabeth Emanuel who had informed me she believed that her ex-business partner, Mr Shami Ahmed was continuing to use her name even though she had left the business in October 1997. On telephoning the studio of Elizabeth Emanuel I asked to speak to Liz. I was told words to the effect that “Elizabeth is not here at the moment and could a message be taken”. When I asked when she expected Liz to return and if she was likely to return to the office that day I was told “Probably not but she will be here on Monday”. When I informed a representative that I had previously written to Liz and had not received a reply and was she certain that Liz would be in on Monday I was told “yes”. At no time was I informed that Liz was no longer involved with the company. I was clearly misled by

the people with whom I spoke who indicated to me that Liz continued to be the designer with the company.

5. A few days later I once again telephoned the studio and asked to speak to Liz. A different woman answered the phone and told me that “Liz did not work here anymore”. I asked how I could get in contact with Liz about my letter which I previously sent to them and which did not seem to have found its way to Liz, and was told that Liz’s mail was being passed to the receivers. I had great difficulty in obtaining Liz’s new number but eventually it was given to me.”

The seventh affidavit dated 18 February 2000 is by Anna Pukas. Having confirmed that the contents of her affidavit are true to the best of her knowledge, information and belief, Ms Pukas explains that she is a Senior Feature Writer with The Express newspaper a position she has held since February 1996, prior to which she worked at the Daily Mail and The Sunday Times. The remainder of Ms Puka’s affidavit is reproduced verbatim below:

“3. At the end of January 1998 I was writing an article about Elizabeth Emanuel. The article was about the collapse of Elizabeth Emanuel’s business and her short-lived partnership with Shami Ahmed. A copy of the article is now produced and shown to me marked AP1. I called the Elizabeth Emanuel shop, I believe on Thursday 29th January or Friday 30th January 1998 and asked for Elizabeth Emanuel. The female whose name I did not get, replied after being asked if I could speak to Elizabeth Emanuel “She is not here”. She went on to say after I had asked her whether she would be in later that day, “I don’t think so we are not expecting her today”. They may not be the exact words she used but the above is the gist of her words.

4. When I asked further as to when Elizabeth Emanuel was expected the person answered “I am not certain”. When I pursued this and asked why she could not tell me when Elizabeth Emanuel was next due in at the shop I was told “She doesn’t come often, I am not able to say when she will be in next”. On being asked if Elizabeth did in fact work there I was told “I do not know”. Again these may not be the identical words used, but they are close to the words used and they do, at the least, show the conversation is misleading. My account of the telephone conversation is taken from memory and notes I made at the time.

5. The impression I was given was that Elizabeth was still designing and working at the shop but she was temporarily out of the office. Elizabeth Emanuel had already told me that she no longer worked at the shop. In fact, she said she had been barred from going there. The telephone conversation confirmed to me that Elizabeth Emanuel did not work in the shop that bore her name.”

The eighth affidavit dated 21 February 2000 is by Maureen Crawt. Having confirmed that the contents of her affidavit are true to the best of her knowledge, information and belief, Ms Crawt explains that she is a Director of Success Appointment with over 20 years experience in the fashion recruitment industry. The remainder of Ms Crawt’s affidavit is reproduced verbatim below:

“3. I have known Elizabeth Emanuel professionally since the mid-1980s. I was aware of Elizabeth Emanuel as a designer because of her high profile and excellent reputation in the industry, initially with her husband David and following that as an independent designer in her own right. I of course knew about the dress that she designed for Diana Princess of Wales.

4. Since joining Success Appointments I have been responsible for placing key staff with Elizabeth Emanuel, including a managing director in June 1997. In February 1998, Elizabeth Emanuel called to see me at our offices to appraise us of her situation as a client. During that meeting she told me about the changes taking place, including the situation with Shami Ahmed and the dispute with him regarding the use of her name.

5. Elizabeth Emanuel asked me to telephone her office and ascertain what clients were being told about the situation. I did so, and asked for Elizabeth Emanuel. I was told by the representative that she was not available. Once I questioned the representative further I was told that she did not know when she would be back. I was never told that Elizabeth had left the company even though the representative had plenty of opportunity to do so. The representative did not let me have Elizabeth’s home number. I put this in writing to Elizabeth Emanuel; and there is now produced and shown to me marked Exhibit MC1, a copy of that letter.”

The ninth affidavit dated 17 February 2000 is by Alexandra Shulman. Having confirmed that the contents of her affidavit are true to the best of her knowledge, information and belief, Ms Shulman explains that she is the editor of British Vogue a position she has held since 1992. Prior to this Ms Shulman explains that she was editor of GQ from 1990 to 1992, features editor of Vogue from 1988 to 1990, Deputy editor of the Sunday Telegraph magazine from 1987 to 1988 and worked on Tatler from 1982 to 1987. The remainder of Ms Shulman’s affidavit is reproduced verbatim below:

“3. I have known Elizabeth Emanuel since 1989. I met her through her PR agent, Judy Tarlo. Before that time, I was aware of Elizabeth Emanuel as a designer because of her high profile and excellent reputation in the industry, initially with her husband David and following that as an independent designer in her own right. I of course knew about the dresses she designed for Diana Princess of Wales.

4. Because of Elizabeth’s reputation in the fashion design industry, if ever I saw a reference to “Elizabeth Emanuel” on a dress or in fashion magazine, or in relation to fashion generally, I would think, as I would believe most people in the industry would, that the reference would be to the designer Elizabeth Emanuel herself. Her reputation would dictate that this would be the case.

5. I think it very likely that somebody buying a garment from a shop incorporating the name Elizabeth Emanuel would believe they were buying a garment which had been designed by Elizabeth herself. I think that such people would inevitably be misled because of Elizabeth’s reputation in the industry.”

The remaining affidavits are from: Richard Branson (dated 22 January 2000), Jeffrey Archer (dated 21 February 2000), Joan Burstein (dated 17 February 2000), David Sassoon (dated 21 February 2000) and Julius Schofield (dated 21 February 2000). Each describe themselves and their relationship with Elizabeth Emanuel in the following terms:

Richard Branson

“2. I am Chairman of the Virgin Group of Companies. I have known of Elizabeth Emanuel since about 1981 when I am aware she designed the famous wedding dress for Princess Diana. In 1990 I commissioned Elizabeth to design our new uniform for Virgin Airlines. There is now produced and shown to me marked RB1 a copy of an article from the “Today” newspaper dated 9th November 1990 publicising the preview of the uniforms.

3. There is now produced and shown to me marked RB2 the affidavit of Alexandra Shulman sworn herein. I agree entirely with paragraphs 4 and 5 of that affidavit with regard to the reputation of Elizabeth Emanuel as an independent designer.”

Jeffrey Archer

“2. I am an author and politician. I have known Elizabeth Emanuel for a number of years through mutual activities with charities and the media, and am aware of her reputation as a fashion designer of significant standing.”

Joan Burstein

“2. I am the owner of Browns, designer clothing boutique on South Molton Street and I have worked in the fashion industry all of my life. I have known Elizabeth Emanuel since the beginning of her designing career.”

David Sassoon

“2. I am design director of Bellville Sassoon. I have known Elizabeth Emanuel since 1980, and have shown my own collection of designs with her at many Gala Charity Fashion Shows. Before this time, I was aware of Elizabeth Emanuel as a designer because of her high profile and excellent reputation in the fashion industry.”

Julius Schofield

“2. I am Co-Partner of Indesign Fashion Recruitment and Consultants. The business was established in 1967 working with international artists and designers including Donna Karan, Tommy Hilfiger, Yves Saint-Laurent and Valentino.

3. I have known Elizabeth since 1975 when she graduated from the Harrow School of Art, and subsequently at the Royal College of Art. Elizabeth designed some of the clothes for Fashion Aid 1985, at which I was the Fashion Co-ordinator. From 1986 - 1988 Indesign were Elizabeth’s public relations representatives.”

I note that all of the declarants conclude their affidavits in the same terms as Mr Branson mentioned above.

APPLICANT/REGISTERED PROPRIETOR'S EVIDENCE

This consists of two witness statements both of which are accompanied by a statement of truth. The first dated 12 September 2000 is by Paul Cambridge. Mr Cambridge explains that he is the Managing Director of Oakridge Trading Limited (Oakridge) who are responsible for marketing clothing under the following brand names: JOE BLOGGS JUNIOR, BABY BLOGGS, DOLCE DOLCE, MAJOR MINOR and ELIZABETH EMANUEL. He states that ready-to-wear day wear was launched in August 1998 under the ELIZABETH EMANUEL name and adds that this is the only ELIZABETH EMANUEL merchandise traded in by Oakridge.

The remainder of Mr Cambridge's witness statement is reproduced verbatim below:

“3. When launching the ELIZABETH EMANUEL day wear, I personally instructed all of my staff that, whilst they should not volunteer to customers that the goods had not been designed by Elizabeth Emanuel (“Miss Emanuel”) they should so advise if asked.

4. I verily believe that all customers of ELIZABETH EMANUEL day wear are well aware that the merchandise is not designed by Miss Emanuel and have been so since at least the time of the launch.”

The second witness statement dated 10 October 2000 is by Eathasham Ahmed. Mr Ahmed explains that Oakridge Trading Limited is a member of his group of companies adding that he is authorised by its Directors to make his witness statement on its behalf. The remainder of Mr Ahmed's witness statement is reproduced verbatim below:

“2. Oakridge Trading Limited (Oakridge) is the successor in title to Frostprint Limited. Frostprint Limited changed its name on 23 September 1997 to Elizabeth Emanuel International Limited (International) and International assigned its rights to Oakridge on 5 November 1997. There is now produced and shown to me and marked EA1, a copy of the Assignment between International and Oakridge to which I have just referred.

3. I unhesitatingly accept that Elizabeth Florence Emanuel (Miss Emanuel) is known as a fashion designer.

4. By the Frostprint agreement (Exhibit EFE2), Frostprint acquired *inter alia* Registered Trade Mark No. 1586464 (the Trade Mark) comprising dominantly the words ELIZABETH EMANUEL together with a device of the letters EE and a bow arrangement (Clause 2.1.3); designs (including without limitation all paper clothing designs and patterns (Clause 2.1.4) and the goodwill of Elizabeth Emanuel plc (including the business name or names under which the business is carried on to the extent that they are capable of transference) and the **exclusive right** (emphasis added)

to hold itself out as carrying on the business in succession to Elizabeth Emanuel plc (Clause 2.1.5).

5. I do not object to Miss Emanuel using her own name, provided it is not used as a brand name. For instance, if Miss Emanuel were to trade under brand X, I would have no objection to her making it known that brand X clothes are designed by Elizabeth Emanuel.

6. It is not unusual for a fashion house to continue to brand goods with the name of its founder or original designer when he or she is either no longer involved with the ongoing business or no longer involved in the actual designing of the garments and/or products whether through death or otherwise. I mention the following as examples: Gucci, Yves St Laurent, Chanel, Jasper Conran, Louis Vuitton, Katherine Hammet and Pierre Cardin.

7. Miss Emanuel left the employ of International during October 1997. The rift which had occurred between Miss Emanuel and myself was widely publicised. There is now produced and shown to me and marked Exhibit EA3 a bundle of press cuttings. For anyone involved in the fashion industry to suggest that they were not aware that Miss Emanuel had ceased her involvement with International and Oakridge by the time of the Harrogate Exhibition in September 1998, is frankly incredible.

8. After Miss Emanuel's departure from International, there was a period of about two months during which negotiations were in progress with a view to the possible re-engagement of Miss Emanuel. During this period, staff at the Dorset Street shop had been instructed to be circumspect in response to enquiries for Miss Emanuel or her whereabouts.

9. I believe that the only garments sold from the Dorset Street shop as having been designed by Miss Emanuel were goods in make at the time of her departure.

10. Although the staff of Oakridge did not say on every occasion that goods for sale under the name ELIZABETH EMANUEL had not been designed by Miss Emanuel, if questioned on the point, they said that they had not. The staff had been so instructed.

11. Throughout the voluminous evidence filed on behalf of the applicant, I can find only one claim to garments having been incorrectly sold as designed by Miss Emanuel (the affidavit of Mary Blair). Whether this was a misunderstanding or an isolated instance I cannot tell, but the opponent's evidence is entirely consistent with what I have said in paragraph 10 above.

12. Miss Emanuel has referred to a number of advertisements which appeared in the period of negotiation referred to in paragraph 8 above."

In the final two paragraphs of his witness statement Mr Ahmed refers to a co-pending opposition action between the parties relating to the words ELIZABETH EMANUEL solus. They are reproduced below:

“13. Miss Emanuel alleges that the trade mark applications were made in bad faith. This is not the case. I am advised that use of the words ELIZABETH EMANUEL (simpliciter) would be an infringement of Registration No. 1586464 the dominant part of which comprises those words, which were, of course, the business name which Frostprint had purchased. To strengthen its position and build the brand portfolio, Oakridge sought registration of the words ELIZABETH EMANUEL (simpliciter) in plain capitals and in the form of a signature. Signature marks are not uncommon in the fashion industry and I mention Pierre Cardin and Paul Smith as examples, along with Joe Bloggs and Gabicci from my own group of companies’ labels. We have not, in fact, used the Elizabeth Emanuel signature marks and have no intention of doing so. In view of this and the sensitivity of the matter to Miss Emanuel, I instructed the application No. 2161562A for the signatures to be withdrawn. Miss Emanuel should not, however, assume that the use of her signature as a brand name would not be an infringement of my company’s rights.

14. It does not appear to be in dispute that Frostprint acquired the goodwill in the Registered mark No. 2161562B and that must apply to the mark as spoken, which is to say the words ELIZABETH EMANUEL.”

EVIDENCE IN REPLY OF THE OPPONENT/APPLICANT FOR REVOCATION

This consists of a further two affidavits and four witness statements. The first affidavit dated 18 July 2001 is by the same Elizabeth Florence Emanuel mentioned above. Once again, I do not propose to summarise all of Elizabeth Emanuel’s affidavit here but have chosen those paragraphs which in my view convey a picture of Elizabeth Emanuel’s evidence under the headings “My Reputation”, “Branding in the Fashion Industry”, “Instructions to Staff” and “The Use and Effect of the Mark” and these are reproduced verbatim below together with the paragraph number and the category to which they relate.

“My Reputation

2. In paragraph 3 of his Witness Statement Mr Ahmed accepts that I am "known as a fashion designer". I have previously set out in paragraphs 9 to 20 of my Affidavit of 29th February 2000 some detail of how my personal reputation as a designer developed before, during and after my association with Hamlet Plc ("Hamlet") and Oakridge. In that Affidavit I attempt to explain how my reputation developed not only as a fashion designer but also as something of a celebrity in my own right. I do not consider that Mr Ahmed's brief comment on my reputation addresses the full significance of the issue in the context of these proceedings. Due to the extensive media coverage that I have obtained over the years I believe that I have become very visually recognisable to the public and therefore more closely associated in a personal sense in the mind of the public with any product that bears my name.

3. By way of example of the level of publicity that I continue to achieve and my continuing business activities there is now produced and shown to me and marked "EFE 16" a bundle of articles, press cuttings, photographs and other editorials relating to coverage of me personally and my work for the period January 1999 to present.

.....

Branding in the Fashion Industry.

8. I do not accept what Mr Ahmed says in paragraph 6 of his Witness Statement which is an oversimplification of the position and overlooks certain critical factors. When a fashion house continues to brand goods with the name of its founder or original designer, even though that person is no longer associated with the house, it is normally for the following reasons:

- (i) The original designer or founder is dead. Clearly there is no possibility of misleading the public as to the personal involvement of the designer in the business in such circumstances. That position applies to both of Mr Ahmed's examples of Chanel and Louis Vuitton. Moreover in both of the latter examples other well known designers were brought into the houses (Karl Lagerfeld and Mark Jacobs respectively) amidst substantial publicity and marketing campaigns to "re-launch" the labels.
- (ii) The original designer has agreed for whatever reason (age, contractual restriction, etc.) to cease trading/designing under his/her own name. In those circumstances there will be no competing business in the marketplace under the same name and little possibility of the average consumer of the relevant product being misled or confused as to its origin. That scenario applies to both of Mr Ahmed's examples as to Gucci and Yves St Laurent. Moreover, as with the example referred to in (i) above, it is common for a re-structuring of the brand to take place with the well publicised appointment of a new creative director/designer. In the case of Gucci this occurred with Tom Ford, the well known designer.

9. Alternatively, it may in fact be the case that the original designer does retain an association with the brand by virtue of reserving a right to product approval/quality control. This will normally be in conjunction with some form of continued remuneration in accordance with sales achieved. So far as I am aware that position applied particularly to Jasper Conran and Katherine Hamnett of the examples cited by Mr Ahmed. I am aware that Jasper Conran remains actively involved in personal endorsement of the products bearing his name. In these circumstances there is again little likelihood of the brand giving rise to false expectations on the part of consumers - on the contrary the consumer assumes that the particular designer is involved in some way in the design process of the product bearing his/her name and that is in fact the case under the product approval/quality control provisions under which the goods are produced.

13. I would also comment that the status and history of the fashion houses referred to by Mr Ahmed are very different to those for businesses involved in the design and exploitation of products bearing the name Elizabeth Emanuel. The examples cited by Mr Ahmed are all internationally renowned fashion houses with long histories (with the possible exceptions of the Jasper Conran and Katherine Hamnett labels where, as I

have referred to above, the licensing arrangements involve product approval by the respective designers who thereby retain a close association with the products). I do not consider that my situation can be compared with that of Gucci, Yves St Laurent, Chanel or Pierre Cardin where each of those labels have a long history and are internationally renowned businesses with very substantial financial turnovers. In those circumstances the average consumer of the product who is reasonably well informed is fully aware that the product bearing the particular label is that of a multi-national corporate entity with very many employees and numerous well known designers that have worked for the particular house. In other words there is no expectation on the part of the consumer that the individual designer whom the company is named after will be personally involved in the product and therefore the mark does not give rise to an expectation which will not be fulfilled. I would also comment that the business of all of the designers to which Mr Ahmed refers is very wide ranging (i.e. across various categories of product - including not only all types of clothing for all occasions but also jewellery, luggage, cosmetic products, etc.).

14. By contrast with the foregoing, as will be apparent from paragraphs 9 to 20 of my Affidavit of 29th February 2000 the use of the name "Elizabeth Emanuel" in connection with (primarily) clothing products is relatively recent and relates primarily to exclusive high priced limited edition ranges. The brand "Elizabeth Emanuel" is not and has not ever been perceived by the public as an international fashion house with all that entails - i.e. numerous designers, employees and a broad range of products - rather the name is specifically connected with me personally and elegant "occasion wear" (particularly wedding dresses). I would repeat the comments that I have made above as to my personal reputation and I would again comment that much of this position has come about as a result of the very high profile that I achieved in connection with the wedding dress for Princess Diana. Although the names of the various designers that Mr Ahmed refers to are undoubtedly far more well known than my own, I would suggest that the individuals themselves would not be readily recognisable to the relevant public whereas I might well be. Apart from the other factors referred to it is largely that 'personal fame' that distinguishes me from the international fashion houses that Mr Ahmed refers to and more closely associates me personally with any product bearing my name. Accordingly, the average consumer does expect that I will have been involved personally in some way in the design of any garment bearing my name.

Instructions to Staff

15. In paragraph 8 of his Witness Statement Mr Ahmed states that, following the departure of Elizabeth Emanuel from International (around October 1997) the staff at the Dorset Street shop "had been instructed to be circumspect in response to enquiries for Ms Emanuel or her whereabouts". Further, in paragraph 10 of his Statement Mr Ahmed states that Oakridge staff has been instructed, if questioned on the point, to say that goods for sale under the name Elizabeth Emanuel had not been designed by Ms Emanuel. In paragraph 3 of his Statement Mr Cambridge states that he personally instructed all of his staff that, when launching the Elizabeth Emanuel day wear "whilst they should not volunteer to customers that the goods had not been designed by Ms

Emanuel they should so advise if asked".

16. At "EFE 21" is a copy of a letter from my solicitors to the Trade Mark Attorneys for Oakridge, Messrs McNeight & Lawrence, and it will be noted from numbered paragraph 2 thereof that my solicitors sought copies of all written documentation relied upon in relation to the contention put forward in paragraph 8 of Mr Ahmed's Statement. I am advised that my solicitors did not receive a written response to that letter but the issue was raised by my solicitor, John Simmons, with John Lawrence of McNeight & Lawrence in a telephone conversation on 19th March. Mr Simmons informs me that during that conversation Mr Lawrence confirmed that the Registered Proprietor would not be relying upon any documentary evidence in the nature of that referred to. I find it very surprising that such fundamental instructions to staff should not, at some time at least, have been reduced into writing. Further, even in the event that such instructions were given (which I do not accept) it does not appear from the evidence of Mary Blair, Christina Brandon, Shirley Hillary, Tony Drew, Jane Kerr, Anna Pukas, Maureen Crawl, Elizabeth King, David Baughton, Shirley Ann Darby (and others) that such instructions were put into practice to avoid misunderstanding on the part of potential customers for the product.

Use of the Effect of the Mark

17. In paragraph 7 of his Witness Statement Mr Ahmed suggests that: "for anyone involved in the fashion industry to suggest that they were not aware that Ms Emanuel had ceased her involvement with International and Oakridge by the time of the Harrogate Exhibition in September 1998, is frankly incredible". Paragraphs 8 and 9 then deal with the manner in which goods were sold at the Dorset Street shop and instructions to the staff of International. As referred to above paragraph 10 deals with the instructions purportedly given to staff of Oakridge. In paragraph 11 Mr Ahmed contends that: "throughout the voluminous evidence filed on behalf of the Opponent [he] can find only one claim to garments having been incorrectly sold as designed by Ms Emanuel" being the evidence contained in the Affidavit of Mary Blair. I expressly disagree with the latter comment and I rely upon the evidence referred to in paragraph 16 above. In paragraph 12 Mr Ahmed suggests that the advertisements which appeared in Vogue (as referred to in paragraph 33 of my Affidavit) were booked prior to October 1997 or during the 2 months thereafter.

18. Dealing with the issue of the Vogue advertisement, I continue to rely upon the position set out in paragraph 33 of my first Affidavit. I have no recollection whatsoever of the adverts being booked during the period referred to by Mr Ahmed. In any event I see no reason why Oakridge/International was unable to cancel or amend the advertisements in the following months or to seek some form of correction in such a prominent publication. Once again Mr Ahmed has declined to put forward any documentary evidence in support of his contention as to the bookings. The gist of what Mr Ahmed says in these paragraphs is that the use of the marks applied for does not and will not lead to any "confusion" (in the broad sense of the grounds set out in the application in these proceedings). Mr Cambridge also states in paragraph 4 of his Statement that [he] very verily believe[s] "that all customers of Elizabeth Emanuel day

wear are well aware that the merchandise is not designed by Ms Emanuel and have been so since at least the time of the launch". Mr Cambridge puts matters on a broader basis than Mr Ahmed does but it amounts to the same point. I will further comment on this general issue which I will loosely describe as "confusion" below.

19. I disagree entirely with what Mr Ahmed says in paragraph 7 of his Statement. Firstly, I am advised that the matters in issue in these proceedings are not to be judged by reference to the knowledge of "anyone involved in the fashion industry" rather it is necessary to look through the eyes of the average consumer of the product who is reasonably well informed and reasonably observant and circumspect. Secondly, I do not accept what Mr Ahmed says in paragraphs 7 and 11 of his Statement as a matter of fact. It is quite clear from evidence already filed in these proceedings that numerous people involved in the fashion industry were not aware of the split between Mr Ahmed and I in October 1997. Even if they were vaguely aware that we had fallen out they would not necessarily know the implications of that in terms of the use of the trade mark in connection with Oakridge, International, Elizabeth Emanuel (London) Limited ("EE London") or myself personally. I firmly believe that the overriding impression amongst those within the industry, the average consumer of the garments and the public generally continued (and continues to be) that I must be closely associated with any product bearing my name. I believe that position is absolutely clear from the Affidavits and evidence served in these proceedings.

20. In any event even some considerable time after the split with International I was still being connected in the press with Mr Ahmed and one such example of that may be found at page 1 of "EFE 22" now produced and shown to me (and being a bundle of documents that I shall refer to in connection with the heading "The use and Effect of the Mark"). The latter is an article in The Evening Standard of 17th September 1998 (approximately a year after my split with Mr Ahmed) which shows the two of us pictured together and gives the impression that we were still working together at that time. Further, at pages 2 and 3 of "EFE-22" is a letter to me from the Worth Global Style Network ("WGSN") together with an advert from the WGSN August 1998 web site for the launch of "the first Elizabeth Emanuel ready to wear collection" under the heading "Elizabeth Emanuel Label Launched". The article states "The New Elizabeth Emanuel, London label is backed by Shami Ahmed". The final sentence of the article states: "Elizabeth Emanuel, with her ex-husband David, designed the wedding dress worn by Diana, Princess of Wales". Again there is the connection made with my personal reputation. The article does state that Mr Ahmed "acquired the business of designer Elizabeth Emanuel including the trade mark last year" but there is no indication that I am no longer involved with the business and on the contrary the reference to the Royal Wedding dress gives completely the opposite impression.

21. In addition to the evidence already served in these proceedings as to the "confusion" of those involved in the fashion industry as at the time of the Harrogate Exhibition in September 1998 I would also refer to the letter of Melanie Jones, Deputy Editor of "Bride and Groom" magazine of 17th August 1999. A copy of that letter may be found at page 4 of "EFE 22". Clearly the Deputy Editor of a publication such as "Bride and Groom" must fall within Mr Ahmed's category of "anyone involved in the

fashion industry" (paragraph 7 of his statement). Although Ms Jones acknowledges that her recollection of the exact exchange of words was rather "fuzzy" it is quite clear that she felt it necessary to seek confirmation from the representatives on the International stall that I myself had designed the clothing on show. Ms Jones then states that the response led her to believe that I was actually involved with International.

22. As to the perception of the average consumer when purchasing a product bearing the Mark **ELIZABETH EMANUEL** in addition to the Affidavits which have already been served in these proceedings I would also refer to the Statements of Shirley Anne Darby of 15th June 2001; Elisabeth King of 25th April 2001 and Angela Bracken of 24th June 2001. The Statements provide information not only as to the state of mind of the potential consumer of the product but also as to the knowledge and understanding of the salespersons of the product.

23. In paragraph 6 of her Statement Ms Darby states the following: "At no time did the saleswoman make any attempt to dispel my very clear belief and understanding that I had purchased a garment which Elizabeth Emanuel had personally been involved in the creation of". Items 15(a) and 15(b) of the bundle of press clippings contained in "EFE 16" are an article from the Daily Mail of 6th May 2000 and the article in Hello magazine of 27th June 2000 referred to in paragraph 6 of Ms Darby's Statement. The second paragraph of the Daily Mail article is a reference to the fact that I was responsible for designing the wedding dress for the bride. I attended the wedding itself and one of the photographs from the Hello feature shows me together with the wedding party. Whilst at the wedding I spoke briefly with Ms Darby and she commented to me to the effect that she loved the suit whilst under the clear impression that I had been responsible for designing it. That placed me in an embarrassing position as she was clearly pleased at the thought that I had been responsible for the design of her outfit and, in particular, as she knew that I had designed the dress for the bride. I obviously did not want to dispel any happy associations on that day and I therefore simply commented to the effect that the suit looked very nice on her. Indeed, somebody from the wedding party informed a reporter from Hello at the event that I had been responsible for designing all of the outfits and I was obliged to contact Hello to advise them of the correct position. It was only when I subsequently contacted Ms Darby in relation to these proceedings that she learnt for the first time that I had not been involved in any way in the design of her suit.

24. Turning to the Witness Statement of Elisabeth King, Ms King states very clearly in paragraph 3 of her Statement as follows:

"When I saw the label "Elizabeth Emanuel" the possibility did not occur to me that the dress might have been designed by someone other than the famous designer Elizabeth Emanuel. The position seemed absolutely clear to me - the label said "Elizabeth Emanuel" and that was enough as far as I was concerned. I believed absolutely that Elizabeth Emanuel the individual was responsible for the dress. Indeed, I was unaware that any company was trading under "the

Elizabeth Emanuel" label without Elizabeth Emanuel's direct personal involvement."

Ms King also explains how her belief that I had personally been involved in the design of the dress was strengthened by her conversations with the sales staff in the "Jacques Vert" shop in the Bluewater Shopping Centre on 9th September 2000. I should mention that I understand that Mr Ahmed has some involvement in the management and ownership of the Jacques Vert business and I refer to the press articles at pages 5 and 6 of "EFE 22".

25. The further contents of Ms King's Statement and also that of Angela Bracken cause me concern in the following respects also. Firstly, I am concerned at the low price of the garment and the poor quality that has obviously led to. Secondly, I am concerned at the very poor customer care that Ms King received from Mr Ahmed's group of companies in relation to her complaint. Thirdly, it seems that the purchaser of a garment manufactured by Mr Ahmed's group of companies finds it far easier to contact me personally in relation to a complaint than to track down the company actually responsible for its manufacture. I believe that the latter is an ongoing problem for anyone wishing to identify the business entity within Mr Ahmed's organisation actually responsible for the design and manufacture of garments bearing an Elizabeth Emanuel label. At pages 7-19 of "EFE 22" is a bundle of documents comprising various searches on the Companies House Register and various internet searches on the Google search engine relating to the name Elizabeth Emanuel. Even now it is not clear to me which companies were or are responsible for the design and manufacture of garments bearing the trade mark and it is notable that International (as at 2nd July 2001) had not filed an account for the period which was due on 30th April 1999. Additionally, I note that EE London was dissolved on 30th November 1999. Further, the vast majority of various searches against my name on the Google internet search engine relate to me rather than any of Mr Ahmed's business interests. In the circumstances it is hardly surprising that many disgruntled consumers of products bearing the label "Elizabeth Emanuel" find themselves contacting me rather than an entity associated with Mr Ahmed. On the same basis I also receive frequent communications from people simply making enquiries in relation to the product bearing an Elizabeth Emanuel label. Two such examples may be found at pages 20-21 of "EFE 22" although there are many other such examples that I have not retained copies of. In fact I would say that, over the last 3 years or so, I have dealt with at least one enquiry a month where the other person does not appreciate that I have no connection with Mr. Ahmed's companies and (if I have the time) I have to explain the position.

27. I would also refer to the Witness Statement of David Boughton of 21st June 2001 and to a number of occasions upon which I made test telephone calls to outlets selling garments created by Mr Ahmed's companies and bearing the label "Elizabeth Emanuel". I should explain that, in relation to each outlet I contacted, I was aware that I had not personally supplied any of the garments I myself had designed to the particular outlet and any 'Elizabeth Emanuel' stock that they held must therefore have been that of one of Mr. Ahmed's companies. The same position also applies to the

outlets contacted by David Boughton and Tony Drew. I recorded each of the telephone conversations to which I will refer and I am advised that a copy of each of the recordings may be heard on reasonable notice at the office of my solicitors. I also prepared transcripts of each of the conversations which are now produced and shown to me and marked "EFE 23". I will refer to each in chronological order below.

28. On 28th August 1999 I made a telephone call to the Jacques Vert shop in the Bluewater Shopping Centre in Dartford. Whilst the assistant did not explicitly say so, it will be seen from the transcript that she did very little to negate my feigned assumptions that the designer Elizabeth Emanuel had been involved in the design of the garment in question personally. Certainly, I am not informed at any stage that the designer was not personally involved and I am therefore allowed to maintain the false assumption.

29. On 6th April 2001 I made a telephone call to a shop called Gisonni in Cambridgeshire pursuant to an advert that I had seen on an internet site for designer clothing. In particular the following exchange took place with the assistant during the short conversation:

Liz: "OK, but it's definitely the designer Elizabeth Emanuel?"

Assistant: "Yes."

Liz: "OK because, no, it's just that I know there's two lots of them going around I just wanted to check ..."

Assistant: "Two lots going around one's an impostor are they?"

Liz: "Well I don't know I just saw a television programme so I just wanted to check before I come in that it's the right one?"

Assistant: "Yeah, no problems there."

Clearly the assistant in the shop believed absolutely that the Elizabeth Emanuel garments that were for sale were designed by me personally. I believe that grave misconception had come about (even on the part of somebody selling the product as opposed to the average consumer) due to the assistant's knowledge of my reputation personally and the consequent association between any product bearing my name and me personally. I assume that Mr Ahmed would categorise a sales assistant of his product as someone "involved in the fashion industry" as referred to in paragraph 7 of his Statement. Clearly, this particular person had no idea whatsoever about any dispute relating to garments bearing the name Elizabeth Emanuel and naturally assumed that I was involved in the design of the product that she was selling. That assistant would hardly be in a position to convey the correct position to a potential consumer. A copy of the transcript may be found at pages 8-11 of "EFE 23".

30. On 12th April 2001 I made a telephone call to a shop called Grazyna in Highgate,

London. A copy of the transcript may be found at pages 12-18 of "EFE 23". I again posed as a potential customer interested in purchasing an evening dress under the Elizabeth Emanuel label to wear to a wedding. Again, I was aware that none of my personal designs were available in this shop. As will be noted from the transcript, initially I thought that I was speaking with an assistant in the shop but it subsequently transpired that the person that I was talking to was in fact the owner. At page 14 of "EFE 23" after the owner had informed me that she had certain "Elizabeth Emanuel" garments available, she confirmed that a particular dress had been designed by Elizabeth Emanuel personally (i.e. the one who did the wedding dress). Again I tried to press as to whether or not the owner was conscious of any conflict in the market place in respect of the name Elizabeth Emanuel and again it was clear that the owner had no knowledge of that and she was labouring under the misapprehension that I personally must have been responsible for any garment bearing the name Elizabeth Emanuel. Accordingly the following exchange took place:

Liz: "Oh that's pretty good. Is that, are you sure that's the designer, the one who did the Royal Wedding dress and not the other label?"

Assistant: "What other label?"

Liz: "Because I know there's two Elizabeth Emanuels."

Assistant: "Well this is ready to wear range ..."

Liz: "So that would have been designed by her?"

Assistant: "Yes."

Later in the conversation I asked the owner if she knows anyone else that might carry the range that we were talking about. She responds that she does not know although: "(I know that she had a shop somewhere in ... god knows where.)"

The second affidavit dated 18 July 2001 is by the same Anthony Drew mentioned above. The relevant extracts from his affidavit are reproduced verbatim below:

"2.....I fully believe that the purchaser of a garment bearing an Elizabeth Emanuel label assumes that the designer of that name has herself been involved in the design process of the garment. Indeed I believe that even persons responsible for the sale of such garments to the public foster this mistaken belief as they themselves consider that to be the case. I tested this proposition myself by posing as a potential customer on 22nd July 1999 in a telephone call to a shop called "Pandora's Dresses" in Knightsbridge.

3.....It will be noted from the transcript of that conversation that I deliberately emphasised that there were "two Elizabeth Emanuels". This proposition was put forward with a view to testing whether or not the assistant had any appreciation of the possibility that garments bearing the Elizabeth Emanuel name existed in the market

place (and indeed that the assistant was selling) that the designer herself was not in any way associated with. The assistant's initial response to this was as follows:

“I don't know about that. I imagine it's the Elizabeth Emanuel who make Princess Di's dress, that's the one isn't it?”

Subsequently in the conversation I took matters a stage further by expressly referring to Joe Bloggs ie. the well known business of Mr Ahmed. The following exchange took place:

Tony: “And then there's an Elizabeth Emanuel which is in some way actually made by Joe Bloggs produced by Elizabeth Emanuel”.

Assistant: “Well I think that the ones that we would get are not Joe Bloggs”.

Tony: Not Joe Bloggs?

Assistant: No.

4. I should also emphasise that, in making the call to Pandora's Dresses, I was conscious that the designer Elizabeth Emanuel did not have any garments for sale in that shop so that the Assistant could only have been referring to Elizabeth Emanuel dresses designed and manufactured under Mr Ahmed's business.

5. I would also refer to paragraph 25 of the second affidavit of Elizabeth Emanuel. I confirm that I also have personal experience of dealing with people that have attempted to contact Elizabeth under the false belief that Elizabeth is still associated with Mr Ahmed's companies or is otherwise responsible for the garments produced by such businesses. I firmly believe that Elizabeth is still the first “port of call” for people wishing to make enquiries in relation to garments or businesses bearing her name. Accordingly, I have dealt with at least 50 enquiries of this nature over the last 3 years. I have received such calls from members of the public; journalists; public relations people and particularly trade suppliers (in one case at least mistakenly demanding payment of an invoice that was nothing to do with Elizabeth but rather one of Mr Ahmed's businesses). I do not believe that it is clear to a significant and sizeable proportion of people who are knowledgeable of the fashion industry (let alone the average consumer) that Elizabeth Emanuel the designer has no involvement whatsoever in the design or production by Mr Ahmed's business of garments bearing the ELIZABETH EMANUEL trade mark.”

The four remaining witness statements all of which are accompanied by a statement of truth are from Elisabeth King (dated 25 April 2001), Shirley Ann Darby (dated 15 June 2001), David Boughton (dated 21 June 2001) and Angela Bracken (dated 24 June 2001). In so far as the witness statements of Ms King and Ms Darby are concerned, both attest to the fact that their purchase of their respective dresses was influenced by the fact that both felt that the dresses they were purchasing were connected with the famous designer Elizabeth Emanuel. In her witness statement Ms King comments on her visit on the 9th of September 2000 to the

Jacques Vert store located in the Bluewater Shopping Centre. Amongst her comments she says:

“.....I noticed a number of garments on the clothes rails with the label “Elizabeth Emanuel”. I remember commenting to my friend: “Wouldn’t it be wonderful to wear a dress to my wedding by the same designer as Lady Diana”. With that particularly in mind I bought.....”

“As referred to above, when deciding to buy the dress, I was very much influenced by the fact that it appeared that the dress was made by the designer Elizabeth Emanuel whose reputation I was very conscious of.....When I saw the label “Elizabeth Emanuel” the possibility did not occur to me that the dress might have been designed by someone other than the famous designer Elizabeth Emanuel.....I believed absolutely that Elizabeth Emanuel the individual was responsible for the dress.”

Ms King then goes on to explain how following dry cleaning a month or so later, the beads on the dress disintegrated and in so doing ruined the garment; she adds that in her opinion the fault was with the dress itself and not with the dry cleaning process. Ms King’s view of matters is supported by the witness statement of Ms Bracken who was the Dry Cleaning Controller at the Aylesbury branch of Safeway Stores plc responsible for the dry cleaning of the dress in question.

In her witness statement Ms Darby comments on the dress she purchased from the Jacques Vert store in Whiteleys, London. She says:

“3. When I bought the outfit I was already conscious of Elizabeth Emanuel’s reputation as a fashion designer of established quality and standing. Furthermore my future daughter-in-law had recently commissioned Elizabeth Emanuel to personally design her bespoke Bridal dress and Bridesmaids dresses and had already completed several fittings with Ms Emanuel at her studio in Chalk Farm, London.

4. Once I had decided to purchase the outfit, I looked inside the label and I was amused to find that I had unwittingly chosen an outfit seemingly produced by the same Elizabeth Emanuel who was currently designing the wedding dress for my future daughter-in-law. The label simply stated “Elizabeth Emanuel”. Naturally, I assumed that the label was there because the designer Elizabeth Emanuel had been personally involved in some way with its design approval, indeed at the time I was completely unaware that any company was trading under the “Elizabeth Emanuel” label without Ms Emanuel’s direct personal involvement

5.....As her name was on the label, I assumed that Elizabeth Emanuel personally must be responsible at least in part for the design and quality of the outfits.

7. In fact I continued to believe that the outfit was designed by Elizabeth Emanuel herself up until April 2001 when Ms Emanuel finally contacted me to clarify the position.”

The final witness statement is by David Boughton. Mr Boughton explains that he is a design assistant. His witness statement concerns enquiries he made on 7th April 2000 of the John Lewis Store in Oxford Street. At the time the enquiries were made, Mr Boughton was working as a design assistant for Elizabeth Emanuel Enterprises Limited. The results of his enquiries are reproduced verbatim below:

“3. On the afternoon of 7th April 2000 I made two short telephone calls to John Lewis on the pretext that I was looking for a dress for my mother to wear to a wedding. I spoke in particular to a shop assistant called Dawn in the “Ladies Dresses” department. At first the shop assistant said that the Elizabeth Emanuel dresses may not be suitable for my mother as they were of a fairly tight fitting satin style. However, I persisted with my enquiries as to the Elizabeth Emanuel dresses and I said that my mother had expressly asked whether the dresses were by “Elizabeth Emanuel the designer or another label”. The assistant replied quite emphatically that the dresses were by “Elizabeth Emanuel the designer”. I even asked if that was the Elizabeth Emanuel who designed the wedding dress for Princess Diana and again the assistant confirmed that was indeed the case.

4. Subsequently in the telephone conversation referred to above with the shop assistant at John Lewis I even asked the assistant to confirm that the Elizabeth Emanuel dresses were not by “The Joe Bloggs Company”. The assistant did not appear to understand the reference and she simply replied that they were John Lewis in Oxford Street. I then tried to clarify that I meant that there were some Elizabeth Emanuel garments that were the product of The Joe Bloggs Company. The assistant replied by saying that their dresses were supplied by the actual designer. She said that John Lewis sold a lot of designer wear and that they also stocked their own products on other labels.

5. Throughout the telephone conversation with the shop assistant, Dawn, it was absolutely clear to me that she believed that the Elizabeth Emanuel dresses stocked by John Lewis were designed by Elizabeth Emanuel personally and she identified that name with the well known fashion designer responsible for the Princess Diana wedding dress. The shop assistant made no connection whatsoever between Elizabeth Emanuel and Joe Bloggs.

6. At the time of making the aforementioned telephone calls I understood from Elizabeth Emanuel and Tony Drew that Elizabeth Emanuel personally had not been involved in the design of the “Elizabeth Emanuel” dresses stocked by John Lewis at that time.”

That concludes my review of the evidence filed in these proceedings in so far as I consider it necessary.