

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION NO 3288539
IN THE NAME OF TWG TEA COMPANY PTE LTD
TO REGISTER THE FOLLOWING TRADE MARK IN CLASS 30:**



Background

1. On 7 February 2018, the applicant, TWG TEA COMPANY PTE LTD, applied to register the above trade mark for the following goods:

Class 30: Tea; black tea [English tea]; flavourings of tea; tea-based beverages; fruit flavoured tea; fruit tea; beverages with tea base; rooibos tea; herbal tea; chai tea; green tea; Japanese green tea; oolong tea (Chinese tea); aromatic teas; beverages made of tea; iced tea; tea bags; tea extracts; tea essence; tea for infusions; spices; sugar; chocolates; chocolate bars; pralines; edible ices; ice cream; sorbets (ices); ice desserts, confectionery; cakes, pastry; macaroons (pastry); pastries; biscuits; cookies, aromatic preparations for pastries.
2. On 26 February 2018, the Intellectual Property Office ('IPO') issued an examination report in response to the application. The examination report contained an objection under Sections 3(1)(b) and (c) of the Trade Marks Act 1994 ('the Act').
3. The objection was raised on the basis that the mark consisted exclusively of a sign which may serve in trade to designate the kind of goods, i.e. goods being 'Red Jasmine Tea' or flavoured with 'Red Jasmine Tea'. The examination report presupposed that 'Red Jasmine Tea' could be a type of tea or, alternatively, that Jasmine Tea coloured red is a type of tea, and the device of what would be assumed to be the Jasmine plant, contained within the mark merely reinforces the descriptiveness of the words. The examination report contended that the words (verbal element) permeate the mark to such a degree that the non-verbal elements are rendered incapable of enabling the whole sign to perform the function of a trade mark, to guarantee origin.

4. On 26 April 2018, the applicant responded through its attorney, asking, as a contingency in the event its written submissions were not accepted, for a hearing to discuss the objections raised. The written submissions drew attention to presentational elements within the mark, such as: projections and extensions of lettering, three dots design, exaggerated curlicues on the initials R and J, all of which rendered the stylisation “as being suggestive of exotic solidity, armour and reinforcement”, in the words of the attorney. Further, the attorney drew attention to the overall colour and ‘stylised’ shrub/plant device (including circular border), meaning that the device was not simply, what may be termed, a ‘naturalistic expression’. Finally, the attorney noted that the particular stylisation had been used by the applicant for years, and in fact had been registered in this form as well. It was, in short, a consistently recognised stylisation, both by the relevant consumer and official registries. However, the examiner rejected all these submissions and a hearing was subsequently scheduled for 10 July 2018.
5. A hearing was conducted on 10 July 2018. The applicant was represented by Mr Duncan Morgan of Beck Greener. I made no decision at the hearing but, instead issued my written conclusions on 17 July 2018. My conclusions were not final as I allowed a further period of two months in which the applicant could, in particular, consider the option of acquired distinctiveness. My conclusions acknowledged Mr Morgan’s further submissions in respect of the overall presentation of the mark, which built on the written submissions referred to above. Mr Morgan also referred me to earlier applications, which, in his view, could be considered as useful comparators: 2638074 Royal Moroccan Tea, 2646527 New World Tea, 2646528 White House Tea, and 3028553 White Earl Grey. All of these he said, could be argued to be on a par with this case and supported the acceptance of this application.
6. It was also acknowledged at the hearing that this application had some further background history. A fellow hearing officer had, for example, rejected a previous application for the words only, ‘Red Jasmine Tea’ in the name of the same applicant. They had done so in the following terms:

Hearing Discussion

The hearing came before me on 6 November 2017 and was attended by Mr Ian Bartlett of Beck Greener who is the applicant’s representative in this case. Mr Bartlett submitted that whilst there is such a thing as red jasmine plant, there is no evidence that it is commonly used to flavour teas. Mr Bartlett advised me that he had conducted a search of the term ‘red jasmine tea’ and the majority of references he found referred to the applicant and one other reference which showed use of the term ‘Thousand Year Red Jasmine Tea’ was misleading as the brand is ‘Thousand Year Red’ and the goods are jasmine tea which are sold under the brand. Mr Bartlett felt that this supports his assertion that there is no such thing as RED JASMINE TEA, nor is it a term used in trade to describe tea or the other goods listed in the application.

I suggested to Mr Bartlett that given the fact that consumers are very familiar with the concept of jasmine tea and because there is such a thing as a ‘red jasmine plant’, that when faced with the term, consumers would merely perceive the sign as designating goods made from, or flavoured with red jasmine, as opposed to the more common jasmine tea. Mr Bartlett submitted that consumers wouldn’t be familiar with a red jasmine plant as it is uncommon and although consumers will be reasonably well informed and circumspect, they will not be aware of the plant and wouldn’t therefore

attach any descriptive meaning to the term.

Hearing Decision

I deferred my decision at the hearing, but having further considered Mr Bartlett's submissions, I am not persuaded that the objection should be waived. In my view the sign would merely be perceived as designating goods that have been made from, or flavoured with red jasmine, or that they are, or are flavoured with a blend of red tea and jasmine tea. Given that consumers will be very familiar with the concept of red tea and jasmine tea, I see no reason why RED JASMINE TEA will be perceived as anything other than a blend of tea or an indication that the goods are flavoured with red jasmine made from the red jasmine plant. The Court of Justice in Case C-265/00 Campina Melkunie BV and BeneluxMerkenbureau, BIOMILD, held that, as a rule, a sign which consists only of descriptive components, without any unusual variations as to syntax or meaning, is likely itself to be descriptive. In my view, when faced with this sign consumers will merely perceive it as an indication that the goods are, or are flavoured with a blend of red tea and jasmine tea, or that they contain red jasmine, from the red jasmine plant.

I acknowledge that it is necessary to assess, both visually and aurally, whether the sign creates an impression which is different, or goes further, than the impression made by the simple descriptive combination. In this case merely bringing together wholly descriptive terms does not introduce any unusual variation, in particular as to syntax or meaning, and cannot result in anything other than a mark consisting exclusively of a sign or indication which may serve, in trade, to designate characteristics of the goods concerned. In my view there is a sufficiently direct and specific relationship between the sign and the goods in question which would enable the public concerned immediately to perceive, without further thought, a description of the goods or their characteristics and as such the objection must be maintained.

7. My written conclusions, following and discussed at the hearing, also referred to an earlier case heard by the Appointed Person (BL O/358/17) involving the applicant, and relating to various names of teas, where the Appointed Person observes, regarding the names 'PARIS BREAKFAST TEA' and 'RUSSIAN BREAKFAST TEA' as follows:

44. In relation to PARIS BREAKFAST TEA and RUSSIAN BREAKFAST TEA, the Hearing Officer concluded that these phrases would be viewed by the relevant consumer as descriptive of the flavour of the tea. This was not about what TWG sought to achieve by using the mark, but what consumers took the words to mean. As Wadlow, The Law of Passing Off (5th Ed, Sweet and Maxwell 2016), expresses in paragraph 8-68:

A trader who introduces goods or services which are novel enough for the English language not already to have a word to describe them does so at his own risk if he fails to provide the public with a suitable generic term for identifying the new goods or services without implicitly referring to their source.

He continues at paragraph 8-70 (footnotes omitted)

Words such as paraffin, linoleum and magnolia are wholly arbitrary in relation to oil, floor coverings and alloys. However, that does not stop them being descriptive in the sense that they are the name of the article as such.

45. These statements apply equally when somebody introduces a new blend of tea. If consumers consider the name of the blend to be PARIS (or RUSSIAN) BREAKFAST TEA then they are using those phrases descriptively and so cannot generate goodwill for TWG. It does not matter that TWG invented the name for the blend.

46. Mr Bartlett submitted that there was no evidence upon which the Hearing Officer could find these phrases were descriptive. However, where no evidence is filed it was perfectly proper for the Hearing Officer to rely upon his common sense: O2 Holdings Ltd's TM Application [2011] RPC 22.

8. Whilst Mr Morgan made no concessions at the hearing as to the registrability of the words only, 'Red Jasmine Tea', it is fair to say the thrust of his submissions went to the particular presentational features of the mark and he built upon the contentions already made in writing. He said the unique typeface (which is not readily available on MS Word), with its "spike-like" elongations on the middle letters, as well as the shadowing and three-dimensionality of the words, is more than a merely trivial element, as it plays its part in creating an "exotic feel". Further, he submitted the red colour of the background permeates through the perforated letters, adding distinctive character.
9. In my conclusions after hearing, I dealt with the question of the words, 'Red Jasmine Tea', only, and said that I would have found it difficult, based on the previous findings referred to above and my understanding of case law, to have concluded other than that the words only, 'Red Jasmine Tea', would not have been registrable under section 3(1)(c) of the Act and 3(1)(b) as a result. That is to say, the question would have been whether the words 'Red Jasmine Tea' *could* have designated a characteristic of the goods to the consumer (e.g. kind/flavour/ingredient)¹. In that regard, the view that the registrar could not prove that such a blend of tea existed, or was likely to exist, or that the applicant was the inventor or even the sole or main user was not an effective answer or rebuttal to the objection. In any event, the applicant had filed no evidence that it was the inventor of 'Red Jasmine Tea' or that it was sole or rare user, not that this would have changed my mind anyway since, as is made clear in the Appointed Person case I have referred to above and other cases, the matter is quite properly judged by me as a matter of 'common sense' and with an eye to the public interest. This is the approach I shall take in my full reasoning below.
10. As far, then, as my conclusions following the hearing were concerned, the sole issue for me was whether the particular presentation of the mark *as a whole*, rather than the verbal element only, was sufficient to function as a trade mark in the eyes of the relevant consumer, absent education through use. This is a question which has confronted the registry and other authorities on numerous occasions – the combination of descriptive or non-distinctive words with other matter or elements which may or may not be enough to avoid objection. By way of example only and irrespective of its final outcome, *The Flying Scotsman* decision (paras 23-29), (BL O/313/11) by the Appointed Person is an excellent expression of the kind of analysis involved. The question is whether the mark as a whole may serve to individualise ('allude

¹ The question 'could designate a characteristic' is confirmed for example only in BL O/096/11 PUTTERSCOPE, a decision of the Appointed Person at para 11.

emblematically' are the words used by the Appointed Person) the goods or services in respect of which it may be used. I concluded, having conducted the type of analysis required of me in *Flying Scotsman*, that this application was the wrong side of the line. In particular, I was not convinced the various niceties of presentation which the applicant had been so keen to impress upon me, would in fact be heeded by the relevant consumer in terms of them having, individually or collectively any trade mark significance. In other words, any presentational elements were drowned out by the descriptive words which permeated the mark as a whole. I was also not persuaded by the prior, comparator, acceptances referred to me by Mr Morgan. I shall speak further on these questions in my reasoned decision below.

11. I did, however, conclude that the objection under section 3(1)(c) should be waived and this was in light of the guidance in the judgment of Richard Arnold Q.C, sitting as deputy High Court Judge, in *SPAMBUSTER* (see [2005] EWHC 13 (Ch). This judgment found, in my opinion, that although adding stylisation to the descriptive word *SPAMBUSTER* did not remove a potential descriptiveness objection under Section 3(1)(c), the addition of separate device elements would result in an objection under 3(1)(c) being inapplicable, and that objection being replaced by an objection under section 3(1)(b) only (see paras 145-150). The device elements in the *SPAMBUSTER* judgment, which were deemed sufficient enough to result in the objection under 3(1)(c) being inapplicable and replaced by a 3(1)(b) only, were an exclamation mark and an oval surround. In this case, my view was that, overall, the undeniable existence of the non-verbal elements (including the plant device) rendered the objection under 3(1)(c), in light of *SPAMBUSTER*, as being inappropriate. I nevertheless found the Section 3(1)(b) objection to stand.
12. The applicant was provided a period of two months primarily to submit evidence of acquired distinctiveness with the purpose of overcoming the objection.
13. An extension of time to respond was requested and granted, until 26 November 2018. However, no response was received, and so the application was formally refused on 28 January 2019. The applicant requested a full statement of my grounds for refusal on 28 February 2019. This I shall do below.

Decision

14. The relevant parts of section 3 of the Act read as follows:

"3.-(1) The following shall not be registered –

(a) ...

(b) trade marks which are devoid of any distinctive character,

The relevant legal principles - Section 3(1)(b)

15. The Court of Justice of the European Union ('CJEU') has repeatedly emphasised the need to interpret the grounds of refusal of registration listed in Article 3(1) and Article 7(1), the equivalent provision in Council Regulation 40/94 of 20 December 1993 on the Community Trade Mark, in the light of the general interest underlying each of them (*Bio ID v OHIM*, C-37/03P paragraph 59 and the case law cited there and, more recently, *Celltech R&D Ltd v OHIM*, C-273/05P).

16. The general interest to be taken into account in each case must reflect different considerations according to the ground for refusal in question. In relation to section 3(1)(b) (and the equivalent provision referred to above) the Court has held that "...the public interest... is, manifestly, indissociable from the essential function of a trade mark", *SAT.1 SatellitenFernsehen GmbH v OHIM*, C-329/02P. The essential function thus referred to is that of guaranteeing the identity of the origin of the goods or services offered under the mark to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin (see paragraph 23 of the above-mentioned judgment). Marks which are devoid of distinctive character are incapable of fulfilling that essential function.
17. Section 3(1)(b) must include within its scope those marks which, whilst not designating a characteristic of the relevant goods and services (i.e. not being necessarily descriptive), will nonetheless fail to serve the essential function of a trade mark in that they will be incapable of designating origin. In terms of assessing distinctiveness under section 3(1)(b), the ECJ provided guidance in *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (Postkantoor) C-363/99) where, at para 34, it stated:

A trade mark's distinctiveness within the meaning of Article 3(1)(b) of the Directive must be assessed, first, by reference to those goods or services and, second, by reference to the perception of the relevant public, which consists of average consumers of the goods or services in question, who are reasonably well informed and reasonably observant and circumspect (see inter alia Joined Cases C-53/01 to 55/01 Linde and Others [2003] ECR I- 3161, paragraph 41, and C-104/01 Libertel [2003] ECR I-3793, paragraphs 46 and 75).
18. This establishes the principle that the question of a mark being devoid of any distinctive character is answered by reference firstly, to the goods and services applied for, and secondly, to the perception of the average consumer for those goods or services. In this regard, the relevant consumer must be identified as being the average consumer in general, as the goods applied for an inexpensive, every day, non-specialist items.
19. There is, as stated in paragraph 19 of the judgment of the CJEU in Case C-104/00 *Deutsche Krankenversicherung AG v Ohim (Companyline)*, no obligation to rule on the possible dividing line between the concept of lack of distinctiveness and that of minimum distinctiveness. If the sign in question is found, on assessment, to be intrinsically origin neutral in relation to goods of the kind for which registration has been requested, the application for registration stands to be rejected for lack of distinctiveness under section 3(1)(b).
20. One must also be aware that the test of distinctive character is one of immediacy or first impression, as confirmed by the European Court of First Instance (now the General Court) which, in its decision on *Sykes Enterprises v OHIM*, T-130/01 (*Real People Real Solutions*), stated the following:

...a sign which fulfils functions other than that of a trade mark is only distinctive for the purposes of Article 7(1)(b) of Regulation No 40/94 if it may be perceived immediately as an indication of the commercial origin of the goods or services in question, so as to enable the relevant public to distinguish, without any possibility of confusion, the goods or services of the owner of the mark from those of a different commercial origin.

Application of legal principles - Section 3(1)(b)

21. As I did in my letter following the hearing, I find it convenient to divide my analysis into, firstly, the question of the words, 'Red Jasmine Tea', only, and then, to consider the possible impact of the non-verbal elements on the question whether the mark as a whole is devoid of distinctive character.

'Red Jasmine Tea' – words only

22. There is no express concession in terms of the verbal element only, and so I consider that I must deal with this as a primary matter. As expressed above, I am of the opinion that the words 'Red Jasmine Tea' could be perceived by the consumer as designating a characteristic of the goods, namely the type or kind of goods or that they may be 'red jasmine tea' itself, flavoured with 'red jasmine tea' or have 'red jasmine tea' as an ingredient. It is irrelevant that the descriptive colour, 'red', may describe the plant from which the tea is derived, or to the tea itself. In both scenarios the words are descriptive. As mentioned above, I am entitled in such a case as this to make a 'common-sense' judgment based on notional and fair use in relation to the goods specified.
23. Further, it was not contended, for example, by the applicant that I should be divide the goods up in any way, such that some may be free for objection. The goods are, then, homogeneous enough, in my opinion, to be given the same treatment and it was not contended otherwise. In this specific regard, I should say that whilst a food item such as 'ice cream', for example, may seem at first sight to be somewhat removed from tea, I do not believe it beyond the realm of probability that 'red jasmine tea' could be perceived as an ingredient for such an item (see for example *Case T-234/06 Giampetro Torresan v OHIM [2009] ECR II-4185*). In any event, as I say, I was not addressed on this particular question, and am content that this is a case where the goods stand or fall together as a homogeneous group. I would simply add that if I am found to be wrong on this and I should not have treated the application so compendiously, then for goods that are *not* in the homogenous group, there must, at the very least be a question that applying this mark to such goods could result in consumer deception, which would constitute an alternative objection under Section 3(3)(b) of the Act. ²
24. To return to this 'common-sense' judgment I have mentioned, this reflects the fact that I myself am a relevant consumer of tea and purchase it from the normal retail sources such as supermarkets. It needs re-stating that the relevant consumer in this case is clearly an ordinary member of the public. I am fully aware also that there is such a thing as 'jasmine tea'. It is a well-known type of tea in my opinion. The addition of the descriptive word, 'red', would not convert the overall term, suddenly, into a trade mark. Teas, these days, have many descriptive terms, reflecting different types and blends. To me, the term 'Red Jasmine Tea' is simply another such descriptive term for a tea, reflecting its type or kind. As I have said above, and based on existing case law, I do not have to prove the existence of such a type of tea or of the 'red jasmine plant' to arrive at this conclusion nor does the applicant need to disprove it. Moreover, even if the applicant could show that it had devised the term or the particular (novel) blend or that it was the sole or main user of the term, this would not have served to deflect or

² See the analysis in BL O/358/17 (*supra*) at paras 89-93

rebut the objection that the words alone *could* designate or describe a characteristic of the goods. I would add that such a characteristic would also be very *'direct'*, in terms of the goods. That is to say it would describe the type of kind of goods; there is no allusion, vagueness or laudatory quality about the words.

25. I would also maintain that such a conclusion is entirely consistent with the observations made by the Appointed Person in connection with the 'PARIS BREAKFAST TEA' and 'RUSSIAN BREAKFAST TEA' case referred to above. Admittedly, the Wadlow quotation the Appointed Person relied upon was in relation to the generation of 'goodwill' of a novel or invented term. That said, in the case of teas especially, the possible absence of any goodwill of a term which may relate to a novel product or one invented by the applicant itself, would be telling in regard to whether such a term is capable of registration as a trade mark.
26. I would conclude, then, that the words only, 'red jasmine tea', would have been objectionable under section 3(1)(c) (as well as 3(1)(b) as a consequence) of the Act.

The effect of the device and other elements of the mark

27. Although I have found the words contained within the mark to be descriptive, I have referred above to the *SPAMBUSTER* judgment, and found, following the hearing, a Section 3(1)(c) objection to be inappropriate. It is quite evident, therefore, that the acceptability of the sign applied for will rely on the impact the mark's figurative, non-verbal, elements and whether or not they create an overall distinctive impression in a trade mark sense.
28. As is clear, these elements have been carefully referred to me in writing and at the hearing, in meticulously analytical and precise terms.
29. However, the decision as to whether or not such elements create trade mark distinctiveness, sufficient to avoid objection, lies not in the artistic efforts of the applicant or the exotic manner they are described by the attorney, but in the recognition as a trade mark by the consumer. It is well established in case-law that distinctiveness of a sign must be assessed, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the perception of the relevant public. The question is whether or not the purchaser of everyday inexpensive items in a supermarket environment, such as tea and confectionary, who is considered to be reasonably observant and circumspect and nothing more, will notice such minute details and will consider them to be sufficiently distinctive, as a whole, to the point of functioning as indicators of trade origin.
30. As I have explained so far in this decision, I have found the verbal elements contained within the mark to contain directly descriptive information about the kind or type of goods. The words, in other words, speak 'loud and clear' to the consumer.
31. I am not convinced that during the purchasing process of such inexpensive everyday goods as those applied for, the level of attention of the consumer will be so attuned to the minor, 'exotic' and non-verbal details referred to me. In this regard, I see the verbal element as effectively drowning out any possible 'origin specific' message that may have been urged on me.
32. In short, I am of the opinion that, when faced with the mark applied for, the perceptions and recollections of the average consumer in relation to the mark as a whole, *and absent education*, will be 'origin neutral' as opposed to 'origin specific'. The case of

BL O/205/04, *Quick Wash Action*, decided by the Appointed Person provides me with a neat characterisation as to how the mark may be perceived. The Appointed Person says in '*Quick Wash Action*' "...the artistic impression [of the plant/or leaves] neatly and skilfully builds upon and reinforces the origin neutral message in a way that makes it even more effective than the words alone might. I think that the net result is a well-executed, artistically pleasing, origin neutral device". This, I think, is the case here; the net result is of an artistically pleasing blend of word, device, colour, font but not one which, in the realm of tea and tea-based (including as an ingredient) products, will actually resonate as a trade mark, absent education.

33. I should stress that I have not only considered cases such as '*Quick Wash Action*' which end in refusal being affirmed on appeal. In coming to my decision, I have also considered, as I have said above, another of the Appointed Person's decisions in *The Flying Scotsman* (BL O/313/11). In that decision, the Appointed Person was of the opinion that the mark as a whole was possessed of enough artistry and creative impression that it would be seen as 'alluding emblematically' to the content and character of the goods concerned. The mark was viewed in this case, as 'origin specific' rather than 'origin neutral'. The importance of *Flying Scotsman* lies not in the outcome but the articulation of the analysis we are required to undertake. I would add that the registrar is very familiar with that analysis and undertakes it all the time.
34. A crucial part of that analysis makes it essential to ensure, in the final analysis, that the trade mark is not divided into its constituent parts of verbal and figurative elements, but rather an assessment of the mark's capacity to function as an indicator of trade origin is made of the sign as a whole, in the context that the relevant consumer would make a purchase. I have done this and my view is that, having regard to the goods and the relevant consumer, this mark is objectionable under section 3(1)(b).
35. As a footnote I should also explain that, whilst Mr Morgan did not expressly refer to it, I believe that my finding is entirely consistent with the common practice enunciated by a Network Group under the auspices of the EUIPO and in a document entitled: '*Common Communication on the Common Practice of Distinctiveness – Figurative Marks Containing Descriptive/Non-Distinctive Words*, of 2 October 2015', published on our website at <https://www.gov.uk/government/publications/common-practice-on-distinctiveness-figurative-marks-containing-descriptive-non-distinctive-words>.
36. In this Common Practice notice, a subject was covered which is relevant to the current application. The subject I refer to is that which explains that a figurative mark which contains both descriptive words and figurative elements, which are themselves either a direct representation or have a direct link to the goods applied for, are ultimately objectionable. Such a judgement applies directly to the current application as the words are descriptive and the key figurative element is apparently a plant from which tea may be derived, and therefore a direct link to the goods applied for. Regardless of the stylised nature of the device element, this element will be considered, first and foremost, as a representation of, or relevant to, the content of the goods. In my opinion the plant and leaf device, although the applicant describes it 'stylised', actually comes across as quite a naturalised and realistic expression. I should add that, even without this particular guidance in the Common Practice, I would have arrived at the same conclusion.
37. I should finally mention the question of comparator marks raised at the hearing. It is well established that comparator marks (so called 'state of the register' evidence) are

irrelevant for the reasons most recently expressed in *BREXIT* (BL O/262/18) a decision of the Appointed Person at paras 9-11. Para 11 reads:

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.

Conclusion

38. Having considered all arguments put forward in the proceedings, the application is rejected for all the goods applied for as it is barred from registration under section 3(1)(b) only.

Dated this day of 21st May 2019

Edward Smith
Acting for the Registrar, the Comptroller General