

O-463-16

TRADE MARKS ACT 1994

**IN THE MATTER OF
APPLICATION NO 3037046
BY CRAIG & ROSE LIMITED
TO REGISTER THE TRADE MARK**

AUTHENTIC PERIOD COLOURS

**IN CLASSES 2, 24 & 27
AND
OPPOSITION THERETO (UNDER NO. 403878)
BY
CROWN BRANDS LIMITED**

Background

1) On 08 January 2014, Craig & Rose Limited ('the applicant') applied to register the words 'AUTHENTIC PERIOD COLOURS' as a trade mark for the following goods:

Class 2: Paints, varnishes, lacquers, preservatives against rust and deterioration of wood: colorants; mordants: raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

Class 24: Textiles.

Class 27: Wall hangings (non-textile).

2) The application for registration was provisionally rejected on the grounds that AUTHENTIC PERIOD COLOURS falls foul of s.3(1)(b) & (c) of The Trade Marks Act 1994 ('the Act') because it is descriptive (and therefore non-distinctive) for the goods applied for. However, subsequent to an ex parte hearing, it was accepted on the basis that the trade mark had acquired a distinctive character through use for all of the goods listed above.

3) The application was published for opposition purposes on 05 December 2014¹ and notice of opposition was filed thereafter by Crown Brands Limited ('the opponent'). The opponent claims that the application offends under a number of grounds, including under section 3(1)(b) & (c) of the Trade Marks Act 1994 ('the Act').² For the sake of economy, and for reasons which will become apparent, it is necessary only to set out the respective arguments and evidence relevant to that ground. In this connection, the opponent directs its opposition to all of the goods applied for³ and states, inter alia, the following:

"The mark consist exclusively of the words "AUTHENTIC PERIOD COLOURS" and those words serve in the relevant trade of emulsions, paints

¹ As per s.38 of the Act.

² The other grounds pleaded are under s.5(2)(b) and 5(4)(a) of the Act.

³ As confirmed by Ms Brindle at the hearing.

and decorative products to designate a characteristic, range of colours of the goods. AUTHENTIC PERIOD COLOURS are shades which reproduce colours that can be found amongst historical information and common knowledge as being typically of the Victorian, Georgian etc. eras.”

4) The applicant filed a counterstatement denying all of the grounds of opposition. In relation to the objection under s.3 of the Act, it states, inter alia, that:

“29. ...AUTHENTIC PERIOD COLOURS is not a particularly meaningful expression because it is not unambiguous. The application mark contains an unusual and memorable double adjective AUTHENTIC PERIOD, which is a distinctive juxtaposition. There is a tautology and redundancy around the double adjective which is significant in that it raises the following ambiguity in the term. AUTHENTIC PERIOD can be read to be modified by the word COLOURS as opposed to the other way round...It is submitted that this is an equally obvious interpretation from the sign with a different consequence because COLOURS can then be interpreted as the adjective describing AUTHENTIC PERIOD. The mark can only be held to be descriptive of paint, as alleged, if COLOURS is taken to refer to the paint product. This does not hold if COLOURS is taken to be the modifier of AUTHENTIC PERIOD. It is accepted that PERIOD COLOURS on its own might be descriptive. However, the addition of the term AUTHENTIC qualifies the term significantly to render it distinctive because AUTHENTIC PERIOD becomes the noun...”

and

“27....Given 15 years continuous use of the mark AUTHENTIC PERIOD COLOURS for a leading brand by a Proprietor with the unique and distinguished heritage of this Applicant, it is submitted that the relevant consumer will immediately associate the application mark with the Proprietor.”

5) A hearing took place before me by telephone conference at which the opponent was represented by Ms Natalie Brindle of Harrison IP Limited and the applicant was represented by Mr Peter Galloway of Morton Fraser Solicitors.

Evidence

6) As I indicated earlier, I will only summarise the evidence before me that is pertinent to the ground of opposition under s.3 of the Act.

Opponent's evidence in chief

7) This comes from Anne Lacaze-Masmonteil, a registered Trade Mark Attorney at Harrison IP Limited (the opponent's representative in these proceedings). That evidence can be summarised as follows:

- Exhibit ALM1 consists of dictionary definitions. The word 'Authentic' is described as being an adjective meaning 'genuine', 'original' or 'true'; 'Period' is described as, amongst other things, an adjective meaning 'having a style typical of a particular time in history'.
- Exhibit ALM3 shows the results of a 'Google' search for the term 'authentic period colours'. This is filtered to bring back results pre-dating 01 January 2014 only. Print outs from a number of the websites returned in the list are also provided. Ms Lacaze-Masmonteil states that these show meaningful use of the term 'authentic period colour(s)' in relation to paint products. Examples of this use are given below with the relevant phrase highlighted in italics:
 - An article from www.completelylondon.co.uk entitled 'TIPS FOR USING PERIOD PAINT COLOURS' states: "Here's our guide to creating an *authentic period colour* palette that's faithful to your property's architectural era..."
 - An article from www.oneofkitchen.co.uk states "We have a wide collection of colour charts – ancient and modern – and we can advise on pigments, and on *authentic period colours*."
 - An extract from www.mylands.co.uk entitled "Luxury Paint and Bespoke Colours: Mylands Paint" states: "...we have built up an unrivalled catalogue of samples and fragments of historic paints,

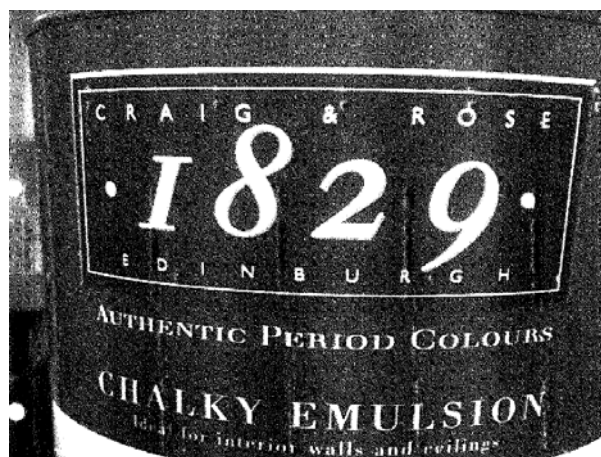
wallpapers, distempers and plasters, giving us unique access to a vast collection of *authentic period colours* to bring out the best in any property, no matter what the era.”

- Exhibit ALM4 is a web extract providing a grammatical explanation of cumulative adjectives, giving examples of the use of these in normal parlance such as “big square blue box” and “attractive young American lady”.

Applicant’s evidence

8) This comes from Peter Galloway of Morton Fraser LLP, the applicant’s representative in these proceedings. Attached at Exhibit 1 is the evidence and submissions submitted at the *ex officio* stage purporting to show that the mark has acquired distinctive character through the use made of it. That evidence takes the form of a witness statement in the name of Mr Stephen Percy-Robb, managing Director of Craig & Rose Limited, and can be summarised as follows:

- Mr Percy-Robb states that the trade mark AUTHENTIC PERIOD COLOURS has been used in the UK since the year 2000 in relation to all of the goods covered by the application.
- Exhibits 2, 3 and 7 comprise examples of labels from tins of paint from the years 2000 and 2006 showing the manner in which the mark has been used. The layout of all the labels is very similar. One of them is shown below:



- Exhibit 5 is a photograph of a display of tins of paint in a store from 2002. The following sign can be seen above the shelves of paint:



- Exhibit 4 shows a paint colour card. The mark is presented on the card in the following way:



I also note that on the far left of the colour card underneath the heading 'A Guide To Period Styles', the first sentence of the second paragraph reads: "This range encompasses authentic period colours from six important historical periods...." (my emphasis)

- Exhibit 9 shows examples of two adverts for the products which appeared in Period Living, Period Ideas and Good Homes magazines from 2008 to 2013; Exhibit 8 shows two examples of paint colour cards from around 2003. In both exhibits the mark is presented in a similar manner to that in the second and fourth bullet points above i.e. below the mark "CRAIG & ROSE 1829 EDINBURGH".

- Annual sales of the goods in classes 02, 24 and 27 (combined) are shown below:

2001/2002	£2,320,100
2002/2003	£2,253,200
2003/2004	£2,525,100
2004/2005	£2,542,200
2005/2006	£1,734,000
2006/2007	£1,863,000
2007/2008	£1,375,600
2008/2009	£1,330,300
2009/2010	£921,200
2010/2011	£1,101,300
2011/2012	£970,300
2012/2013	£883,900
2013/2014	£1,263,000

- Annual figures for promotional spend are shown below:

2001/2002	£81,243.14
2002/2003	£204,464.28
2003/2004	£150,975.18
2004/2005	£138,523.39
2005/2006	£112,163.62
2006/2007	£202,695.48
2007/2008	£34,081.31
2008/2009	£96,106.68
2009/2010	£27,199.56
2010/2011	£45,178.40
2011/2012	£81,243.14
2012/2013	£204,464.28
2013/2014	£150,975.18

9) I do not consider it necessary to summarise the opponent's evidence in reply. Much of it is submission rather than evidence and the factual information that is present does not assist me any more than the evidence already summarised above.

Decision

10) Section 3(1) of the Act states:

“3(1) The following shall not be registered –

- (a) signs which do not satisfy the requirements of section 1(1),
- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade:

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

11) The opponent's objections under s. 3(1)(b) and (c) are both premised upon the mark being descriptive of a characteristic of the goods. As there is no other argument put forward by the opponent as to why the mark falls foul of s.3(1)(b), it follows that both grounds will stand or fall together (see the comments of Anna Carboni, sitting as the Appointed Person in O-363-09 *COMBI STEAM Trade Mark*). Accordingly, there is no need to consider the s.3(1)(b) ground independently of the s.3(1)(c) ground.

12) The case law under s.3(1)(c) was summarised by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such

goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down

in Article 3 of Directive 89/104, *Koninklijke KPN Nederland* , paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the

goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56).”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

13) The matter must be assessed from the perspective of the relevant consumer of the goods at issue, including those in the trade.⁴ In the instant case the average consumer is the general public and those in the painting and decorating trade.

The *prima facie* position

14) Mr Galloway argued that, whilst each of the words within the mark, when viewed individually, may be descriptive, and that the combination ‘PERIOD COLOURS’ may also be descriptive, the addition of the word ‘AUTHENTIC’ renders the mark, as a whole, distinctive as it consists of an unusual juxtaposition of words, akin to the mark BABY DRY.⁵ He made much of the presence of what he described as the “unusual” double adjective at the beginning of the mark i.e. “Authentic Period” which he argued attributes the mark with an ambiguity. In his submission the mark is open to various interpretations such that it cannot be dismissed as a mere description.

⁴ *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04, para 24

⁵ See Case C-383/99 P

15) Dealing firstly with the argument that the mark is open to various interpretations, it is well established that even if that were the case, this does not preclude the mark from falling foul of s.3(1)(c) if at least one of those possible meanings is descriptive. See, for example, *Wm. Wrigley Jr. Company v. Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-191/01P (*'DOUBLEMINT'*), where the CJEU stated:

“32. In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No 40/94, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that such signs and indications could be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned.”

16) As to the argument that the mark is an unusual juxtaposition of words, I am mindful of the decision in *Koninklijke KPN Nederland NV v Benelux-Merkenbureau (Postkantoor)* Case C-363/99, where the CJEU stated that:

“98. As a general rule, a mere combination of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics for the purposes of Article 3(1)(c) of the Directive. Merely bringing those elements together without introducing any unusual variations, in particular as to syntax or meaning, cannot result in anything other than a mark consisting exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services concerned.

99. However, such a combination may not be descriptive within the meaning of Article 3(1)(c) of the Directive, provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of

those elements. In the case of a word mark, which is intended to be heard as much as to be read, that condition must be satisfied as regards both the aural and the visual impression produced by the mark”.

The court has repeated the above in subsequent cases which should now be considered settled law.⁶ I see nothing at all syntactically unusual about the combination of the double adjective ‘AUTHENTIC PERIOD’ with the noun ‘COLOURS’. As a matter of general knowledge, and as Ms Brindle was keen to stress, the use of double adjectives preceding a noun is commonplace in everyday parlance. To my mind, the mark sends an immediate and clear descriptive message i.e. colours that are typical and true of those used in historical periods. I find that the combination of words in the mark does not “create an impression which is sufficiently far removed from that produced by the simple combination of those elements”. The mark is *prima facie* excluded from registration under section 3(1)(c) of the Act as it describes a characteristic of the goods.

Acquired distinctiveness?

17) The CJEU provided guidance in *Windsurfing Chiemsee*, Joined cases C-108 & C-109/97, about the correct approach with regard to the assessment of the acquisition of distinctive character through use. The guidance is as follows:

“51. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may also be taken into account: the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations.

⁶ See, for example, *Campina Melkunie*, Case 265/00P

52. If, on the basis of those factors, the competent authority finds that the relevant class of persons, or at least a significant proportion thereof, identify goods as originating from a particular undertaking because of the trade mark, it must hold that the requirement for registering the mark laid down in Article 3(3) of the Directive is satisfied. However, the circumstances in which that requirement may be regarded as satisfied cannot be shown to exist solely by reference to general, abstract data such as predetermined percentages.

53. As regards the method to be used to assess the distinctive character of a mark in respect of which registration is applied for, Community law does not preclude the competent authority, where it has particular difficulty in that connection, from having recourse, under the conditions laid down by its own national law, to an opinion poll as guidance for its judgment (see, to that effect, Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 37).”

18) The burden of proving acquired distinctiveness lies with the applicant.⁷

19) My first observation of the evidence before me is that there is nothing to show that the contested mark has been used on anything other than paint. There is a complete absence of any corroborative evidence beyond the bald assertions in Mr Percy-Robb’s witness statement showing use on any of the other goods applied for in class 2 or for the goods in classes 24 and 27.

20) As regards the use of the contested mark on paint, all of this has been in conjunction with the mark ‘CRAIG & ROSE 1829 EDINBURGH’ (as shown in the evidence summary). In view of this, I must also bear in mind that in *Société des Produits Nestlé SA v Mars UK Ltd*, Case C-353/03, the CJEU held that:

“The distinctive character of a mark referred to in Article 3(3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the

⁷ *Oberbank AG & Banco Santander SA and Another v Deutscher Sparkassen- und Giroverband* (Joined cases C-217 and 218/13).

Member States relating to trade marks may be acquired in consequence of the use of that mark as part of, or in conjunction with, a registered trade mark.”

21) The guidance in Case C-215/14, *Société des Produits Nestlé SA v Cadbury UK Ltd*, although dealing with non-conventional trade marks, is also of assistance. In that case the CJEU considered a preliminary reference from the High Court which sought guidance about the legal test for showing that a trade mark had acquired a distinctive character. The CJEU understood the question as follows:

“By its first question the referring court asks, in essence, whether an applicant to register a trade mark which has acquired a distinctive character following the use which has been made of it within the meaning of Article 3(3) of Directive 2008/95 must prove that the relevant class of persons perceive the goods or services designated exclusively by that mark, as opposed to any other mark which might also be present, as originating from a particular company, or whether it is sufficient for that applicant to prove that a significant proportion of the relevant class of persons recognise that mark and associate it with the applicant’s goods.”

The CJEU answered the question in these terms:

“In order to obtain registration of a trade mark which has acquired a distinctive character following the use which has been made of it within the meaning of Article 3(3) of Directive 2008/95, regardless of whether that use is as part of another registered trade mark or in conjunction with such a mark, the trade mark applicant must prove that the relevant class of persons perceive the goods or services designated exclusively by the mark applied for, as opposed to any other mark which might also be present, as originating from a particular company.”

In the High Court, Arnold J. stated that he understood this to mean that:

“...in order to demonstrate that a sign has acquired distinctive character, the applicant or trade mark proprietor must prove that, at the relevant date, a significant proportion of the relevant class of persons perceives the relevant goods or services as originating from a particular undertaking *because of the sign in question* (as opposed to any other trade mark which may also be present).”

Additionally,

“...it is legitimate for the competent authority, when assessing whether the applicant has proved that a significant proportion of the relevant class of persons perceives the relevant goods or services as originating from a particular undertaking because of the sign in question, to consider whether such persons would rely upon the sign as denoting the origin of the goods if it were used on its own.”

22) I also bear in mind that it may be more difficult to prove acquired distinctiveness of a non-distinctive sign if used with other distinctive marks. In *Audi AG, Volkswagen AG v OHIM*, Case T-318/09, the GC stated that:

“73. in the advertising material submitted by the applicants and included in the administrative file, the sign TDI always appears with another mark belonging to the applicants, such as the trade marks Audi, VW or Volkswagen. The Court has, however, held on numerous occasions that advertising material on which a sign which is devoid of any distinctive character always appears with other marks which, by contrast, do have such distinctive character does not constitute proof that the public perceives the sign applied for as a mark which indicates the commercial origin of the goods (*Shape of a beer bottle*, cited in paragraph 41 above, paragraph 51, and *Shape of a lighter*, cited in paragraph 27 above, paragraph 77). In any event, by quoting an internet site indicating that the Spanish public perceives the sign TDI as an abbreviation which refers to the type of direct fuel-injection diesel engine, irrespective of the car manufacturer, the Board of Appeal established that, despite all the applicants’ advertising efforts in Spain, the

relevant public did not perceive that sign as identifying the commercial origin of the goods in question, but as a descriptive and generic term.”

23) Whilst the applicant’s annual sales and promotional figures have been consistently substantial for over ten years prior to the date of application suggesting that it would also have a reasonable market share, every single example of use in the evidence shows that the contested mark is used in conjunction with the far more distinctive and dominant mark ‘CRAIG & ROSE 1829 EDINBURGH’. It is clear to me that the nature of the use is such that ‘AUTHENTIC PERIOD COLOURS’ will merely be perceived as a descriptor of the goods and nothing more. Furthermore, as I pointed out to Mr Galloway, one particular example of a colour card⁸ in the evidence used for promotional purposes clearly states “This range encompasses *authentic period colours* from six important historical periods....” (my emphasis); this is undoubtedly descriptive use which does not assist the applicant’s position that the relevant public will have been educated to perceive the contested mark as a badge of origin. In the circumstances, and having borne in mind all of the case law set out above and applying it to the matter at hand, I am far from satisfied that, at the relevant date, a significant proportion of the relevant class of persons would have perceived any of the goods applied for as originating from a particular undertaking because of the sign ‘AUTHENTIC PERIOD COLOURS’ alone.

24) The opposition under section 3(1)(c) of the Act succeeds in full. The application is therefore refused.

Other grounds

25) Given what I consider to be my clear finding under s.3(1)(c) of the Act, I do not consider it necessary to address any of the other grounds of opposition.

⁸ Exhibit 4.

Costs

26) As the opponent has been successful, it is entitled to a contribution towards its costs. Using the guidance in Tribunal Practice Notice 4/2007, I award the opponent costs on the following basis:

Opposition fee	£200
Preparing a statement and considering the applicant's statement	£200
Preparing evidence and considering the applicant's evidence	£500
Preparing for and attending the hearing by telephone conference	£300
Total:	£1200

27) I order Craig & Rose Limited to pay Crown Brands Limited the sum of **£1200**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of September 2016

**Beverley Hedley
For the Registrar,
the Comptroller-General**