

O-533-18

TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION NUMBER 3207535
BY SARAH BRIGHTMAN
TO REGISTER THE FOLLOWING TRADE MARKS IN CLASSES 9, 16, 25, 41:



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Background

1. On 19 January 2017, SARAH BRIGHTMAN ('the applicant') applied to register the above marks, as a series of two, for the following goods and services:

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus; computer software and telecommunications apparatus to enable connection to databases, local area networks and the Internet; computer software to enable teleconferencing, videoconferencing and videophone services; computer software to enable searching and retrieval of data; computer software for accessing databases, telecommunications services, computer networks and electronic bulletin boards; sound, video, television and radio apparatus and instruments; communication, telecommunication, telephone and mobile telephone apparatus and instruments; telephones, mobile telephones, communications devices and cases therefore; ringtones [downloadable]; screen savers and screen wallpaper; communication, wireless communication and mobile communication devices; reading tablets and other devices for reading and viewing text, images and audio-visual content; software applications (apps), including apps for installation on telephones, mobile telephones and communications and wireless communication devices; accessories for telephones, telephone handsets, communication and wireless

communication devices; cases adapted for holding or carrying telephones, mobile telephones communications and wireless communications equipment and accessories; electronic and computerised personal organisers; aerials; batteries; micro processors; key boards; modems; calculators; display screens; electronic global positioning systems; electronic navigational, tracking and positioning apparatus and instruments; apparatus and instruments for geolocation; monitoring apparatus and instruments; digital records; films; animations; cartoons; records; music records; recorded documentaries; music, sound, audio, visual and audio visual content and records; apparatus for access to broadcast or transmitted programmes; holograms; satellite broadcast receiving and decoding apparatus and instruments; apparatus and instruments for use in recording, storing, generating, carrying, transmitting, manipulating, processing, reproducing and playback of sounds, images, signals, data, software, code, information and audio-visual content; computer hardware, firmware and software; computer hardware, software and firmware for use in connection with advertising, marketing and promotion; computer games and entertainment hardware, firmware and software; television and computer arcade games; computer games; instructional apparatus and instruments; non-printed, electronic, optical and digital publications; data cards; memory cards; electronic, magnetic, and optical identity cards; payment cards, credit cards, charge cards, debit cards and smart cards; cameras; photographic transparencies and films; cinematographic films; spectacles; sunglasses; cases for spectacles and sunglasses; parts, fittings and accessories for all the aforesaid goods.

Class 16: Paper and cardboard; printed matter; bookbinding material; photographs; stationery; writing, drawing and marking instruments and cases therefor; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites; instructional and teaching materials; wrapping and packaging materials; plastic materials for packaging; paper for gift wrapping; paper and plastic bags; tissues; tissue paper; prints; posters; cards; greetings cards; gift tags; calendars; diaries; printers' type; printing blocks; publications; programmes and concert programmes; books; pamphlets; manuals; magazines; journals; periodical publications; newspapers; newspaper and magazine sections, articles, supplements and columns; newsletters; decalcomanias; pressure sensitive stickers; book covers; book marks; gift cards, printed gift certificates; parts and fittings for all the aforesaid goods.

Class 25: Clothing; footwear; headgear; parts, fittings and accessories for all the aforesaid.

Class 41: Education; educational lectures; Providing of training; Entertainment; providing education, entertainment and music; club and nightclub entertainment services; organising, presenting and providing entertainment, club nights, parties, festivals, concerts and other entertainment events; entertainment services, namely, live, televised and movie appearances by musicians and entertainers; Entertainment, namely, live performances by musical performers; Sporting and cultural activities; musical entertainment services and online musical entertainment services; presentation of radio, television and internet programmes; entertainment services, namely, providing non-downloadable playback of music via global communications networks; providing non-downloadable music and audio, visual and audio-visual recordings; organising and operating games and competitions; Providing a website

on a global computer network featuring information and content relating to entertainment, music, clubs, nightclubs, festivals and parties; cinema services; filming services; online games; organising and operating music shows, talent shows and fashion shows; conducting auditions; arranging contests; publishing; music publishing; recording; music mixing; production of music, films and of recordings; direction of music, films and of performances; examining for and granting of qualifications and awards; organising and operating award schemes and ceremonies including in the fields of music and entertainment; organising and conducting parties, festivals, ceremonies, entertainment events and educational events; performances and live performances; musician services; disk jockey, music group and music group performance services; musical, radio, dramatic and television entertainment; disc jockey services; music composing services; photography services and photographic syndication services; photographic reporting; news and current events reporting and syndication; theatre and concert tickets reservation services; providing web pages, web sites and portals relating to all the aforesaid; advice, information and assistance relating to all the aforesaid.

2. On 25 January 2017, the Intellectual Property Office ('IPO') issued an examination report in response to the application. In that report, an objection was raised under sections 3(5) and 4(1) (d) of the Trade Marks Act 1994 ('the Act'), because the marks contain the word 'Royal' and it was considered that consumers would believe the goods and services have Royal patronage. The applicant was advised that the objection could be overcome by obtaining written permission to use the marks from the Lord Chamberlain. The examination report also highlighted incorrect classification of services in Class 41. In addition to the objections raised, the applicant was advised that as the marks appear to consist of, or contain arms, the right to use a Coat of Arms falls under the jurisdiction of the Garter King of Arms in England, Wales and Northern Ireland and for Scotland, The Court of the Lord Lyon. The applicant was also advised that the use of armorial insignia in Scotland which are not registered in the Public Register of All Arms and Bearings in Scotland constitutes an offence and may lead to prosecution.

3. On 27 March 2017, Mr Ian Bartlett of Beck Greener who is the applicant's representative requested an extension of time for two months to allow time to discuss the objections raised with the applicant. This was allowed until 29 May 2017. On 30 May 2017 an ex-parte hearing was requested and this was held on 17 July 2017, where the applicant was represented by Mr Ian Bartlett. At the hearing, the objections under sections 3(5) and 4(1) (d) were maintained and a period of two months was granted until 28 September 2017 at Mr Bartlett's request, to allow him time to seek consent from the Lord Chamberlain. On 8th September 2017 further correspondence was received from Mr Bartlett advising me that he had been instructed to appeal my decision and as such, requested that the application should be formally refused. On 29 September 2017 the application was refused under section 37(4) of the Act and a Form TM5 requesting a full statement of reasons for Registrar's decision was received on 30 October 2017. As a result, I am now required to set out the reasons for refusal.

The applicant's case for registration

4. The applicant filed two applications on 19 January 2017 which were examined and heard simultaneously. Due to the similarity between the marks, the submissions made at hearing covered both applications. The applicant's co-pending application relates to the word only mark ROYAL CHRISTMAS GALA, application number [3207494](#).

5. Prior to refusal of the application, the arguments put forward in support of acceptance were those made orally by the applicant's representative at the ex parte hearing.

6. At the hearing Mr Bartlett made the following submissions:

- The applications cover wide specifications and are both in the name of Sarah Brightman who is a famous soprano. The background to the application is that Ms Brightman has been running a series of concerts with the Royal Philharmonic Orchestra and this has led to filing the applications.
- The Courts have interpreted section 4(1)(d) of the Act as meaning "words letters or devices which 'are likely to lead' the 'average consumer' to 'believe' that the applicant either has, or recently has had Royal patronage or authorisation" and as such, being 'caused to wonder' is not sufficient to attract an objection.
- Looking at the marks and the goods and services, the examiner has not expressly stated whether the objection applies to all goods and services, therefore it is assumed that the objection must apply to all goods and services claimed.
- The applicant's main area of interest is in respect of services in Class 41 and the average consumer is accustomed to seeing the word 'Royal' as an element of trade marks and business names, for example, 'The Royal Court Theatre', 'The Royal Berkshire Hotel', 'The Royal and Ancient Golf Course', 'Café Royal', 'Royal Garden Hotel', 'The Royal Berkshire Polo Club' etcetera. The public is very familiar with such names, not only in respect of entertainment, sporting and cultural events, but in respect of all areas of business. As such it is not conceivable that consumers would 'believe' that in each case, there has been Royal patronage or authorisation.
- If consumers were asked why they thought the word 'Royal' appears in the sign 'Royal Court Theatre', they might wonder if there had previously been some Royal connection, but mere speculation is not enough. The mark itself must lead consumers to believe that there was, or is Royal patronage to attract an objection.
- In determining whether goods and services have Royal patronage, consumers will look for the Royal Crest, or the words 'By Appointment to...".
- There are a vast number of Royal marks registered in Class 41 both at the EUIPO and as national registrations, in total 556 marks. Such marks include e.g. 'Café Royal', 'London Royals and Designers', 'Great Western Royal', 'Royal Blood' and 'Royal Circus', whilst the state of the Register is not an indication of what is happening in the market, it is reasonable to propose that a good proportion of these trade marks are in use. This supports the fact that consumers are surrounded by 'Royal' marks, without being led to believe that they have Royal patronage or authorisation in each case.
- The mark 'Royal Berkshire Hotel' is a registered trade mark and the applicant's website does not suggest that the undertaking has Royal patronage. This exemplifies the vast numbers of Royal marks, which render the term 'Royal' as being incapable of being used to determine whether or not goods and services have Royal patronage.

- The same submissions apply in respect of Classes 9, 16 and 25, but in this respect the goods are even further away from any prospect that consumers would be induced to believe that there is Royal patronage. There are also numerous registrations in respect of goods in these classes which contain the word Royal and in respect of the current application, the examiner has been over zealous in raising the objection and has not given any particular attention to the difference in the goods and services claimed.

Decision

The Law

7. Sections 3(5) and 4(1)(d) of the Act reads as follows:

3. - (5) A trade mark shall not be registered in the cases specified, or referred to, in section 4 (specially protected emblems).

4. - (1) A trade mark which consists of or contains –

(a)...

(b)...

(c)...

(d) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Royal patronage or authorisation,

shall not be registered unless it appears to the registrar that consent has been given by or on behalf of Her Majesty or, as the case may be, the relevant member of the Royal family.

8. Section 4(1)(d) involves an assessment of the impact that the trade mark as a whole, would have on the average consumer of the goods or services in relation to which the mark is used. It is very clear from the wording of section 4(1)(d) that words which lead consumers to believe that the applicant either has or recently has had Royal patronage or authorisation, shall not be registered without consent by or on behalf of Her Majesty.

9. The Registrar's practice in relation to section 4 is set out in the registry's Examination Guide. The passage concerning use of the word ROYAL is at page 206:

7. Marks incorporating the word Royal

Section 4 relates to the use of any words, in such a manner as to be likely to lead persons to think that the applicant either has, or recently has had, Royal patronage or authorization. Examples of goods or services for which ROYAL may indicate Royal patronage are high quality porcelain or glassware, luxury foods, organic food, confectionery, alcoholic beverages, clothing, organisation of sporting events,

exhibitions, flower shows, tourism, medical and charitable services. This is not an exhaustive list. ROYAL may indicate royal patronage or authorisation for other high value products, or prestige or 'public interest' type services.

ROYAL is unlikely to indicate Royal patronage or authorisation for everyday items e.g. insurance or financial services, double glazing services, provision of electricity, or for goods which are far enough removed from any association with the Royal family such as skateboards, computers, computer games or T-shirts.

7.1 Practice

ROYAL alone and closely similar words, e.g. ROYALE, for goods or services which can imply Royal patronage should be objected to under section 3(5).

ROYAL in combination with a descriptive word is also likely to suggest Royal patronage or authorisation and may face objection prima facie for goods/services that Royalty may be prepared to use or approve, e.g. ROYAL VENISON for meat.

ROYAL in combination with a word which also implies royal patronage should be objected to under section 3(5) and section 3(3), e.g. ROYAL BALMORAL for any goods or services.

ROYAL in combination with words which points away from the mark implying Royal Patronage, e.g. ROYAL FLUSH, can be accepted prima facie for any goods/services unless the combination is descriptive.

ROYAL in combination with another registrable word or device, e.g. RAYBURN ROYAL or ROYAL HARTEX can be accepted.

The words ROYAL SOVEREIGN suggest Royal Patronage. Objections should be raised under section 3(5).

10. Considering the wording of section 4(1)(d) in conjunction with the above guidance, there is no doubt that in certain circumstances, consumers will not always assume that goods or services promoted under signs containing the word 'Royal', whether used in business, or as trade marks, will have Royal patronage. But similarly, it is possible, that in many cases, consumers will assume that certain undertakings have Royal patronage because of the presence of the word 'Royal'.

11. What I must consider is whether the marks before me lead consumers to think that the applicant has Royal patronage or authorisation. The state of the Register and precedents are not a basis for acceptance, however they can be a useful guide in determining whether the bar has been set too high. As I am unaware of the circumstances behind the acceptance of other 'Royal' marks, I can only attach limited significance to the fact that similar marks may have been registered. Furthermore, the Registrar does not consider that, in law, it is required to justify the acceptance of similar applications, or that, earlier acceptances are binding or even persuasive. It is helpful to refer to the recent decision of James Mellor Q.C., acting as the AP in case BL O-262-18 BREXIT, which addresses grounds of alleged inconsistency in approach by the Registrar. At paragraphs 9-11 Mr Mellor states the following:

Alleged inconsistency in approach by the UK IPO

9. Mr Brewster accused the UK IPO of acting in 'a somewhat arbitrary fashion'. He drew my attention to a list of ten UK registrations which have been approved by the UK IPO. His point was that if the UK IPO had approved those 10 registrations, it must have been inconsistent and wrong to refuse his application.

10. It has long been the law that this type of 'state of the register' evidence is irrelevant – that was the law under the Trade Marks Act 1938 (see *Madame Trade Mark* [1966] RPC 541) – and the same is true under the Trade Marks Act 1994. Jacob J. explained why in *TREAT* [1996] RPC 25:

*In particular, the state of the Register does not tell you what is actually happening out in the market, and in any event one has no idea what the circumstances were which led the Registrar to put the marks concerned on the Register. It has long been held under the old Act that comparison with other marks on the Register is in principle irrelevant when considering a particular mark tendered for registration, see e.g. *Madame TM*, and the same must be true under the new Act.'*

11. There are additional sound reasons for this principle. Frequently, the marks identified on the Register are different in some respect. (Indeed, an identical earlier mark for identical goods or services would pose a different (relative grounds) obstacle). The mark itself may be different or the goods or services for which it is registered may be different or the applicant may have been able to rely on evidence of distinctiveness acquired through use. In addition, just because a mark is on the Register does not mean it will be held valid when challenged. Furthermore, if the touchstone for registration was to be a comparison with marks already on the register, then registration would come to depend on the lowest common denominator. In any event, it is quite clear that the application of the section 3(1)(b) ground requires an assessment not against other marks on the register, but against the standard laid down in that provision, as interpreted in the case law.

12. In my view, I consider that the words within the signs, 'Royal Christmas Gala' would lead consumers to believe that goods and services provided under the signs have Royal patronage or authorisation. However, in my assessment, I have taken into account all elements within the marks including the coat of arms and whilst this is not a Royal coat of arms, I believe that it merely reinforces consumer perception, that the applicant has Royal patronage or authorisation. The specifications covered by the application contain a very broad range of goods and services and as such, the relevant consumer will encompass both the general public and more sophisticated consumers. To my mind the average consumer will react to the combination of elements within the marks, in such a way that will lead them into thinking that the user of the marks has Royal Patronage or authorisation. I acknowledge that the guidance provided in the Examination Guide states that the word ROYAL is unlikely to indicate Royal patronage or authorisation for everyday items such as double glazing services, provision of electricity, or for goods which are far enough removed from any association with the Royal family, such as skateboards, computers, computer games or T-shirts. However, in this case and as acknowledged by the applicant, its primary services are those of entertainment in Class 41. It is responsible for the production of a show, specifically. The general public is used to the production of such shows as being accompanied by an extensive and official

merchandising exercise in relation to souvenirs such as programmes, items of clothing or even stationery. All will be linked and ancillary to the actual show itself and for that reason I am treating the goods and services as being homogeneous.

13. The words 'Royal' and 'Christmas' within the marks need no explanation in their meaning. The word 'gala' is defined in Oxford Dictionaries as;

Gala; noun; a social occasion with special entertainments or performances

The use of the word 'gala' within the sign further lends itself to inform consumers that the event is a particularly important occasion. It is also likely that consumers will be aware, for example, of events such as 'The Royal Variety Performance' or 'The Royal Variety Show'. Such events are also frequently televised for example and in that context, it is usual to see a member of the Royal Family present, which would be suggestive at least of Royal patronage. To support my view that I must consider the mark as a whole, it is helpful to refer to the decision of Anna Carboni acting as the Appointed Person in BL O-254-10, THE COMBINED ARMED FORCES FEDERATION where at paragraph 46 the Appointed Person stated:

46. These findings show that the Opponent took the right course when it withdrew the ground of opposition based on section 4(1)(b) of the Act, since that prohibits registration of "a representation of the Royal crown" and does not extend to crowns having only a passing resemblance to the Royal crown. **However, the section 4(1)(d) ground is not limited to Royal crowns, but is a more general prohibition on the registration of "words, letters or devices likely to lead persons to think that the applicant either has or recently has had Royal patronage or authorisation", and it was the combination of crown, flag and words which led the hearing officer to his conclusion that this provision was satisfied, notwithstanding the fact that the crown was perceptibly not the Royal crown.**

Whilst the marks at issue do not contain a Royal crown similar to the case above, the addition of the coat of arms, in marks in suit, whilst this is not a Royal coat of arms¹, reinforces my view, that it is the combination of elements within the marks which make me believe that the signs will likely lead persons to think that the applicant has or recently had Royal Patronage or authorisation.

14. At the hearing Mr Bartlett requested a period of two months to seek consent from the Lord Chamberlain but I am not aware that any such request has been made. Consent to register a Trade Mark including a Royal title is granted by the Lord Chamberlain's Office, as per Section 4 of the TM Act. The Lord Chamberlain's Office requires evidence from the applicant that they had received consent to use the title "Royal" or any other protected name. Applications to use the title Royal are administered by the Constitutional Policy Team at the Cabinet Office who make recommendations to the Royal Household for The Queen's approval. There are certain criteria that each applicant must meet. The guidance note issued by the Cabinet Office contains information about the process involved. **Annex A** provides 'GUIDANCE:

¹ Although the Coat of Arms is not The Royal Arms, there is in my view, a passing resemblance between the supporters. The supporters are one of the principal armorial bearings of the arms covered by Section 4(1)(a) and also notified by the UK under Art 6ter and whilst an objection under section 4(1)(a) was not taken, this was considered.

APPLICATIONS FOR PROTECTED ROYAL TITLES'. When making an application for the grant of a protected Royal title, the Cabinet Office suggests that the following information is provided:

- Reason(s) why the title 'Royal' is being sought
- A history of the organisation/body
- Future plans
- The present administration and activities
- Details of leading members, and membership numbers
- Report and Accounts for the last three years
- Details of any Royal/Government associations
- Details of publications, providing examples where possible
- Any other information that is considered appropriate e.g. evidence of surname, location or long usage of a name.

15. The information required above, suggests that any assessment of an application for the grant of a protected Royal title, is rigorous and thorough and not something that is granted habitually. Additional guidance is also provided on the Monarchy website which is a booklet on the use of Royal Devices reproduced at Annex B. Since at no point in the proceedings have I been provided with consent from the Cabinet Office or the Lord Chamberlain, nor am I aware if any contact has been made to seek consent, I can only assume that either consent has not been sought, or in the alternative, if it has been sought it must have been refused.

16. To my mind the average consumer will react to the signs in such a way that will lead them into thinking that the goods and services provided under the signs have Royal patronage or authorisation. In my opinion and contrary to Mr Bartlett's submissions, it is not necessary for a mark to have a Royal Crest or 'By appointment to the Queen etc.', for section 4(1)(d) to take effect. The relevant provision is clearly couched in general terms to allow for its operation in a range of circumstances but which, may lead to a real prospect of the relevant consumer assuming Royal patronage or authorisation.

Conclusion

17. Having assessed the marks applied for and taking into account the law, for the above reasons it is my view that the marks in suit offends against sections 3(5) and 4(1)(d) of the Act. In reaching my decision, I have considered all the papers filed and submissions made. The application is refused under sections 3(5) and 4(1)(d) for all the goods and services claimed.

Dated this 28 day of August 2018

**Bridget Rees
For The Registrar
The Comptroller-General**

Annex A

GUIDANCE: APPLICATIONS FOR PROTECTED ROYAL TITLES

Permission to use the title 'Royal', names and titles of members of the Royal Family, and other protected Royal titles is a mark of Royal favour granted by the Sovereign, acting on the advice of her Ministers². This includes use of the title 'Royal' and other protected titles on merger of two bodies, one of which has the title, or the wish to reinstate the title from a former grant.

The protected Royal titles are sparingly granted and strict standards are applied. As a matter dealt with under the Royal Prerogative, information about any criteria which may exist and the reasons for the grant or refusal of an application are not disclosed. The grant of the titles is not, and never has been, a right which can be claimed by a body fulfilling certain conditions.

You should be aware that neither Royal Patronage nor a Royal Charter confers on an organisation the right to use Royal names and titles, including the title 'Royal' – these are separate issues. Nor is there an entitlement to the use of a Royal Coat of Arms or other Royal Emblems on the grant of any of the aforementioned. Furthermore, it is unlikely that an application would be successful where it is sought to enhance a body or on the founding of an organisation.

Whilst it is not for the Cabinet Office to advise on how best to present applications for the grant of the protected Royal titles, it is suggested that the following information be attached:

- Reason(s) why the title 'Royal' is being sought
- A history of the organisation/body
- Future plans
- The present administration and activities
- Details of leading members, and membership numbers
- Report and Accounts for the last three years
- Details of any Royal/Government associations
- Details of publications, providing examples where possible
- Any other information that is considered appropriate e.g. evidence of surname, location or long usage of a name.

The application should be made by the senior officer of the organisation, e.g. Chairman, President, Chief Executive, (Vice) Chancellor, Honorary Secretary.

Applications by email are preferred. The application and attachments should be emailed to:
Royal Names Team, Cabinet Office:
RoyalNames@cabinetoffice.gov.uk

²

Consideration and recommendation is delegated to the Cabinet Office's Royal Names Team which resides at 1 Horse Guards Road.

Applications can also be sent to:
4th Floor (Orange Zone), 1 Horse Guards Road, London SW1A 2HQ

Annex B

GUIDANCE ON THE USE OF ROYAL ARMS, NAMES AND IMAGES

The following booklet summarises the legal position governing the use, for commercial purposes, of the Royal Arms, Royal Devices, Emblems and Titles and of photographs, portraits, engravings, effigies and busts of The Queen and Members of the Royal Family.

Guidance on advertising in which reference is made to a Member of the Royal Family, and on the use of images of Members of the Royal Family on articles for sale, is also provided.

The Lord Chamberlain's Office will be pleased to provide guidance when it is unclear as to whether the use of "Arms" etc., may give the impression that there is a Royal connection.

TRADE MARKS

Section 4 (1) of the Trade Marks Act 1994 states:

“A trade mark which consists of or contains –

- (a) the Royal arms, or any of the principal armorial bearings of the Royal arms, or any insignia or device so nearly resembling the Royal arms or any such armorial bearing as to be likely to be mistaken for them or it,*
- (b) a representation of the Royal crown or any of the Royal flags,*
- (c) a representation of Her Majesty or any Member of the Royal Family, or any colourable imitation thereof, or*
- (d) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Royal patronage or authorisation,*

shall not be registered unless it appears to the registrar that consent has been given by or on behalf of Her Majesty or, as the case may be, the relevant Member of the Royal Family.”

The Lord Chamberlain's Office is empowered to grant the consent referred to in *Section 4(1)* on behalf of Her Majesty The Queen. The Lord Chamberlain's Office has a standard procedure and document to implement the grant of any such consent. The consent is conditional on (*inter alia*) the proprietary rights in the registration remaining with the applicant, and cannot be assigned without further consent.

Unauthorised Use

Section 99(1) of the Trade Marks Act 1994 states that "a person shall not without the authority of Her Majesty use in connection with any business the Royal arms (or arms so closely resembling the Royal arms as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal arms".

International Protection

The use of certain Royal insignia as trade marks can also be protected internationally under the Paris Convention for the Protection of Industrial Property of 1883.

Article 6ter (1) (a) of the Paris Convention states that:

“The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view”.

All the countries which are contracting parties to the Paris Convention undertake not to register trade marks which incorporate or imitate State emblems, armorial bearings, official signs or hallmarks, which are designated as protected emblems under the Convention, without evidence of consent to the registration for the appropriate “competent authority”.

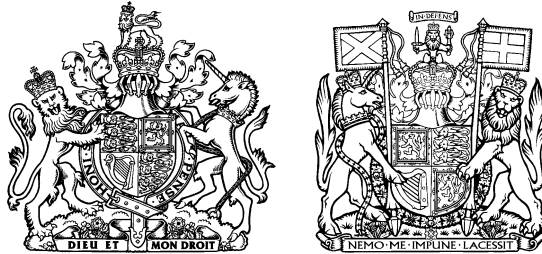
There are currently 173 member states that are party to the Paris Convention and bound by this provision (Annex A). Several versions of the Royal arms (including the Supporters) are protected as UK state emblems under the Paris Convention.

ROYAL ARMS AND SIMILAR EMBLEMS

The use of the Royal Arms and of Royal Devices, Emblems and Titles, or of Arms, Devices, etc., which are so similar as to be calculated to deceive, in connection with any trade or business, or to suggest that the person is employed by or supplies goods to a Member of the Royal Family, is prohibited by the Trade Marks Act 1994, unless the permission of the Member of the Royal Family concerned has been obtained.

The Lord Chamberlain's Office will be pleased to provide guidance when it is unclear as to whether the use of "Arms" etc., may give the impression that there is a Royal connection.

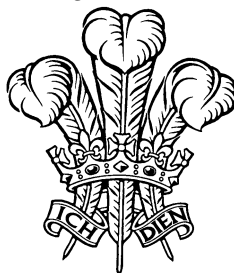
Conventional representations of the Royal Arms are shown below:



(English Version) (Scottish Version) The Duke of Edinburgh's Arms:



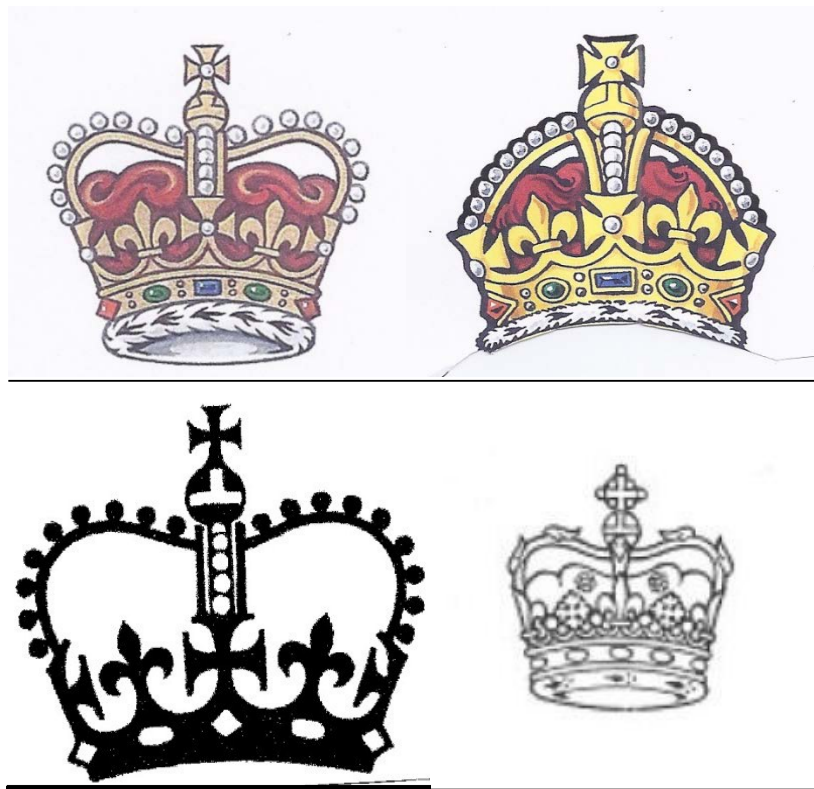
The Prince of Wales's Three Feathers Badge:



The late Queen Mother's Arms:



Conventional representations of the Royal Crown are shown below:



Further images of Royal Crowns are shown in Annex B.

A Royal Coronet is also a protected Royal Device:-



Crown designs that may be used for business purposes without infringement of the Royal Crown are shown in Annex C.

Products

The Royal Arms, similar emblems and the Royal Crown may not be used on articles for sale, unless prior permission has been granted by the Lord Chamberlain's Office.

It is only proposed to vary these rules on occasional events of national importance.

Trade Descriptions Act 1968

Section 12 states that:

"If any person, in the course of any trade or business, gives, by whatever means, any false indication, direct or indirect, that any goods or services supplied by him or any methods adopted by him are or are of a kind supplied to or approved by Her Majesty or any member of the Royal Family, he shall, subject to the provisions of this Act, be guilty of an offence".

Royal Warrants

When Royal Patronage is granted, for instance a Tradesmen's Warrant, the Royal Arms may be displayed in certain instances, as laid down in the Lord Chamberlain's Rules for holders of a Tradesmen's Warrant. However they may not be used as a trade mark and should only be displayed for the duration of the grant of a Royal Warrant.

The Lord Chamberlain's Office will be pleased to provide guidance if required.

NAMES OF THE ROYAL FAMILY

Trade Marks

Names of the Royal Family may not be registered in, or as, trade marks without the consent of The Queen or the relevant Member of the Royal Family. The names of Members of the Royal Family are listed at Annex C. The names of Royal Residences may not be registered either.

In addition to the possibility of an objection under Section 3(5) Trade Marks Act 1994, Trade Mark examiners will also consider whether the application has been made in bad faith (Section 3(6) and whether the mark is distinctive for the goods/services (Section 3(1)

Trade Marks incorporating the word Royal

Section 4 of the Trade Marks Act related to the use of any words, in such a manner as to be likely to lead persons to think that the applicant either has, or recently has had, Royal patronage or authorization.

Examples of goods or services for which ROYAL may indicate Royal patronage are high quality porcelain or glassware, luxury foods, organic food, confectionery, alcoholic beverages, clothing, organisation of sporting events, exhibitions, flower shows, tourism, medical and charitable services. This is not an exhaustive list.

ROYAL may indicate royal patronage or authorisation for other high value products, or prestige or 'public interest' type services.

ROYAL is unlikely to indicate Royal patronage or authorisation for everyday items e.g. insurance or financial services, double glazing services, provision of electricity, or for goods which are far enough removed from any association with the Royal family such as skateboards, computers, computer games or T-shirts.

Company Names

Sections 55 and 1047 of the Companies Act 2006 and Regulation 8 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 prohibits companies (including overseas companies) and limited liability partnerships from being registered under a name which includes any of the sensitive words specified in the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014, unless the approval of the Secretary of State has been obtained. The sensitive words specified in the 2014 Regulations include Royal, Queen, King, Prince or Princess.

Section 1194 of the Companies Act 2006 provides that it is an offence to carry on any type of business (to include a company (including an overseas), limited liability partnership or any other type of business) under a name which includes any of the sensitive words specified in the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014, unless the approval of the Secretary of State has been obtained. See: <https://www.gov.uk/government/publications/incorporation-and-names>

To use these words in a company or business name, you must obtain the consent of the body shown below:-

England & Northern Ireland:

E-mail (preferred): RoyalNames@cabinetoffice.gov.uk

or write to:

Constitutional Policy Team 4th Floor (South 1)
Cabinet Office
1 Horse Guards Road
London SW1A 2HQ

To speed up your application, please provide details of the reason(s) why you wish to use this word; the history of the company/organisation and its future plans; details of any Royal or Government associations/leading members. If you wish to use the name to represent an existing public house, hotel or similar establishment, provide evidence including the length of time it has existed. If the name represents a street name, surname or has long usage, provide evidence of such and any other relevant information.

Wales:

Email: PAD@wales.gsi.gov.uk

or write to:

The Welsh Government
Public Administration and Honours Unit
Crown Buildings
Cathays Park Cardiff
CF10 3NQ

Scotland:

Email: protocol@scotland.gsi.gov.uk

or write to:

The Scottish Government
Protocol Team
3-D Bridge, Victoria Quay
Edinburgh EH6 6QQ

Products

Using Royal names or Royal residences on products, rather than as part of a Company's name, is illegal if the use of the name suggests the goods have some connection with or are supplied to a Member of the Royal Family.

It is only proposed to vary these rules on occasional events of national importance.

ROYAL IMAGES

Royal images include representations of The Queen, any Member of the Royal Family (Annex D) and Royal Residences (Annex E).

Trade Marks

Trade Marks containing representations of Her Majesty, or any member of the Royal Family or royal Residences are open to objection under section 3(5) of the Trade Mark Act 1994 unless the consent of The Queen or the relevant member of the Royal Family is provided.

Products

The Lord Chamberlain's Office will not generally seek to oppose the use of images of Members of the Royal Family or Royal Residences on certain articles which are for sale, providing they are of a permanent kind, free from advertisement, in good taste, carry no implication that the firm concerned has received Royal Custom or approval, and are not in contravention of any trademark or copyright.

However, as a general rule, the Lord Chamberlain's Office does not consider that Royal Images should be used on the following:-

- Medals, medallions and coins
(which are not issued by The Queen or are legal tender)
- Adhesive seals
- Articles of dress
- Household linen and furnishing fabrics
- Packaging, containers, boxes, covers or labels

If it is intended to show the image of The Queen or a Member of the Royal Family with that of a person who is not a Member of the Royal Family, then it is suggested that specific advice should be sought from the Lord Chamberlain's Office.

Images of Members of the Royal Family under the age of 18 should not be used for commercial purposes.

Any question of copyright involved in the reproduction of a Royal Image must be settled by the prospective user directly with the copyright holder.

Nothing in these rules gives any right to the use of any particular Image.

It is only proposed to vary these rules on occasional events of national importance.

Advertising

The Advertising Standards Authority issues specific guidelines which cover the use of Royal Images in advertising, but generally, except when advertising a book, newspaper article or magazine article about a Member of the Royal Family, Royal Images may not be used for advertising purposes in any medium.

A firm's advertisement may not include photographs of Members of the Royal Family visiting their works or exhibition stands, or being publicly involved with their goods or services. Such matters may then be referred to the Advertising Standards Authority or the Director General of Fair Trading under the control of the Consumer Protection from Unfair Trading Regulations 2008 or the Business Protection from Misleading Marketing Regulations 2008.

Legal Tender and Postage Stamps

Legal tender which shows The Queen's head side of a coin or bank note may be used in advertising material, providing it is a faithful reproduction and is shown without alteration. This also applies to postage stamps, which must be shown in entirety, including perforations.

Clarification can be sought from the Lord Chamberlain's Office.